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Contents

Federal Register

Vol. 89, No. 111

Friday, June 7, 2024

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, and notice of recently enacted public laws.

To subscribe to the Federal Register Table of Contents electronic mailing list, go to https://public.govdelivery.com/accounts/USGPOOFR/subscriber/new, enter your e-mail address, then follow the instructions to join, leave, or manage your subscription.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR

Proclamations:
10773.....48487

7 CFR
3.....48495
3550.....48499

8 CFR
208.....48710
235.....48710
1208.....48710

14 CFR
39.....48500
71 (2 documents) 48504, 48506

21 CFR
573.....48507

Proposed Rules:
1308.....48515

33 CFR
100.....48509
165.....48509

Proposed Rules:
151.....48515

34 CFR

Proposed Rules:
Ch. VI.....48517

40 CFR
257.....48774
261.....48511

Proposed Rules:
52 (2 documents) 48523, 48532

45 CFR

Proposed Rules:
5b.....48536

47 CFR
8.....48514
20.....48514

Proposed Rules:
4.....48540

48 CFR

Proposed Rules:
2.....48540
19 (2 documents) 48540, 48544
42.....48540
52 (2 documents) 48540, 48544

Federal Register
Vol. 89, No. 111
Friday, June 7, 2024

Presidential Documents

Proclamation 10773 of June 3, 2024

Securing the Border

By the President of the United States of America

A Proclamation

There are more people around the world who are displaced from their homes today than at any point in time since World War II. Many factors have contributed to this problem. Failing regimes and dire economic conditions afflict many countries, including several in the Western Hemisphere. Violence linked to transnational criminal organizations has displaced substantial numbers of people in Latin America. The global COVID–19 pandemic upended societies around the globe. Natural disasters have forced people from their homes.

As a result of these global conditions, we have been experiencing substantial levels of migration throughout the Western Hemisphere, including at our southwest land border. In 2019, encounters nearly doubled from their 2018 level to almost 1 million. In 2020, the global COVID–19 pandemic led countries throughout the world to shut their borders and suspend international travel; however, once the pandemic began to recede, international travel resumed, and we again experienced elevated levels of migration throughout the Western Hemisphere, including at our southwest land border.

On May 11, 2023, as part of my Administration's work to prepare for the end of the Centers for Disease Control and Prevention's public health order under title 42, United States Code, and to return to processing all noncitizens under immigration authorities under title 8, United States Code (title 8), the Department of Homeland Security (DHS) and the Department of Justice (DOJ) issued a final rule, entitled Circumvention of Lawful Pathways (Lawful Pathways rule), encouraging the use of lawful pathways and imposing a rebuttable presumption of asylum ineligibility on those who do not use them.

The Lawful Pathways rule was designed to address the high levels of migration throughout the Western Hemisphere and further discourage irregular migration by encouraging migrants to use lawful, safe, and orderly processes for entering the United States or to seek protection in other partner nations; imposing a presumptive condition on asylum eligibility for those who fail to do so; and supporting the swift return of those who do not have valid protection claims.

As a complement to the Lawful Pathways rule and associated enforcement efforts, the Department of State and DHS have taken significant steps to expand safe and orderly pathways for migrants to enter the United States lawfully. Those steps include establishing Safe Mobility Offices in Colombia, Costa Rica, Ecuador, and Guatemala to facilitate access to lawful pathways; expanding country-specific and other available processes to seek parole on a case-by-case basis for urgent humanitarian reasons or significant public benefit; expanding access to visa programs for seasonal employment; establishing a mechanism for noncitizens to schedule a time and place to present at ports of entry in a safe, orderly, and lawful manner through the CBP One mobile application; and expanding refugee admissions from the Western Hemisphere from 5,000 in Fiscal Year 2021 to up to 50,000 in Fiscal Year 2024.

The Lawful Pathways rule and these complementary measures have made a substantial impact. On May 12, 2023, DHS returned to processing all noncitizens under title 8 immigration authorities and is processing noncitizens at record scale and efficiency. Since then, my Administration has maximized the use of expedited removal to the greatest extent possible given limited resources, placing more than 970 individuals encountered at and between ports of entry at the southwest land border into the process each day on average and conducting more than 152,000 credible fear interviews, both of which are record highs. As a result, from May 12, 2023, to May 1, 2024, my Administration removed or returned more than 720,000 noncitizens who did not have a lawful basis to remain in the United States, the vast majority of whom crossed the southwest land border. Total removals and returns in the 12 months following May 12, 2023, exceeded removals and returns in every full Fiscal Year since 2010. The majority of all individuals encountered at the southwest land border from Fiscal Year 2021 to Fiscal Year 2023 were removed, returned, or expelled.

Despite these efforts, and after months of reduced encounter levels following the changes put in place after May 12, 2023, encounter levels increased toward the end of 2023, and December 2023 saw the highest level of encounters between ports of entry in history, as increasing numbers of people migrated through the Western Hemisphere. The challenges presented by this surge in migration, which would have been even worse had the Lawful Pathways rule and other measures not been in place, were compounded by the fact that the surge was focused increasingly on western areas of the border in California and Arizona that are geographically remote, challenging to address, and without sufficient pre-existing infrastructure or resources to respond to the surge. From January to March 2024, encounters decreased from and have remained below levels experienced in November and December 2023, including as a result of increased enforcement by the United States and partner countries. However, the factors that are driving the unprecedented movement of people in our hemisphere remain, and there is still a substantial and elevated level of migration that continues to pose significant operational challenges.

The current situation is also the direct result of the Congress's failure to update an immigration and asylum system that is simply broken—and not equipped to meet current needs. While my Administration has vigorously enforced the law within the constraints imposed by the existing system, the statutory framework put in place by the Congress is outdated. For the vast majority of people in immigration proceedings, the current laws make it impossible to quickly grant protection to those who require it and to quickly remove those who do not establish a legal basis to remain in the United States. This reality is compounded by the fact that the Congress has chronically underfunded our border security and immigration system and has failed to provide the resources or reforms it needs to be able to deliver timely consequences to most individuals who cross unlawfully and cannot establish a legal basis to remain in the United States.

Despite the strengthened consequences in place at our border through the Lawful Pathways rule and the related measures that have led to record returns and removals, encounter levels are exceeding our capacity to deliver those consequences in a timely manner due to the outdated laws and limited resources we have available.

My Administration has repeatedly asked the Congress to update the outdated and inadequate immigration statutes, to create a legal framework that is functional and addresses current realities, and to provide additional resources so that we can more effectively deliver consequences at the border. In August 2023, I requested more than $4 billion in additional funding for border security and related migration issues, including more than $2 billion for urgent DHS border management requirements. The Congress failed to act. In October 2023, I requested $13.6 billion for border enforcement and migration management. This request included more than $5 billion for DHS

to manage conditions on the southern border, as well as funding for critical capacity enhancements to keep the southern border secure. The Congress once again failed to provide our border and immigration system with the resources it needs to deliver timely consequences to those who cross unlawfully.

In early February 2024, a bipartisan group of Senators introduced legislation (bipartisan legislative proposal) containing the toughest and fairest reforms of our asylum laws in decades that would have provided new authorities to significantly streamline and speed up immigration enforcement proceedings for individuals encountered at the border, including those who are seeking protection. Critically, the bipartisan legislative proposal included nearly $20 billion in additional resources for DHS and other departments to implement those new authorities, such as:

(a) over 1,500 new U.S. Customs and Border Protection (CBP) personnel, including Border Patrol agents and CBP officers;

(b) over 4,300 new asylum officers and additional U.S. Citizenship and Immigration Services staff to facilitate timely and fair decisions;

(c) 100 new immigration judge teams to help reduce the asylum caseload backlog and adjudicate cases more quickly;

(d) shelter and critical services for newcomers in our cities and States; and

(e) 1,200 new U.S. Immigration and Customs Enforcement personnel for functions including enforcement and deportations.

While the bipartisan legislative proposal did not include everything we wanted, senior officials from my Administration worked closely with the bipartisan group of Senators to ensure that the reforms would adequately address the challenges that we have been facing at our southern border for more than a decade. However, the Congress failed to move forward with this bipartisan legislative proposal.

The Further Consolidated Appropriations Act, 2024 (Public Law 118–47) increased funding for DHS over Fiscal Year 2023, but it did not address the needs identified in various related supplemental requests, nor did it equip the Federal Government with the new authorities from the bipartisan legislative proposal. In May 2024, when the Senate again considered the bipartisan legislative proposal, the Senate failed to advance the measure.

Our broken immigration system is directly contributing to the historic migration we are seeing throughout the Western Hemisphere, exacerbated by poor economic conditions, natural disasters, and general insecurity, and this fact, combined with inadequate resources to keep pace, has once again severely strained our capacity at the border. The result is a vicious cycle in which our United States Border Patrol facilities constantly risk overcrowding, our detention system has regularly been at capacity, and our asylum system remains backlogged and cannot deliver timely decisions, all of which spurs more people to make the dangerous journey north to the United States.

The Congress's failure to deliver meaningful policy reforms and adequate funding, despite repeated requests that they do so, is a core cause of this problem. Under current law, whenever a noncitizen in expedited removal indicates an intention to apply for asylum or a fear of persecution, they are referred for an interview with an asylum officer and cannot be removed through expedited removal if there is a significant possibility that they could establish eligibility for asylum. This screening standard is a requirement imposed by the Congress, but it has not functioned well in predicting ultimate success in asylum proceedings. From 2014 to 2019, 83 percent of individuals referred for an interview with an asylum officer passed the screening stage, meaning that they were not removed pursuant to expedited removal, but less than 25 percent of cases ultimately resulted in a grant of asylum or other protection, often after waiting years to reach a final

decision. By imposing a rebuttable presumption of asylum ineligibility on those who cross the border unlawfully, the Lawful Pathways rule has made a meaningful impact in reducing this disparity. The screen-in rate from May 12, 2023, to March 31, 2024, dropped to 52 percent for individuals who are subject to the rebuttable presumption of asylum ineligibility. However, the Lawful Pathways rule alone is inadequate during times of record encounter levels and cannot change the underlying statutory limitations.

Data confirm that the system has been badly strained for many years and is not functioning to provide timely relief for those who warrant it or timely consequences for those without viable protection claims. Due to an outdated and inefficient system and insufficient resources that do not allow for prompt adjudication of claims, too many people have had to be processed by the Border Patrol and released with a notice to appear in removal proceedings before an immigration judge since May 2023. The U.S. Citizenship and Immigration Service affirmative asylum backlog is now over 1 million cases and growing, with over 300,000 applications filed prior to 2021 still pending. At the end of Fiscal Year 2023, there were over 2.4 million cases pending in the immigration courts. Pending cases more than doubled from the end of Fiscal Year 2016 to the end of Fiscal Year 2020 and doubled again between that time and the end of Fiscal Year 2023. Between Fiscal Year 2006 and the end of Fiscal Year 2023, in tandem with historic increases in filings to initiate immigration court proceedings, the immigration courts' pending caseload increased from approximately 170,000 to approximately 2.46 million. During Fiscal Year 2023, immigration judges completed more cases than they ever had before in a single year, but more than twice as many cases were received by the immigration courts than were completed.

The status quo system—the result of outdated laws and inadequate resources—has become a driver for unlawful migration throughout the region and an increasingly lucrative source of income for dangerous transnational criminal organizations and other criminal smuggling organizations that, without countermeasures, will continue to grow in strength and pose significant threats to the safety and security of United States communities and migrants, as well as countries throughout the region.

Considering these trends and the decades-long failure of the Congress to address the problem through systemic reform and adequate funding, and following the Congress's failure to pass the bipartisan legislative proposal, I must exercise my executive authorities to meet the moment. This proclamation answers the call by suspending entry of noncitizens across the southern border during this time of high border crossings. Appropriate exceptions are provided, such as for those who are particularly vulnerable or present pursuant to a process the Secretary of Homeland Security determines is appropriate to allow for safe and orderly processing into the United States. That process will continue to allow for individuals to seek entry to this country each day in a safe and orderly manner, and following their arrival, to seek protection through the appropriate process. This proclamation, in conjunction with steps to be taken by DOJ and DHS, is needed to enhance our ability to address the historic levels of migration and more efficiently process migrants arriving at the southern border given current resource levels.

These actions do not change or fully compensate for the fact that our immigration system is under-resourced and broken, nor do they change the fact that there are significant limits to what can be achieved without the Congress fulfilling its responsibility to help solve the unprecedented challenge that we are facing. No executive action can deliver the significant policy reforms and additional resources that were in the bipartisan legislative proposal. But I will continue to take actions, within these constraints, to address the situation at our southern border.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States, by the authority vested in me by the Constitution and the laws of the

United States of America, including sections 212(f) and 215(a) of the Immigration and Nationality Act (8 U.S.C. 1182(f) and 1185(a)) and section 301 of title 3, United States Code, hereby find that, absent the measures set forth in this proclamation, the entry into the United States of persons described in section 1 of this proclamation under circumstances described in section 2 of this proclamation would be detrimental to the interests of the United States, and that their entry should be subject to certain restrictions, limitations, and exceptions. I therefore hereby proclaim the following:

Section 1. *Suspension and Limitation on Entry.* The entry of any noncitizen into the United States across the southern border is hereby suspended and limited, subject to section 3 of this proclamation. This suspension and limitation on entry shall be effective at 12:01 a.m. eastern daylight time on June 5, 2024. The suspension and limitation directed in this proclamation shall be discontinued pursuant to subsection 2(a) of this proclamation, subject to subsection 2(b) of this proclamation.

Sec. 2. *Applicability of Suspension and Limitation on Entry.* (a) The Secretary of Homeland Security shall monitor the number of daily encounters and, subject to subsection (b) of this section, the suspension and limitation on entry pursuant to section 1 of this proclamation shall be discontinued at 12:01 a.m. eastern time on the date that is 14 calendar days after the Secretary makes a factual determination that there has been a 7-consecutive-calendar-day average of less than 1,500 encounters, not including encounters described in subsection 4(a)(iii) of this proclamation.

(b) Notwithstanding a factual determination made under subsection (a) of this section, the suspension and limitation on entry pursuant to section 1 of this proclamation shall apply at 12:01 a.m. eastern time on the calendar day immediately after the Secretary has made a factual determination that there has been a 7-consecutive-calendar-day average of 2,500 encounters or more, not including encounters described in subsection 4(a)(iii) of this proclamation, until such suspension and limitation on entry is discontinued pursuant to subsection (a) of this section.

(c) For purposes of subsection (a) and subsection (b) of this section, unaccompanied children (as defined in section 279(g)(2) of title 6, United States Code) from non-contiguous countries shall not be included in calculating the number of encounters.

Sec. 3. *Scope and Implementation of Suspension and Limitation on Entry.* (a) The suspension and limitation on entry pursuant to section 1 of this proclamation shall apply across the southern border to noncitizens, other than those described in subsection (b) of this section, during such times that the suspension and limitation on entry is in effect.

(b) The suspension and limitation on entry pursuant to section 1 of this proclamation shall not apply to:

(i) any noncitizen national of the United States;

(ii) any lawful permanent resident of the United States;

(iii) any unaccompanied child as defined in section 279(g)(2) of title 6, United States Code;

(iv) any noncitizen who is determined to be a victim of a severe form of trafficking in persons, as defined in section 7102(16) of title 22, United States Code;

(v) any noncitizen who has a valid visa or other lawful permission to seek entry or admission into the United States, or presents at a port of entry pursuant to a pre-scheduled time and place, including:

(A) members of the United States Armed Forces and associated personnel, United States Government employees or contractors on orders abroad, or their accompanying family members who are on their orders or are members of their household;

(B) noncitizens who hold a valid visa or who have all necessary documents required for admission consistent with the requirements of section 1182(a)(7) of title 8, United States Code, upon arrival at a port of entry;

(C) noncitizens traveling pursuant to the visa waiver program as described in section 1187 of title 8, United States Code; and

(D) noncitizens who arrive in the United States at a southwest land border port of entry pursuant to a process the Secretary of Homeland Security determines is appropriate to allow for the safe and orderly entry of noncitizens into the United States;

(vi) any noncitizen who is permitted to enter by the Secretary of Homeland Security, acting through a CBP immigration officer, based on the totality of the circumstances, including consideration of significant law enforcement, officer and public safety, urgent humanitarian, and public health interests at the time of the entry or encounter that warranted permitting the noncitizen to enter; and

(vii) any noncitizen who is permitted to enter by the Secretary of Homeland Security, acting through a CBP immigration officer, due to operational considerations at the time of the entry or encounter that warranted permitting the noncitizen to enter.

(c) An exception under subsection (b) of this section from the suspension and limitation on entry pursuant to section 1 of this proclamation does not affect a noncitizen's inadmissibility under the Immigration and Nationality Act for a reason other than the applicability of this proclamation.

(d) The Secretary of Homeland Security and the Attorney General are authorized to issue any instructions, orders, or regulations as may be necessary to implement this proclamation, including the determination of the exceptions in subsection (b) of this section, and shall promptly consider issuing any instructions, orders, or regulations as may be necessary to address the circumstances at the southern border, including any additional limitations and conditions on asylum eligibility that they determine are warranted, subject to any exceptions that they determine are warranted.

(e) Nothing in this proclamation shall limit the statutory processes afforded to unaccompanied children upon entering the United States under section 279 of title 6, United States Code, and section 1232 of title 8, United States Code.

Sec. 4. *Definitions.* (a) The term ''encounter'' refers to a noncitizen who:

(i) is physically apprehended by CBP immigration officers within 100 miles of the United States southwest land border during the 14-day period immediately after entry between ports of entry;

(ii) is physically apprehended by DHS personnel at the southern coastal borders during the 14-day period immediately after entry between ports of entry; or

(iii) is determined to be inadmissible at a southwest land border port of entry.

(b) The term ''southern coastal borders'' means all maritime borders in Texas, Louisiana, Mississippi, Alabama, and Florida; all maritime borders proximate to the southwest land border, the Gulf of Mexico, and the southern Pacific coast in California; and all maritime borders of the United States Virgin Islands and Puerto Rico.

(c) The term ''southwest land border'' means the entirety of the United States land border with Mexico.

(d) The term ''southern border'' means the southwest land border and the southern coastal borders.

Sec. 5. *Severability.* It is the policy of the United States to enforce this proclamation to the maximum extent possible to advance the interests of the United States. Accordingly, if any provision of this proclamation, or the application of any provision to any person or circumstance, is held

to be invalid, the remainder of this proclamation and the application of its provisions to any other persons or circumstances shall not be affected thereby.

Sec. 6. *General Provisions.* (a) Nothing in this proclamation shall be construed to impair or otherwise affect:

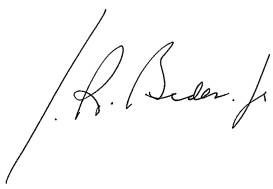
(i) the authority granted by law to an executive department or agency, or the head thereof; or

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

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

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

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



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Rules and Regulations

Federal Register
Vol. 89, No. 111
Friday, June 7, 2024

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 3

[Docket No. USDA–2024–0001]

RIN 0503–AA79

Civil Monetary Penalty Inflation Adjustments for 2024

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the U.S. Department of Agriculture's civil monetary penalty regulations by making inflation adjustments as mandated by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: Effective June 7, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen O'Neill, Office of Budget and Program Analysis, USDA, 1400 Independence Avenue SW, Washington, DC 20250–1400, (202) 720–0038.

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2015, the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Act), which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990, was signed into law to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect. The 2015 Act requires agencies to adjust for inflation annually.

This rule amends 7 CFR part 3 to update the amount of civil monetary penalties that may be levied by U.S. Department of Agriculture (USDA) agencies to reflect inflationary adjustments for 2024 in accordance with the 2015 Act. As required by the 2015 Act, the annual adjustment was made for inflation based on the Consumer Price Index for the month of October 2023 and rounded to the nearest dollar after an initial adjustment. The civil monetary penalties are listed according to the applicable administering agency.

II. Notice and Comment Not Required

This rule is required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, with no issue of policy discretion. Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this action are not necessary. We also find good cause for making this action effective less than 30 days after publication in the **Federal Register**.

III. Procedural Requirements

Executive Order 12866

The Office of Management and Budget (OMB) has determined that this regulatory action does not meet the criteria for significant regulatory action pursuant to Executive Order 12866, Regulatory Planning and Review.

This rule contains inflation adjustments in compliance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. The great majority of individuals, organizations, and entities participating in the programs affected by this regulation do not engage in prohibited activities and practices that would result in civil monetary penalties being incurred. Accordingly, we believe that any aggregate economic impact of this revised regulation will be minimal, affecting only the limited number of program participants that may engage in prohibited behavior in violation of the statutes.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this final rule because USDA was not required to publish notice of proposed rulemaking under 5 U.S.C. 553 or any other law. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

This final rule imposes no new reporting or recordkeeping requirements necessitating clearance by OMB.

List of Subjects in 7 CFR Part 3

Administrative practice and procedure, Claims, Government employees, Income taxes, Loan programs—agriculture, Penalties, Reporting and recordkeeping requirements, Wages.

Accordingly, we are amending 7 CFR part 3, subpart I, as follows:

PART 3—DEBT MANAGEMENT

Subpart I—Adjusted Civil Monetary Penalties

■ 1. The authority citation for part 3, subpart I, continues to read as follows:

Authority: 28 U.S.C. 2461 note.

■ 2. Section 3.91 is amended by revising paragraphs (a)(2) and (b) to read as follows:

§ 3.91 Adjusted civil monetary penalties.

(a) * * *

(2) *Timing.* Any increase in the dollar amount of a civil monetary penalty listed in paragraph (b) of this section applies only to violations occurring after June 7, 2024.

* * * * *

(b) *Penalties*—(1) *Agricultural Marketing Service.* (i) Civil penalty for improper record keeping codified at 7 U.S.C. 136i–1(d), has: A maximum of $1,152 in the case of the first offense, and a minimum of $2,238 in the case of subsequent offenses, except that the penalty will be less than $2,238 if the Secretary determines that the person made a good faith effort to comply.

(ii) Civil penalty for a violation of the unfair conduct rule under the Perishable Agricultural Commodities Act, in lieu of license revocation or suspension, codified at 7 U.S.C. 499b(5), has a maximum of $6,272.

(iii) Civil penalty for violation of the licensing requirements under the Perishable Agricultural Commodities Act, codified at 7 U.S.C. 499c(a), has a maximum of $2,002 for each such offense and not more than $500 for each day it continues, or a maximum of $500 for each offense if the Secretary determines the violation was not willful.

(iv) Civil penalty in lieu of license suspension under the Perishable Agricultural Commodities Act, codified at 7 U.S.C. 499h(e), has a maximum penalty of $4,004 for each violative transaction or each day the violation continues.

(v) Civil penalty for a violation of the Export Apple Act, codified at 7 U.S.C.

586, has a minimum of $182 and a maximum of $18,292.

(vi) Civil penalty for a violation of the Export Grape and Plum Act, codified at 7 U.S.C. 596, has a minimum of $349 and a maximum of $35,001.

(vii) Civil penalty for a violation of an order issued by the Secretary under the Agricultural Adjustment Act, reenacted with amendments by the Agricultural Marketing Agreement Act of 1937, codified at 7 U.S.C. 608c(14)(B), has a maximum of $3,501. Each day the violation continues is a separate violation.

(viii) Civil penalty for failure to file certain reports under the Agricultural Adjustment Act, reenacted by the Agricultural Marketing Agreement Act of 1937, codified at 7 U.S.C. 610(c), has a maximum of $349.

(ix) Civil penalty for a violation of a seed program under the Federal Seed Act, codified at 7 U.S.C. 1596(b), has a minimum of $119 and a maximum of $2,387.

(x) Civil penalty for failure to collect any assessment or fee for a violation of the Cotton Research and Promotion Act, codified at 7 U.S.C. 2112(b), has a maximum of $3,501.

(xi) Civil penalty for failure to pay, collect, or remit any assessment or fee for a violation of a program under the Potato Research and Promotion Act, codified at 7 U.S.C. 2621(b)(1), has a minimum of $1,569 and a maximum of $14,471.

(xii) Civil penalty for failure to obey a cease-and-desist order under the Potato Research and Promotion Act, codified at 7 U.S.C. 2621(b)(3), has a maximum of $1,569. Each day the violation continues is a separate violation.

(xiii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Egg Research and Consumer Information Act, codified at 7 U.S.C. 2714(b)(1), has a minimum of $1,814 and a maximum of $18,140.

(xiv) Civil penalty for failure to obey a cease-and-desist order under the Egg Research and Consumer Information Act, codified at 7 U.S.C. 2714(b)(3), has a maximum of $1,814. Each day the violation continues is a separate violation.

(xv) Civil penalty for failure to remit any assessment or fee or for a violation of a program under the Beef Research and Information Act, codified at 7 U.S.C. 2908(a)(2), has a maximum of $14,151.

(xvi) Civil penalty for failure to remit any assessment or for a violation of a program regarding wheat and wheat foods research, codified at 7 U.S.C. 3410(b), has a maximum of $3,501.

(xvii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Floral Research and Consumer Information Act, codified at 7 U.S.C. 4314(b)(1), has a minimum of $1,648 and a maximum of $16,471.

(xviii) Civil penalty for failure to obey a cease-and-desist order under the Floral Research and Consumer Information Act, codified at 7 U.S.C. 4314(b)(3), has a maximum of $1,648. Each day the violation continues is a separate violation.

(xix) Civil penalty for violation of an order under the Dairy Promotion Program, codified at 7 U.S.C. 4510(b), has a maximum of $3,045.

(xx) Civil penalty for pay, collect, or remit any assessment or fee or for a violation of the Honey Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 4610(b)(1), has a minimum of $915 and a maximum of $9,380.

(xxi) Civil penalty for failure to obey a cease-and-desist order under the Honey Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 4610(b)(3), has a maximum of $937. Each day the violation continues is a separate violation.

(xxii) Civil penalty for a violation of a program under the Pork Promotion, Research, and Consumer Information Act of 1985, codified at 7 U.S.C. 4815(b)(1)(A)(i), has a maximum of $2,831.

(xxiii) Civil penalty for failure to obey a cease-and-desist order under the Pork Promotion, Research, and Consumer Information Act of 1985, codified at 7 U.S.C. 4815(b)(3)(A), has a maximum of $1,416. Each day the violation continues is a separate violation.

(xxiv) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Watermelon Research and Promotion Act, codified at 7 U.S.C. 4910(b)(1), has a minimum of $1,416 and a maximum of $14,151.

(xxv) Civil penalty for failure to obey a cease-and-desist order under the Watermelon Research and Promotion Act, codified at 7 U.S.C. 4910(b)(3), has a maximum of $1,416. Each day the violation continues is a separate violation.

(xxvi) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Pecan Promotion and Research Act of 1990, codified at 7 U.S.C. 6009(c)(1), has a minimum of $2,304 and a maximum of $23,036.

(xxvii) Civil penalty for failure to obey a cease-and-desist order under the Pecan Promotion and Research Act of 1990, codified at 7 U.S.C. 6009(e), has a maximum of $2,302.

(xxviii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Mushroom Promotion, Research, and Consumer Information Act of 1990, codified at 7 U.S.C. 6107(c)(1), has a minimum of $1,120 and a maximum of $11,198.

(xxix) Civil penalty for failure to obey a cease-and-desist order under the Mushroom Promotion, Research, and Consumer Information Act of 1990, codified at 7 U.S.C. 6107(e), has a maximum of $1,120. Each day the violation continues is a separate violation.

(xxx) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of the Lime Research, Promotion, and Consumer Information Act of 1990, codified at 7 U.S.C. 6207(c)(1), has a minimum of $1,120 and a maximum of $11,198.

(xxxi) Civil penalty for failure to obey a cease-and-desist order under the Lime Research, Promotion, and Consumer Information Act of 1990, codified at 7 U.S.C. 6207(e), has a maximum of $1,120. Each day the violation continues is a separate violation.

(xxxii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Soybean Promotion, Research, and Consumer Information Act, codified a 7 U.S.C. 6307(c)(1)(A), has a maximum of $2,304.

(xxxiii) Civil penalty for failure to obey a cease-and-desist order under the Soybean Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 6307(e), has a maximum of $11,469. Each day the violation continues is a separate violation.

(xxxiv) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Fluid Milk Promotion Act of 1990, codified at 7 U.S.C. 6411(c)(1)(A), has a minimum of $1,120 and a maximum of $11,198, or in the case of a violation that is willful, codified at 7 U.S.C. 6411(c)(1)(B), has a minimum of $22,004 and a maximum of $223,922.

(xxxv) Civil penalty for failure to obey a cease-and-desist order under the Fluid Milk Promotion Act of 1990, codified at 7 U.S.C. 6411(e), has a maximum of $11,524. Each day the violation continues is a separate violation.

(xxxvi) Civil penalty for knowingly labeling or selling a product as organic except in accordance with the Organic Foods Production Act of 1990, codified

at 7 U.S.C. 6519(c), has a maximum of $22,392.

(xxxvii) Civil penalty for failure to pay, collect, or remit any assessment or fee or for a violation of a program under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993, codified at 7 U.S.C. 6808(c)(1)(A)(i), has a minimum of $1,056 and a maximum of $10,557.

(xxxviii) Civil penalty for failure to obey a cease-and-desist order under the Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993, codified at 7 U.S.C. 6808(e)(1), has a maximum of $10,557. Each day the violation continues is a separate violation.

(xxxix) Civil penalty for a violation of a program under the Sheep Promotion, Research, and Information Act of 1994, codified at 7 U.S.C. 7107(c)(1)(A), has a maximum of $2,058.

(xl) Civil penalty for failure to obey a cease-and-desist order under the Sheep Promotion, Research, and Information Act of 1994, codified at 7 U.S.C. 7107(e), has a maximum of $1,028. Each day the violation continues is a separate violation.

(xli) Civil penalty for a violation of an order or regulation issued under the Commodity Promotion, Research, and Information Act of 1996, codified at 7 U.S.C. 7419(c)(1), has a minimum of $1,942 and a maximum of $19,435 for each violation.

(xlii) Civil penalty for failure to obey a cease-and-desist order under the Commodity Promotion, Research, and Information Act of 1996, codified at 7 U.S.C. 7419(e), has a minimum of $1,942 and a maximum of $19,435. Each day the violation continues is a separate violation.

(xliii) Civil penalty for a violation of an order or regulation issued under the Canola and Rapeseed Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7448(c)(1)(A)(i), has a maximum of $1,942 for each violation.

(xliv) Civil penalty for failure to obey a cease-and-desist order under the Canola and Rapeseed Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7448(e), has a maximum of $9,718. Each day the violation continues is a separate violation.

(xlv) Civil penalty for violation of an order or regulation issued under the National Kiwifruit Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7468(c)(1), has a minimum of $973 and a maximum of $9,718 for each violation.

(xlvi) Civil penalty for failure to obey a cease-and-desist order under the National Kiwifruit Research, Promotion, and Consumer Information Act, codified at 7 U.S.C. 7468(e), has a maximum of $973. Each day the violation continues is a separate violation.

(xlvii) Civil penalty for a violation of an order or regulation under the Popcorn Promotion, Research, and Consumer Information Act, codified at 7 U.S.C. 7487(a), has a maximum of $1,942 for each violation.

(xlviii) Civil penalty for certain violations under the Egg Products Inspection Act, codified at 21 U.S.C. 1041(c)(1)(A), has a maximum of $11,198 for each violation.

(xlix) Civil penalty for violation of an order or regulation issued under the Hass Avocado Promotion, Research, and Information Act of 2000, codified at 7 U.S.C. 7807(c)(1)(A)(i), has a minimum of $1,766 and a maximum of $17,665 for each violation.

(l) Civil penalty for failure to obey a cease-and-desist order under the Hass Avocado Promotion, Research, and Information Act of 2000, codified at 7 U.S.C. 7807(e)(1), has a maximum of $17,682 for each offense. Each day the violation continues is a separate violation.

(li) Civil penalty for violation of certain provisions of the Livestock Mandatory Reporting Act of 1999, codified a 7 U.S.C. 1636b(a)(1), has a maximum of $18,292 for each violation.

(lii) Civil penalty for failure to obey a cease-and-desist order under the Livestock Mandatory Reporting Act of 1999, codified a 7 U.S.C. 1636b(g)(3), has a maximum of $18,292 for each violation. Each day the violation continues is a separate violation.

(liii) Civil penalty for failure to obey an order of the Secretary issued pursuant to the Dairy Product Mandatory Reporting program, codified at 7 U.S.C. 1637b(c)(4)(D)(iii), has a maximum of $17,682 for each offense.

(liv) Civil penalty for a willful violation of the Country of Origin Labeling program by a retailer or person engaged in the business of supplying a covered commodity to a retailer, codified at 7 U.S.C. 1638b(b)(2), has a maximum of $1,421 for each violation.

(lv) Civil penalty for violations of the Dairy Research Program, codified at 7 U.S.C. 4535 and 4510(b), has a maximum of $3,045 for each violation.

(lvi) Civil penalty for a packer or swine contractor violation, codified at 7 U.S.C. 193(b), has a maximum of $34,995.

(lvii) Civil penalty for a livestock market agency or dealer failure to register, codified at 7 U.S.C. 203, has a maximum of $2,386 and not more than $119 for each day the violation continues.

(lviii) Civil penalty for operating without filing, or in violation of, a stockyard rate schedule, or of a regulation or order of the Secretary made thereunder, codified at 7 U.S.C. 207(g), has a maximum of $2,387 and not more than $119 for each day the violation continues.

(lix) Civil penalty for a stockyard owner, livestock market agency, or dealer, who engages in or uses any unfair, unjustly discriminatory, or deceptive practice or device in connection with determining whether persons should be authorized to operate at the stockyards, or with receiving, marketing, buying, or selling on a commission basis or otherwise, feeding, watering, holding, delivery, shipment, weighing, or handling of livestock, codified at 7 U.S.C. 213(b), has a maximum of $34,995.

(lx) Civil penalty for a stockyard owner, livestock market agency, or dealer, who knowingly fails to obey any order made under the provisions of 7 U.S.C. 211, 212, or 213, codified at 7 U.S.C. 215(a), has a maximum of $2,387.

(lxi) Civil penalty for live poultry dealer violations, codified at 7 U.S.C. 228b–2(b), has a maximum of $101,801.

(lxii) Civil penalty for a violation, codified at 7 U.S.C. 86(c), has a maximum of $341,985.

(lxiii) Civil penalty for failure to comply with certain provisions of the U.S. Warehouse Act, codified at 7 U.S.C. 254, has a maximum of $44,206 per violation if an agricultural product is not involved in the violation.

(2) *Animal and Plant Health Inspection Service.* (i) Civil penalty for a violation of the imported seed provisions of the Federal Seed Act, codified at 7 U.S.C. 1596(b), has a minimum of $119 and a maximum of $2,387.

(ii) Civil penalty for a violation of the Animal Welfare Act, codified at 7 U.S.C. 2149(b), has a maximum of $14,206, and knowing failure to obey a cease-and-desist order has a civil penalty of $2,130.

(iii) Civil penalty for any person that causes harm to, or interferes with, an animal used for the purposes of official inspection by USDA, codified at 7 U.S.C. 2279e(a), has a maximum of $17,682.

(iv) Civil penalty for a violation of the Swine Health Protection Act, codified at 7 U.S.C. 3805(a), has a maximum of $35,538.

(v) Civil penalty for any person that violates the Plant Protection Act (PPA), or that forges, counterfeits, or, without authority from the Secretary, uses,

alters, defaces, or destroys any certificate, permit, or other document provided for in the PPA, codified a 7 U.S.C. 7734(b)(1), has a maximum of the greater of: $88,411 in the case of any individual (except that the civil penalty may not exceed $1,767 in the case of an initial violation of the PPA by an individual moving regulated articles not for monetary gain), $442,052 in the case of any other person for each violation, $710,311 for all violations adjudicated in a single proceeding if the violations do not include a willful violation, and $1,420,620 for all violations adjudicated in a single proceeding if the violations include a willful violation; or twice the gross gain or gross loss for any violation, forgery, counterfeiting, unauthorized us, defacing, or destruction of a certificate, permit, or other document provided for in the PPA that results in the person deriving pecuniary gain or causing pecuniary loss to another.

(vi) Civil penalty for any person (except as provided in 7 U.S.C. 8309(d)) that violates the Animal Health Protection Act (AHPA), or that forges, counterfeits, or, without authority from the Secretary, uses, alters, defaces, or destroys any certificate, permit, or other document provided under the AHPA, codified at 7 U.S.C. 8313(b)(1), has a maximum of the greater of: $84,851 in the case of any individual, except that the civil penalty may not exceed $1,697 in the case of an initial violation of the AHPA by an individual moving regulated articles not for monetary gain, $424,251 in the case of any other person for each violation, $710,311 for all violations adjudicated in a single proceeding if the violations do not include a willful violation, and $1,420,620 for all violations adjudicated in a single proceeding if the violations include a willful violation; or twice the gross gain or gross loss for any violation, forgery, counterfeiting, unauthorized use, defacing, or destruction of a certificate, permit, or other document provided under the AHPA that results in the person's deriving pecuniary gain or causing pecuniary loss to another person.

(vii) Civil penalty for any person that violates certain regulations under the Agricultural Bioterrorism Protection Act of 2002 regarding transfers of listed agents and toxins or possession and use of listed agents and toxins, codified at 7 U.S.C. 8401(i)(1), has a maximum of $424,251 in the case of an individual and $848,506 in the case of any other person.

(viii) Civil penalty for violation of the Horse Protection Act, codified at 15 U.S.C. 1825(b)(1), has a maximum of $7,001.

(ix) Civil penalty for failure to obey Horse Protection Act disqualification, codified at 15 U.S.C. 1825(c), has a maximum of $13,682.

(x) Civil penalty for knowingly violating, or, if in the business as an importer or exporter, violating, with respect to terrestrial plants, any provision of the Endangered Species Act of 1973, any permit or certificate issued thereunder, or any regulation issued pursuant to section 9(a)(1)(A) through (F), (a)(2)(A) through (D), (c), (d) (other than regulations relating to record keeping or filing reports), (f), or (g), as specified at 16 U.S.C. 1540(a)(1), has a maximum of $63,993 for each violation.

(xi) Civil penalty for knowingly violating, or, if in the business as an importer or exporter, violating, with respect to terrestrial plants, any other regulation under the Endangered Species Act of 1973, as specified at 16 U.S.C. 1540(a)(1), has a maximum of $30,645 for each violation.

(xii) Civil penalty for violating, with respect to terrestrial plants, the Endangered Species Act of 1973, or any regulation, permit, or certificate issued thereunder, as specified at 16 U.S.C. 1540(a)(1), has a maximum of $1,615 for each violation.

(xiii) Civil penalty for knowingly and willfully violating 49 U.S.C. 80502 with respect to the transportation of animals by any rail carrier, express carrier, or common carrier (except by air or water), a receiver, trustee, or lessee of one of those carriers, or an owner or master of a vessel, codified at 49 U.S.C. 80502(d), has a minimum of $201 and a maximum of $1,028.

(xiv) Civil penalty for a violation of the Commercial Transportation of Equine for Slaughter Act, 7 U.S.C. 1901 note, and its implementing regulations in 9 CFR part 88, as specified in 9 CFR 88.6, has a maximum of $6,082. Each horse transported in violation of 9 CFR part 88 is a separate violation.

(xv) Civil penalty for knowingly violating section 3(d) or 3(f) of the Lacey Act Amendments of 1981, or for violating any other provision provided that, in the exercise of due care, the violator should have known that the plant was taken, possessed, transported, or sold in violation of any underlying law, treaty, or regulation, has a maximum of $31,821 for each violation, as specified in 16 U.S.C. 3373(a)(1) (but if the plant has a market value of less than $425, and involves only the transportation, acquisition, or receipt of a plant taken or possessed in violation of any law, treaty, or regulation of the United States, any Indian tribal law, any foreign law, or any law or regulation of any State, the penalty will not exceed the maximum provided for violation of said law, treaty, or regulation, or $31,821, whichever is less).

(xvi) Civil penalty for violating section 3(f) of the Lacey Act Amendments of 1981, as specified in 16 U.S.C. 3373(a)(2), has a maximum of $795.

(3) *Food and Nutrition Service.* (i) Civil penalty for violating a provision of the Food and Nutrition Act of 2008 (Act), or a regulation under the Act, by a retail food store or wholesale food concern, codified at 7 U.S.C. 2021(a) and (c), has a maximum of $142,063 for each violation.

(ii) Civil penalty for trafficking in food coupons, codified at 7 U.S.C. 2021(b)(3)(B), has a maximum of $51,192 for each violation, except that the maximum penalty for violations occurring during a single investigation is $92,183.

(iii) Civil penalty for the sale of firearms, ammunitions, explosives, or controlled substances for coupons, codified at 7 U.S.C. 2021(b)(3)(C), has a maximum of $46,092 for each violation, except that the maximum penalty for violations occurring during a single investigation is $92,183.

(iv) Civil penalty for any entity that submits a bid to supply infant formula to carry out the Special Supplemental Nutrition Program for Women, Infants and Children and discloses the amount of the bid, rebate, or discount practices in advance of the bid opening or for any entity that makes a statement prior to the opening of bids for the purpose of influencing a bid, codified at 42 U.S.C. 1786(h)(8)(H)(i), has a maximum of $216,973,224.

(v) Civil penalty for a vendor convicted of trafficking in food instruments, codified at 42 U.S.C. 1786(o)(1)(A) and 42 U.S.C. 1786(o)(4)(B), has a maximum of $18,760 for each violation, except that the maximum penalty for violations occurring during a single investigation is $75,042.

(vi) Civil penalty for a vendor convicted of selling firearms, ammunition, explosive, or controlled substances in exchange for food instruments, codified at 42 U.S.C. 1786(o)(1)(B) and 42 U.S.C. 1786(o)(4)(B), has a maximum of $18,299 for each violation, except that the maximum penalty for violations occurring during a single investigation is $75,042.

(4) *Food Safety and Inspection Service.* (i) Civil penalty for certain violations under the Egg Products Inspection Act, codified at 21 U.S.C. 1041(c)(1)(A), has a maximum of $11,198 for each violation.

(ii) [Reserved]

(5) *Forest Service.* (i) Civil penalty for willful disregard of the prohibition against the export of unprocessed timber originating from Federal lands, codified at 16 U.S.C. 620d(c)(1)(A), has a maximum of $1,152,314 per violation or three times the gross value of the unprocessed timber, whichever is greater.

(ii) Civil penalty for a violation in disregard of the Forest Resources Conservation and Shortage Relief Act or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, codified in 16 U.S.C. 620d(c)(2)(A)(i), has a maximum of $172,869 per violation.

(iii) Civil penalty for a person that should have known that an action was a violation of the Forest Resources Conservation and Shortage Relief Act or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, codified at 16 U.S.C. 620d(c)(2)(A)(ii), has a maximum of $115,231 per violation.

(iv) Civil penalty for a willful violation of the Forest Resources Conservation and Shortage Relief Act or the regulations that implement such Act regardless of whether such violation caused the export of unprocessed timber originating from Federal lands, codified in 16 U.S.C. 620d(c)(2)(A)(iii), has a maximum of $1,152,314.

(v) Civil penalty for a violation involving protections of caves, codified at 16 U.S.C. 4307(a)(2), has a maximum of $25,184.

(6) [Reserved]

(7) *Federal Crop Insurance Corporation.* (i) Civil penalty for any person who willfully and intentionally provides any false or inaccurate information to the Federal Crop Insurance Corporation or to an approved insurance provider with respect to any insurance plan or policy that is offered under the authority of the Federal Crop Insurance Act, or who fails to comply with a requirement of the Federal Crop Insurance Corporation, codified in 7 U.S.C. 1515(h)(3)(A), has a maximum of the greater of: The amount of the pecuniary gain obtained as a result of the false or inaccurate information or the noncompliance; or $14,947.

(ii) [Reserved]

(8) *Rural Housing Service.* (i) Civil penalty for a violation of section 536 of Title V of the Housing Act of 1949, codified in 42 U.S.C. 1490p(e)(2), has a maximum of $244,957 in the case of an individual, and a maximum of $2,449,575 in the case of an applicant other than an individual.

(ii) Civil penalty for equity skimming under section 543(a) of the Housing Act of 1949, codified in 42 U.S.C. 1490s(a)(2), has a maximum of $44,206.

(iii) Civil penalty under section 543b of the Housing Act of 1949 for a violation of regulations or agreements made in accordance with Title V of the Housing Act of 1949, by submitting false information, submitting false certifications, failing to timely submit information, failing to maintain real property in good repair and condition, failing to provide acceptable management for a project, or failing to comply with applicable civil rights laws and regulations, codified in 42 U.S.C. 1490s(b)(3)(A), has a maximum of the greater of: Twice the damages USDA, guaranteed lender, or project that is secured for a loan under Title V suffered or would have suffered as a result of the violation; or $88,411 per violation.

(9) [Reserved]

(10) *Commodity Credit Corporation.* (i) Civil penalty for willful failure or refusal to furnish information, or willful furnishing of false information under of section 156 of the Federal Agricultural Improvement and Reform Act of 1996, codified at 7 U.S.C. 7272(g)(5), has a maximum of $19,435 for each violation.

(ii) Civil penalty for willful failure or refusal to furnish information or willful furnishing of false data by a processor, refiner, or importer of sugar, syrup, and molasses under section 156 of the Federal Agriculture Improvement and Reform Act of 1996, codified at 7 U.S.C. 7272(g)(5), has a maximum of $19,435 for each violation.

(iii) Civil penalty for filing a false acreage report that exceeds tolerance under section 156 of the Federal Agriculture Improvement and Reform Act of 1996, codified at 7 U.S.C. 7272(g)(5), has a maximum of $19,435 for each violation.

(iv) Civil penalty for knowingly violating any regulation of the Secretary of the Commodity Credit Corporation pertaining to flexible marketing allotments for sugar under section 359h(b) of the Agricultural Adjustment Act of 1938, codified at 7 U.S.C. 1359hh(b), has a maximum of $14,206 for each violation.

(v) Civil penalty for knowing violation of regulations promulgated by the Secretary pertaining to cotton insect eradication under section 104(d) of the Agricultural Act of 1949, codified at 7 U.S.C. 1444a(d), has a maximum of $17,501 for each offense.

(11) *Office of the Secretary.* (i) Civil penalty for making, presenting, submitting or causing to be made, presented or submitted, a false, fictitious, or fraudulent claim as defined under the Program Fraud Civil Remedies Act of 1986, codified at 31 U.S.C. 3802(a)(1), has a maximum of $13,947.

(ii) Civil penalty for making, presenting, submitting or causing to be made, presented or submitted, a false, fictitious, or fraudulent written statement as defined under the Program Fraud Civil Remedies Act of 1986, codified at 31 U.S.C. 3802(a)(2), has a maximum of $13,947.

John Rapp,

Director, Office of Budget and Program Analysis, United States Department of Agriculture.

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DEPARTMENT OF AGRICULTURE

Rural Housing Service

7 CFR Part 3550

[Docket No. RHS–23–SFH–0017]

Single Family Housing Section 504 Home Repair Loans and Grants in Presidentially Declared Disaster Areas Pilot Program

AGENCY: Rural Housing Service, USDA.

ACTION: Notification; update and recission.

SUMMARY: The Rural Housing Service (RHS or the Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), is providing notification that due to funding constraints it is rescinding one of the waivers being tested under the Section 504 Home Repair Loans and Grants in a Presidentially Declared Disaster Areas (PDDAs) pilot program, as published in the **Federal Register** on July 18, 2023.

DATES: This recission is effective June 7, 2024.

FOR FURTHER INFORMATION CONTACT: Anthony Williams, Management and Program Analyst, Special Programs, Single Family Housing Direct Loan Division, Rural Development, 1400 Independence Ave., Washington, DC 20250, U.S. Department of Agriculture, Email: *anthonyl.williams@usda.gov;* Phone: (202) 720–9649.

SUPPLEMENTARY INFORMATION:

New Section 504 Pilot Regulatory Waivers Update

On July 18, 2023, the RHS published the Single Family Housing Section 504 Home Repair Loan and Grants in Presidentially Declared Disaster Areas Pilot Program notice in the **Federal**

Register (88 FR 45809). The purpose of the notice was to waive four regulatory requirements for the Section 504 Home Repair Loans and Grants in a Presidentially Declared Disaster Areas (PDDAs) pilot program. The Agency's intention was to evaluate the existing regulations and remove regulatory barriers to assist eligible applicants in PDDAs to improve the program usage for very low-income homeowners that are seeking to repair their damaged homes that are in PDDAs. The Agency also published a correction notice dated September 6, 2023 (88 FR 60883). In the September 6, 2023, notice, the Agency stated that the pilot was subject to the availability of funds.

As stated in the original notice and the correction notice, the Agency has continued to monitor the effectiveness of the pilot and the availability of funds. The Agency has now determined that there are not sufficient funds available for this program to keep all the waivers under the pilot in place. The Consolidated Appropriations Act, 2024 reduced the program level for Section 504 grants to $25,000,000 (in comparison to $32,000,000 in the Consolidated Appropriations Act, 2023) and rescinded $28,000,000 of the unobligated balances that carried over from prior year appropriations. With the lower program level and no available carryover funds, the waiver to the age requirement is no longer supportable and is rescinded. With the rescission of this one waiver, all applicants for the Section 504 Home Repair Grant Program must be 62 years of age or older at the time of application, according to 7 CFR 3550.103(b). Complete applications received prior to the date of this notice can be processed with the age requirement waiver.

The remaining regulatory waivers established for the Section 504 PDDAs pilot program will remain in place and are anticipated to continue until July 18, 2025. This pilot remains subject to the availability of funds.

Eligibility Requirements

Eligible participants in the Section 504 program must abide by the statutory requirements as set forth in 7 CFR part 3550. Eligible PDDAs (individual and public assistance) can be found on the FEMA website at: *https://www.fema.gov/disaster/declarations.*

Non-Discrimination Statement

In accordance with Federal civil rights laws and USDA civil rights regulations and policies, the USDA, its mission areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident. Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, staff office; or the 711 Federal Relay Service. To file a program discrimination complaint, a complainant should complete a Form AD–3027, USDA Program Discrimination Complaint Form, which can be obtained online at *https://www.usda.gov/sites/default/files/documents/ad-3027.pdf,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

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

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

(3) *Email: program.intake@usda.gov.*

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Joaquin Altoro,

Administrator, Rural Housing Service.

[FR Doc. 2024–12559 Filed 6–6–24; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2024–1476; Project Identifier AD–2024–00090–T; Amendment 39–22761; AD 2024–10–15]

RIN 2120–AA64

Airworthiness Directives; Gulfstream Aerospace Corporation Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Gulfstream Aerospace Corporation Model GVII–G500 and GVII–G600 airplanes. This AD was prompted by a report of a failed rear engine mount discovered during a preflight walk-around due to visible engine misalignment. This AD requires inspecting the left and right engine mount points within the pylons and engine nacelles for non-conforming hardware installation, repairing the engine mount points if necessary, and revising the existing aircraft maintenance manual (AMM) to include revised procedures for engine removal and installation. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective June 7, 2024.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in this AD as of June 7, 2024.

The FAA must receive comments on this AD by July 22, 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* by searching for and locating Docket No. FAA–2024–1476; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

The AD docket contains this final rule, any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For Gulfstream material, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402–2206; telephone 800–810–4853; email *pubs@gulfstream.com;* website *gulfstream.com/en/customer-support.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2024–1476.

FOR FURTHER INFORMATION CONTACT: Jeffrey Johnson, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5554; email: *9-ASO-ATLACO-ADs@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 the **ADDRESSES** section. Include Docket No. FAA–2024–1476 and Project Identifier AD–2024–00090–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 Jeffrey Johnson, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5554; email: *9-ASO-ATLACO-ADs@faa.gov.* Any commentary that the FAA receives that is not specifically designated as CBI will be placed in the public docket for this rulemaking.

Background

The FAA has received a report indicating that, on January 31, 2024, a partially disengaged rear engine mount was discovered on an in-service Model GVII–G600 airplane. The flight crew noticed a visible misalignment in the pylon area adjacent to the thrust reverser during a preflight walk-around. The misalignment was caused by the upper, aft engine mount fastener migrating out of position in the pylon area.

Follow-on inspection revealed the hollow pin was the only hardware holding the aft strut in place, and migration of the hollow pin out of position was imminent, which would have resulted in the disconnection of the strut from the airplane. The cause of the upper rear engine mount failure was determined to be the secondary locking device (cotter pin) not being installed, and the separation of the retaining nut from the single strut attachment bolt, resulting in the bolt migrating out of position. The bolt and nut were found at the bottom of the pylon, and the required cotter pin was not located. It was believed that during a post-production engine removal and installation performed in a Gulfstream 145 Repair Station, using the AMM, the rear engine mount fasteners on the airplane side were loosened to aid in engine installation. It is probable that the aft upper strut attachment nut was not properly reinstalled, and the required cotter pin was not installed after the bolt and nut were installed. It was determined that maintenance personnel did not fully comply with the AMM procedures that were current at the time and anecdotal evidence that shows the maintenance personnel requested assistance from the production engine installation personnel to install the engine.

Gulfstream immediately performed technical evaluations on numerous airplanes, discovering other non-conforming engine mount hardware installations, but confirmed that none would have resulted in failure of the engine mount system. However, some of the non-conformances were found on engines installed in production. This indicates quality escapes exist in both production engine installation and in-service installation using the AMM procedures.

Additionally, an FAA investigation discovered numerous discrepancies in the production engine installation procedures, along with similar discrepancies in the AMM procedures for installing engines post-delivery/post-certificate of airworthiness. The FAA identified missing hardware callouts in the engine attachment instruction text, engine attachment hardware not shown in the AMM graphics, and inconsistencies in AMM image view labeling that could lead to misinterpretation of hardware orientation (left and right mirror image inconsistencies).

Failure of any single engine mount, if not addressed, could result in the separation of an engine from the airplane and subsequent loss of control of the airplane. The FAA is issuing this AD to address the unsafe condition on these products.

FAA's Determination

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

Related Material Under 1 CFR Part 51

The FAA reviewed Gulfstream GVII–G500 Customer Bulletin No. 092 and Gulfstream GVII–G600 Customer Bulletin No. 063, both Revision A, both dated April 9, 2024. This material specifies procedures for performing a one-time general visual inspection of the hardware at all engine mounts, attach fittings, links, and struts; for non-conforming engine mount hardware installations (including mis-oriented bolts, nuts, pins, and washers; all required hardware; application of torque; and correct hardware safety installations). This material also specifies reporting findings of non-conforming hardware to Gulfstream and returning non-conforming hardware to conforming configuration before further flight.

The FAA also reviewed the following AMM tasks for Chapter 71—Powerplant, of Gulfstream Aerospace GVII–G500 AMM, Document Number GAC–AC–GVII–G500–AMM–0001, Revision 18, dated March 29, 2024; and Gulfstream Aerospace GVII–G600 AMM, Document

Number GAC–AC–GVII–G600–AMM–0001, Revision 14, dated March 29, 2024. This material contains the following revised maintenance procedures for engine removal and installation:

- 71–20–02 Engine Mount Hardware—Removal/Installation, 71–20 Mounts;
- 71–21–03 Engine Forward Link Assemblies—Removal/Installation, 71–21 Front Mounts;
- 71–21–04 Forward Engine Mount Assembly—Removal/Installation, 71–21 Front Mounts;
- 71–22–03 Aft Engine Mount Strut Assembly—Removal/Installation, 71–22 Rear Mounts;
- 71–23–05 Engine Thrust Strut—Removal/Installation, 71–23 Mounts: Support Links and Accessories; and
- 71–23–06 Engine Alignment Strut—Removal/Installation, 71–23 Mounts: Support Links and Accessories.

These documents are distinct since they apply to different airplane models.

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.

AD Requirements

This AD requires accomplishing the actions specified in the material described previously, except as discussed under ''Differences Between this AD and the Referenced Material'' and except for any differences identified as exceptions in the regulatory text of this AD.

Differences Between This AD and the Referenced Material

The applicability of this AD is not limited to airplanes identified in paragraph I.A., Effectivity, of Gulfstream GVII–G500 Customer Bulletin No. 092 and Gulfstream GVII–G600 Customer Bulletin No. 063, both Revision A, both dated April 9, 2024. The unsafe condition was originally thought to be the result of improper maintenance procedures during post-production engine removal and installation. Investigations subsequent to the issuance of the original Gulfstream customer bulletins were unable to definitively tie the unsafe condition to the removal/installation work and have determined that the unsafe condition could have originated during production. Therefore, this AD includes airplanes that both have and have not had engines replaced since production.

This AD requires inspecting the engine mount hardware installations for conforming hardware and revising the existing AMM to include revised maintenance procedures for engine removal and installation. Where Gulfstream GVII–G500 Customer Bulletin No. 092 and Gulfstream GVII–G600 Customer Bulletin No. 063, both Revision A, both dated April 9, 2024, state a compliance time of 12 months from the initial issue date of February 15, 2024, this AD requires a compliance time of within 30 days after the effective date of this AD.

Justification for Immediate Adoption and Determination of the Effective Date

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

An unsafe condition exists that requires the immediate adoption of this AD without providing an opportunity for public comments prior to adoption. The FAA has found that the risk to the flying public justifies forgoing notice and comment prior to adoption of this rule because failure of any single engine mount could result in separation of the engine from the airplane. Accordingly, notice and opportunity for prior public comment are impracticable and contrary to the public interest pursuant to 5 U.S.C. 553(b)(3)(B).

The compliance time in this AD is shorter than the time necessary for the public to comment and for publication of the final rule. In addition, the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days, for the same reasons the FAA found good cause to forgo notice and comment.

Regulatory Flexibility Act

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

Costs of Compliance

The FAA estimates that this AD affects 247 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS

Action	Labor cost	Parts cost	Cost per product	Cost on U.S. operators
Inspection of engine mount installation hardware	10 work-hours × $85 per hour = $850	$0	$850	$209,950
AMM revision	1 work-hour × $85 per hour = $85	0	85	20,995

The FAA estimates the following costs to do any necessary repairs that would be required based on the results of the inspection. The FAA has no way of determining the number of aircraft that might need this repair:

ON-CONDITION COSTS

Action	Labor cost	Parts cost	Cost per engine
Engine mount hardware repair	1 work-hour × $85 per hour = $85	Up to $4,651 *	Up to $4,736.

* Estimate includes two highest-cost hardware locations: thrust strut and link assembly. Although more locations are possible, two locations are used in this estimate based on typical fleet findings to date.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

2024–10–15 Gulfstream Aerospace Corporation: Amendment 39–22761; Docket No. FAA–2024–1476; Project Identifier AD–2024–00090–T.

(a) Effective Date

This airworthiness directive (AD) is effective June 7, 2024.

(b) Affected ADs

None.

(c) Applicability

This AD applies to Gulfstream Aerospace Corporation airplanes, certificated in any category, identified in paragraphs (c)(1) and (2) of this AD.

(1) Model GVII–G500 airplanes, serial numbers (S/Ns) 72001 through 72140 inclusive.

(2) Model GVII–G600 airplanes, S/Ns 73001 through 73148 inclusive.

(d) Subject

Air Transport Association (ATA) of America Code 71, Powerplant.

(e) Unsafe Condition

This AD was prompted by a report of a failed rear engine mount discovered during a preflight walk-around due to visible engine misalignment. The FAA is issuing this AD to address failure of any single engine mount. The unsafe condition, if not addressed, could result in the separation of an engine from the airplane and subsequent loss of control of the airplane.

(f) Compliance

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

(g) Inspection of Engine Mount Hardware Installations

Within 30 days after the effective date of this AD, do all applicable actions identified as ''RC'' (required for compliance) in, and in accordance with, the Accomplishment Instructions of the applicable material specified in paragraphs (g)(1) and (2) of this AD.

(1) Gulfstream GVII–G500 Customer Bulletin No. 092, Revision A, dated April 9, 2024.

(2) Gulfstream GVII–G600 Customer Bulletin No. 063, Revision A, dated April 9, 2024.

(h) Revision of Aircraft Maintenance Manual (AMM)

Within 30 days after the effective date of this AD, revise the existing AMM to incorporate the procedures specified in paragraphs (h)(1)(i) through (vi) or (h)(2)(i) through (vi) of this AD, as applicable.

(1) Chapter 71—Powerplant, Gulfstream Aerospace GVII–G500 AMM, Document Number GAC–AC–GVII–G500–AMM–0001, Revision 18, dated March 29, 2024:

(i) 71–20–02 Engine Mount Hardware—Removal/Installation, 71–20 Mounts;

(ii) 71–21–03 Engine Forward Link Assemblies—Removal/Installation, 71–21 Front Mounts;

(iii) 71–21–04 Forward Engine Mount Assembly—Removal/Installation, 71–21 Front Mounts;

(iv) 71–22–03 Aft Engine Mount Strut Assembly—Removal/Installation, 71–22 Rear Mounts;

(v) 71–23–05 Engine Thrust Strut—Removal/Installation, 71–23 Mounts: Support Links and Accessories; and

(vi) 71–23–06 Engine Alignment Strut—Removal/Installation, 71–23 Mounts: Support Links and Accessories.

(2) Chapter 71—Powerplant, Gulfstream Aerospace GVII–G600 AMM, Document Number GAC–AC–GVII–G600–AMM–0001, Revision 14, dated March 29, 2024:

(i) 71–20–02 Engine Mount Hardware—Removal/Installation, 71–20 Mounts;

(ii) 71–21–03 Engine Forward Link Assemblies—Removal/Installation, 71–21 Front Mounts;

(iii) 71–21–04 Forward Engine Mount Assembly—Removal/Installation, 71–21 Front Mounts;

(iv) 71–22–03 Aft Engine Mount Strut Assembly—Removal/Installation, 71–22 Rear Mounts;

(v) 71–23–05 Engine Thrust Strut—Removal/Installation, 71–23 Mounts: Support Links and Accessories; and

(vi) 71–23–06 Engine Alignment Strut—Removal/Installation, 71–23 Mounts: Support Links and Accessories.

(i) Credit for Previous Actions

This paragraph provides credit for the actions specified in paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the material identified in paragraphs (i)(1) through (4) of this AD, as applicable.

(1) Gulfstream GVII–G500 Alert Customer Bulletin No. 001, dated February 7, 2024.

(2) Gulfstream GVII–G500 Customer Bulletin No. 092, dated February 15, 2024.

(3) Gulfstream GVII–G600 Alert Customer Bulletin No. 001, dated February 7, 2024.

(4) Gulfstream GVII–G600 Customer Bulletin No. 063, dated February 15, 2024.

(j) Special Flight Permit

Special flight permits may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the airplane to a location where the inspection required by this AD can be performed, but special flight permits may not be issued to operate the airplane after a visual inspection has identified any non-conforming engine mount installation. Non-conforming engine mount installations must be repaired before further flight.

(k) Alternative Methods of Compliance (AMOCs)

(1) The Manager, East Certification Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the certification office, send it to the attention of

the person identified in paragraph (l)(1) of this AD.

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

(3) For service information that contains steps that are labeled as Required for Compliance (RC), the provisions of paragraphs (k)(3)(i) and (ii) of this AD apply.

(i) The steps labeled as RC, including substeps under an RC step and any figures identified in an RC step, must be done to comply with the AD. An AMOC is required for any deviations to RC steps, including substeps and identified figures.

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

(l) Related Information

(1) For more information about this AD, contact Jeffrey Johnson, Aviation Safety Engineer, FAA, 1701 Columbia Avenue, College Park, GA 30337; phone: 404–474–5554; email: *9-ASO-ATLACO-ADs@faa.gov.*

(2) Material identified in this AD that is not incorporated by reference is available at the address specified in paragraph (m)(3) of this AD.

(m) Material Incorporated by Reference

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

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

(i) Gulfstream GVII–G500 Customer Bulletin No. 092, Revision A, dated April 9, 2024.

(ii) Gulfstream GVII–G600 Customer Bulletin No. 063, Revision A, dated April 9, 2024.

(iii) Chapter 71—Powerplant, Gulfstream Aerospace GVII–G500 Aircraft Maintenance Manual (AMM), Document Number GAC–AC–GVII–G500–AMM–0001, Revision 18, dated March 29, 2024:

Note 1 to the introductory text of paragraph (m)(2)(iii): The manufacturer name is located only on the title page of the document.

(A) 71–20–02 Engine Mount Hardware—Removal/Installation, 71–20 Mounts;

(B) 71–21–03 Engine Forward Link Assemblies—Removal/Installation, 71–21 Front Mounts;

(C) 71–21–04 Forward Engine Mount Assembly—Removal/Installation, 71–21 Front Mounts;

(D) 71–22–03 Aft Engine Mount Strut Assembly—Removal/Installation, 71–22 Rear Mounts;

(E) 71–23–05 Engine Thrust Strut—Removal/Installation, 71–23 Mounts: Support Links and Accessories; and

(F) 71–23–06 Engine Alignment Strut—Removal/Installation, 71–23 Mounts: Support Links and Accessories.

(iv) Chapter 71—Powerplant, Gulfstream Aerospace GVII–G600 AMM, Document Number GAC–AC–GVII–G600–AMM–0001, Revision 14, dated March 29, 2024:

Note 2 to the introductory text of paragraph (m)(2)(iv): The manufacturer name is located only on the title page of the document.

(A) 71–20–02 Engine Mount Hardware—Removal/Installation, 71–20 Mounts;

(B) 71–21–03 Engine Forward Link Assemblies—Removal/Installation, 71–21 Front Mounts;

(C) 71–21–04 Forward Engine Mount Assembly—Removal/Installation, 71–21 Front Mounts;

(D) 71–22–03 Aft Engine Mount Strut Assembly—Removal/Installation, 71–22 Rear Mounts;

(E) 71–23–05 Engine Thrust Strut—Removal/Installation, 71–23 Mounts: Support Links and Accessories; and

(F) 71–23–06 Engine Alignment Strut—Removal/Installation, 71–23 Mounts: Support Links and Accessories.

(3) For Gulfstream Aerospace material, contact Gulfstream Aerospace Corporation, Technical Publications Dept., P.O. Box 2206, Savannah, GA 31402–2206; telephone 800–810–4853; email *pubs@gulfstream.com;* website *gulfstream.com/en/customer-support.*

(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 May 17, 2024.

Victor Wicklund,

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

[FR Doc. 2024–12581 Filed 6–5–24; 11:15 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–2483; Airspace Docket No. 23–AGL–24]

RIN 2120–AA66

Amendment of VOR Federal Airways V–48, V–52, V–216, and V–434, and Revocation of VOR Federal Airway V–206 in the Vicinity of Ottumwa, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Very High Frequency Omnidirectional Range (VOR) Federal Airways V–48, V–52, V–216, and V–434, and revokes VOR Federal Airway V–206. The FAA is taking this action due to the planned decommissioning of the VOR portion of the Ottumwa, IA (OTM), VOR/Distance Measuring Equipment (VOR/DME) navigational aid (NAVAID). The Ottumwa VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Effective date 0901 UTC, September 5, 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: 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:

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 modifies the Air Traffic Service (ATS) route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2023–2483 in the **Federal Register** (88 FR 89344; December 27, 2023), proposing to amend VOR Federal Airways V–48, V–52, V–216, and V–434, and revoke VOR Federal Airway V–206 due to the planned decommissioning of the VOR portion of the Ottumwa, IA, VOR/DME NAVAID. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Incorporation by Reference

VOR Federal airways are published in paragraph 6010(a) 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 amending VOR Federal Airways V–48, V–52, V–216, and V–434, and revoking VOR Federal Airway V–206. This action is due to the planned decommissioning of the VOR portion of the Ottumwa, IA, VOR/DME. The airway actions are described below.

V–48: Prior to this final rule, V–48 extended between the Ottumwa, IA, VOR/DME and the Pontiac, IL, VOR/DME. The airway segment between the Ottumwa VOR/DME and the Burlington, IA, VOR/DME is removed. As amended, the airway is changed to now extend between the Burlington VOR/DME and the Pontiac VOR/DME.

V–52: Prior to this final rule, V–52 extended between the Des Moines, IA, VOR/Tactical Air Navigation (VORTAC) and the Ottumwa, IA, VOR/DME; and between the St. Louis, MO, VORTAC and the Pocket City, IN, VORTAC. The airway segment between the Des Moines VORTAC and the Ottumwa VOR/DME is removed. As amended, the airway is changed to now extend between the St. Louis VORTAC and the Pocket City VORTAC.

V–206: Prior to this final rule, V–206 extended between the Napoleon, MO, VORTAC and the Ottumwa, IA, VOR/DME. The airway segment between the Kirksville, MO, VORTAC and the Ottumwa VOR/DME is removed due to the planned decommissioning of the VOR portion of the Ottumwa VOR/DME. Additionally, the airway segment between the Napoleon VORTAC and the Kirksville VORTAC is removed due to that airway segment overlapping V–10 which will remain charted and provide navigational guidance between the two NAVAIDs. As amended, the airway is removed in its entirety.

V–216: Prior to this final rule, V–216 extended between the Lamar, CO, VOR/DME and the Mankato, KS, VORTAC; and between the Lamoni, IA, VOR/DME and the Janesville, WI, VOR/DME. The airway segment between the Lamoni VOR/DME and the Iowa City, IA, VOR/DME is removed. As amended, the airway is changed to now extend between the Lamar VOR/DME and the Mankato VORTAC, and between the Iowa City VOR/DME and the Janesville VOR/DME.

V–434: Prior to this final rule, V–434 extended between the Ottumwa, IA, VOR/DME and the Brickyard, IN, VORTAC. The airway segment between the Ottumwa VOR/DME and the Moline, IL, VOR/DME is removed. As amended, the airway is changed to now extend between the Moline VOR/DME and the Brickyard VORTAC.

The NAVAID radials listed in the VOR Federal airway descriptions in the regulatory text of this final rule are unchanged and stated in degrees True north.

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 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 5–6.5i, which categorically excludes from further environmental impact review the establishment of new or revised air traffic control procedures conducted at 3,000 feet or more above ground level (AGL); procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive areas; modifications to currently approved procedures conducted below 3,000 feet AGL that do not significantly increase noise over noise sensitive areas; and increases in minimum altitudes and landing minima. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List 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 6010(a) Domestic VOR Federal Airways.

* * * * *

V–48 [Amended]

From Burlington, IA; Peoria, IL; to Pontiac, IL.

* * * * *

V–52 [Amended]

From St Louis, MO; Troy, IL; INT Troy 099° and Pocket City, IN, 311° radials; to Pocket City.

* * * * *

V–206 [Removed]

* * * * *

V–216 [Amended]

From Lamar, CO; Hill City, KS; to Mankato, KS. From Iowa City, IA; INT Iowa City 062° and Janesville, WI, 240° radials; to Janesville.

* * * * *

V–434 [Amended]

From Moline, IL; Peoria, IL; Champaign, IL; to Brickyard, IN.

* * * * *

Issued in Washington, DC, on June 3, 2024.

Frank Lias,

Manager, Rules and Regulations Group.

[FR Doc. 2024–12457 Filed 6–6–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2023–2466; Airspace Docket No. 23–ACE–6]

RIN 2120–AA66

Amendment of VOR Federal Airway V–220 and Revocation of VOR Federal Airways V–79 and V–380 in the Vicinity of Hastings, NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Very High Frequency Omnidirectional Range (VOR) Federal Airway V–220 and revokes VOR Federal Airways V–79 and V–380. The FAA is taking this action due to the planned decommissioning of the VOR portion of the Hastings, NE (HSI), VOR/Distance Measuring Equipment (VOR/DME) navigational aid (NAVAID). The Hastings VOR is being decommissioned in support of the FAA's VOR Minimum Operational Network (MON) program.

DATES: Effective date 0901 UTC, September 5, 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: 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:

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 modifies the Air Traffic Service (ATS) route structure as necessary to preserve the safe and efficient flow of air traffic within the National Airspace System.

History

The FAA published a notice of proposed rulemaking for Docket No. FAA–2023–2466 in the **Federal Register** (88 FR 88286; December 21, 2023), proposing to amend VOR Federal Airway V–220 and revoke VOR Federal Airways V–79 and V–380 due to the planned decommissioning of the VOR portion of the Hastings, NE, VOR/DME NAVAID. Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal. No comments were received.

Incorporation by Reference

VOR Federal Airways are published in paragraph 6010(a) 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 amending VOR Federal Airway V–220 and revoking VOR Federal Airways V–79 and V–380 due to the planned decommissioning of the VOR portion of the Hastings, NE, VOR/DME. The airway actions are described below.

V–79: Prior to this final rule, V–79 extended between the Hastings, NE, VOR/DME and the Lincoln, NE, VOR/Tactical Air Navigation (VORTAC). The airway is removed in its entirety.

V–220: Prior to this final rule, V–220 extended between the Grand Junction, CO, VOR/DME and the Columbus, NE, VOR/DME. The airway segment between the Kearney, NE, VOR and the Columbus VOR/DME is removed. As amended, the airway is changed to now extend between the Grand Junction VOR/DME and the Kearney VOR.

V–380: Prior to this final rule, V–380 extended between the Grand Island, NE, VOR/DME and the Mankato, KS, VORTAC. The airway is removed in its entirety.

The NAVAID radials listed in the V–220 description in the regulatory text of this final rule are unchanged and stated in degrees True north.

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 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 5–6.5i, which categorically excludes from further environmental impact review the establishment of new or revised air traffic control procedures conducted at 3,000 feet or more Above Ground Level (AGL); procedures conducted below 3,000 feet AGL that do not cause traffic to be routinely routed over noise sensitive area; modifications to currently approved procedures conducted below 3,000 AGL that do not significantly increase noise over sensitive areas; and increases in minimum altitudes and landing minima. As such, this action is not expected to result in any potentially significant environmental impacts. In accordance with FAA Order 1050.1F, paragraph 5–2 regarding Extraordinary Circumstances, the FAA has reviewed this action for factors and circumstances in which a normally categorically excluded action may have a significant environmental impact requiring further analysis. The FAA has determined that no extraordinary circumstances exist that warrant preparation of an environmental assessment or environmental impact study.

List 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 6010(a) Domestic VOR Federal Airways.

* * * * *

V–79 [Removed]

* * * * *

V–220 [Amended]

From Grand Junction, CO; INT Grand Junction 075° and Rifle, CO, 163° radials; Rifle; Meeker, CO; Hayden, CO; Kremmling, CO; INT Kremmling 081° and Gill, CO, 234° radials; Gill; Akron, CO; INT Akron 094° and McCook, NE, 264° radials; McCook; INT McCook 072° and Kearney, NE, 237° radials; to Kearney.

* * * * *

V–380 [Removed]

* * * * *

Issued in Washington, DC, on June 3, 2024.

Frank Lias,

Manager, Rules and Regulations Group.

[FR Doc. 2024–12454 Filed 6–6–24; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 573

[Docket No. FDA–2023–F–0147]

Food Additives Permitted in Feed and Drinking Water of Animals; Ethyl Cellulose

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA, we, or the Agency) is amending the regulations for food additives permitted in feed and drinking water of animals to provide for the safe use of ethyl cellulose as a matrix scaffolding for tracers, and the ethyl cellulose shall not exceed 80 percent of the tracer. This action is in response to a food additive petition filed by Micro-Tracers, Inc.

DATES: This rule is effective June 7, 2024. See section V, Objections and Hearing Requests, for further information on the filing of objections. Either electronic or written objections and requests for a hearing on the final rule must be submitted by July 8, 2024.

ADDRESSES: You may submit objections and requests for a hearing as follows. Please note that late, untimely filed objections 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 July 8, 2024. Objections 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 objections in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting objections. Objections submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your objection will be made public, you are solely responsible for ensuring that your objection 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 objection, that information will be posted on *https://www.regulations.gov.*
- If you want to submit an objection with confidential information that you do not wish to be made available to the public, submit the objection 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 objections submitted to the Dockets Management Staff, FDA will post your objection, 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–F–0147 for ''Food Additives Permitted in Feed and Drinking Water of Animals; Ethyl Cellulose.'' Received objections, 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 an objection with confidential information that you do not wish to be made publicly available, submit your objections only as a written/paper submission. You should submit two copies in 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 objections. 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 objections 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: Megan Hall, Center for Veterinary Medicine (HFV–221), Food and Drug Administration, 12225 Wilkins Ave., Rockville, MD 20852, 240–796–3801, *megan.hall@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

In a document published in the **Federal Register** of February 6, 2023 (88 FR 7657), FDA announced that we had filed a food additive petition (animal use) (FAP 2316) submitted by Micro Tracers, Inc., 1375 Van Dyke Ave., San Francisco, CA 94124. The petition proposed that the regulations for food additives permitted in feed and drinking water of animals be amended to provide for the safe use of ethyl cellulose as a matrix scaffolding in tracers for use in feeds at no more than 0.09 grams per ton of feed (0.1 ppm).

II. Conclusion

Pursuant to the review of the petition, the intended use rate of the ethyl cellulose in tracers is now characterized as a percentage of the tracer, not as ppm in complete feed. The use of the food additive, ethyl cellulose, as a component of the tracer is a more accurate characterization of the food additive than as proposed in the petition (the food additive as a component of complete feed). Therefore, the intended use rate of the food additive has been recharacterized as a percentage of the tracer. The ethyl cellulose is intended to be used as a matrix scaffolding in tracers, with the ethyl cellulose content not exceeding 80 percent of the tracer.

FDA concludes that the data establish the safety and utility of ethyl cellulose as a matrix scaffolding in tracers, with the ethyl cellulose content not exceeding 80 percent of the tracer and that the food additive regulations should be amended as set forth in this document.

III. Public Disclosure

In accordance with § 571.1(h) (21 CFR 571.1(h)), the petition and documents we considered and relied upon in reaching our decision to approve the petition will be made available for public disclosure (see **FOR FURTHER INFORMATION CONTACT**). As provided in § 571.1(h), we will delete from the documents any materials that are not available for public disclosure.

IV. Analysis of Environmental Impact

We have determined under 21 CFR 25.32(r) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Objections and Hearing Requests

If you will be adversely affected by one or more provisions of this regulation, you may file with the Dockets Management Staff (see **ADDRESSES**) either electronic or written objections. You must separately number each objection, and within each numbered objection you must specify with particularity the provision(s) to which you object, and the grounds for your objection. Within each numbered objection, you must specifically state whether you are requesting a hearing on the particular provision that you specify in that numbered objection. If you do not request a hearing for any particular objection, you waive the right to a hearing on that objection. If you request a hearing, your objection must include a detailed description and analysis of the specific factual information you intend to present in support of the objection in the event that a hearing is held. If you do not include such a description and analysis for any particular objection, you waive the right to a hearing on the objection.

List of Subjects in 21 CFR Part 573

Animal feeds, Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 573 is amended as follows:

PART 573—FOOD ADDITIVES PERMITTED IN FEED AND DRINKING WATER OF ANIMALS

■ 1. The authority citation for part 573 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

■ 2. In § 573.420, revise paragraph (b) to read as follows:

§ 573.420 Ethyl cellulose.

* * * * *

(b) It is used or intended for use:

(1) As a binder or filler in dry vitamin preparations to be incorporated into animal feed.

(2) As a matrix scaffolding for tracers, and the ethyl cellulose content shall not exceed 80 percent of the tracer.

Dated: June 3, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–12533 Filed 6–6–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 100

[Docket No. USCG–2024–0470]

Special Local Regulations Northern California and Lake Tahoe Area Annual Marine Events; Escape From Alcatraz Swim, San Francisco, CA

AGENCY: Coast Guard, DHS.

ACTION: Notification of enforcement of regulation.

SUMMARY: The Coast Guard will enforce the special local regulations for the annual Escape From Alcatraz Swim on June 9, 2024, to provide for the safety of life on navigable waterways in the San Francisco Bay during this event. Our regulation for marine events in Northern California identifies the regulated area for this event in San Francisco, CA. During the enforcement period, unauthorized persons or vessels are prohibited from entering, transiting, or loitering in the regulated area, unless authorized by the Captain of the Port San Francisco (COTP) designated Patrol Commander (PATCOM) enforcing the regulated area.

DATES: The regulations in 33 CFR 100.1103 will be enforced for the location in Table 1 to § 100.1103, Item number 6 from 7 a.m. to 9 a.m. on June 9, 2024.

FOR FURTHER INFORMATION CONTACT: If you have questions about this notification of enforcement, call, or email MST1 Shannon Curtaz-Milian, Sector San Francisco Waterways Management, U.S. Coast Guard; telephone (415) 399–7440, email *SFWaterways@uscg.mil.*

SUPPLEMENTARY INFORMATION: The Coast Guard will enforce the special local regulations in 33 CFR 100.1103, Table 1 to § 100.1103, Item number 6 for the Escape From Alcatraz Swim regulated area from 7 a.m. to 9 a.m. on June 9, 2024. This action is being taken to provide for the safety of life on navigable waterways during this event. Our regulation for marine events within Northern California, § 100.1103, specifies the location of the regulated area for the Escape From Alcatraz Swim which encompasses portions of the San Francisco Bay. During the enforcement period, the regulated area will be in effect in the navigable waters, from surface to bottom, defined by a line drawn from Alcatraz Island to Saint Francis Yacht Club.

During the enforcement period, under the provisions of 33 CFR 100.1103(b), if you are the operator of a vessel in the regulated area you must comply with directions from the Patrol Commander (PATCOM) or any other Official Patrol, defined as a Federal, State, or local law enforcement agency on scene to assist the Coast Guard in enforcing the regulated area. The PATCOM or Official Patrol may, upon request, allow the transit of commercial vessels through regulated areas when it is safe to do so.

In addition to this notification of enforcement in the **Federal Register**, the Coast Guard plans to provide notification of this enforcement period via the Local Notice to Mariners. If the Captain of the Port determines that the regulated area need not be enforced for the full duration stated in this notice, a Broadcast Notice to Mariners or other marine broadcast may be used to grant general permission to enter the regulated area.

Dated: June 3, 2024.

Jordan M. Baldueza,

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

[FR Doc. 2024–12628 Filed 6–6–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG–2024–0256]

RIN 1625–AA00

Safety Zone; Ludington Harbor, Ludington, MI

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for certain waters of Ludington Harbor in Ludington, MI. This rule is necessary to protect personnel, vessels, and the marine environment from potential hazards associated with a light show by restricting persons and vessels within the safety zone. At no time during the effective period may vessels transit the waters of Ludington Harbor, MI, in the vicinity of a triangular shaped safety zone enclosed by the following three coordinates: 43°57.213 N, 086°28.336 W to 43°57.177 N, 086°27.808 W to 43°57.558 N, 086°27.730 W then back to the starting point. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port, Sector Lake Michigan.

DATES: This rule is effective on June 8, 2024, from 9 p.m. through 11 p.m.

ADDRESSES: To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov,* type USCG–2024–0256 in the search box and click ''Search.'' Next, in the Document Type column, select ''Supporting & Related Material.''

FOR FURTHER INFORMATION CONTACT: If you have questions about this rule, call or email Chief Petty Officer Aaron Sunstrom, Sector Lake Michigan Waterways Management Division, U.S. Coast Guard; telephone 414–747–7148, email *Aaron.R.Sunstrom@uscg.mil.*

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR Code of Federal Regulations
COTP Captain of the Port Sector Lake Michigan
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
§ Section
U.S.C. United States Code

II. Background Information and Regulatory History

The Coast Guard is issuing this temporary rule under authority in 5 U.S.C. 553(b)(B). This statutory provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' The Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. Prompt action is needed to respond to the potential safety hazards associated with the Ludington North Breakwater 100th Anniversary Light Show. Due to the nature of the event, it is impracticable to provide notice to ensure the safety of life and property.

Also, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Delaying the effective date of this rule would be impracticable because prompt action is needed to respond to the potential safety hazards associated with the Ludington North Breakwater 100th Anniversary Light Show.

III. Legal Authority and Need for Rule

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034. The Captain of the Port Sector Lake

Michigan (COTP) has determined that potential hazards associated with Ludington North Breakwater 100th Anniversary Light Show event would be a safety concern for anyone within the safety zone that is not participating in the event. The purpose of this rule is to ensure safety of vessels and the navigable waters in the safety zone before, during, and after the scheduled event.

IV. Discussion of the Rule

This rule establishes a safety zone from 9 p.m. until 11 p.m. on June 8, 2024. The safety zone will cover all navigable waters of Ludington Harbor, MI, in the vicinity of a triangular shaped safety zone enclosed by the following three coordinates: 43°57.213 N, 086°28.336 W to 43°57.177 N, 086°27.808 W to 43°57.558 N, 086°27.730 W then back to the starting point. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while the Ludington North Breakwater 100th Anniversary Light Show take place. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

V. Regulatory Analyses

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

A. Regulatory Planning and Review

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

This regulatory action determination is based on the size, location, and duration of the safety zone. The safety zone created by this rule will relatively small and is designed to minimize its impact on navigable waters. This rule will prohibit entry into certain navigable waters of Ludington Harbor in Ludington, MI, and it is not anticipated to exceed 2 hours in duration. Thus, restrictions on vessel movement within that particular area are expected to be minimal. Moreover, under certain conditions vessels may still transit through the safety zone when permitted by the COTP. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF–FM marine channel 16 about the zone.

B. Impact on Small Entities

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

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

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

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

C. Collection of Information

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

D. Federalism and Indian Tribal Governments

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

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

E. Unfunded Mandates Reform Act

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

F. Environment

We have analyzed this rule under Department of Homeland Security Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a temporary safety zone lasting 2 total hours that will prohibit entry within a triangle radius of position 43°57.213 N, 086°28.336 W to 43°57.177 N, 086°27.808 W to 43°57.558 N, 086°27.730 W then back to the starting point in Ludington, MI. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A

Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the **ADDRESSES** section of this preamble.

G. Protest Activities

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

List of Subjects in 33 CFR Part 165

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

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

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

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

■ 2. Add § 165.T09–0256 to read as follows:

§ 165.T09–0256 Safety Zone; Ludington Harbor, Ludington, MI.

(a) *Location.* The following area is a safety zone: All for navigable waters within a triangle radius of position 43°57.213 N, 086°28.336 W to 43°57.177 N, 086°27.808 W to 43°57.558 N, 086°27.730 W then back to the starting point in Ludington, MI.

(b) *Enforcement period.* The safety zone described in paragraph (a) of this section is effective on June 8, 2024, from 9 p.m. through 11 p.m.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan (COTP) or a designated representative.

(2) The safety zone is closed to all vessel traffic, except as may be permitted by the COTP or a designated representative.

(3) The ''designated representative'' of the COTP is any Coast Guard commissioned, warrant, or petty officer who has been designated by the COTP to act on his or her behalf.

(4) Persons and vessel operators desiring to enter or operate within the safety zone during the marine event must contact the COTP or an on-scene representative to obtain permission to do so. The COTP or an on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the COTP or an on-scene representative.

Dated: June 4, 2024.

Gregory J. Knoll,

Commander, U.S. Coast Guard, Acting Captain of the Port Lake Michigan.

[FR Doc. 2024–12641 Filed 6–6–24; 8:45 am]

BILLING CODE 9110–04–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[EPA–R06–RCRA–2024; FRL–11997–01–R6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendment.

SUMMARY: The Environmental Protection Agency (EPA) is amending an exclusion for Shell Oil Company, Deer Park, Texas facility to reflect changes in ownership and name.

DATES: This rule is effective June 7, 2024.

FOR FURTHER INFORMATION CONTACT: Eshala Dixon, RCRA Permits & Solid Waste Section (LCR–RP), Land, Chemicals and Redevelopment Division, EPA Region 6, 1201 Elm Street, Suite 500, Dallas, TX 75270, phone number: 214–665–6592; email address: *dixon.eshala@epa.gov.*

SUPPLEMENTARY INFORMATION: In this document EPA is amending appendix IX to part 261 to reflect a change in the ownership and name of a particular facility. This action documents the transfer of ownership and name change by updating appendix IX to incorporate the change in owner's name for the Shell Oil Company, Deer Park, TX facility for the exclusion from hazardous waste regulations for the Multi-source (F039) landfill leachate. The exclusion or ''delisting'' was granted to Shell Oil Company on August 23, 2005 (see 70 FR 49187). The EPA has been notified that the transfer of ownership of the Shell Oil Company, Deer Park, TX facility to Deer Park Refining Limited Partnership (DPRLP) occurred on March 20, 2022. DPLRP has certified that it plans to comply with all the terms and conditions set forth in the delisting and will not change the characteristics of the wastes subject to the exclusion at the Deer Park, TX facility. This action documents the change by updating appendix IX to incorporate a change in name.

The changes to appendix IX to part 261 are effective June 7, 2024. The Hazardous and Solid Waste Amendments of 1984 amended section 3010 of the Resource Conservation and Recovery Act (RCRA) to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. As described above, the facility has certified that it is prepared to comply with the requirements of the exclusion. Therefore, a six-month delay in the effective date is not necessary in this case. This provides the basis for making this amendment effective immediately upon publication under the Administrative Procedures Act pursuant to 5 United States Code (U.S.C.) 553(d). The EPA has determined that having a proposed rulemaking and public comment on this change is unnecessary, as it involves only a change in company ownership, with all of the same delisting requirements remaining in effect.

List of Subjects in 40 CFR Part 261

Environmental protection, Hazardous waste, Recycling, Reporting and recordkeeping requirements.

Dated: May 29, 2024.

Melissa Smith,

Acting Director, Land, Chemicals and Redevelopment Division, Region 6.

For the reasons set out in the preamble, 40 CFR part 261 is amended as follows:

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

■ 1. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, 6924(y) and 6938.

■ 2. Amend table 1 of Appendix IX to part 261 by removing the second entry for ''Shell Oil Company'' ''Deer Park, TX'' and adding an entry for ''Deer Park Refining Limited Partnership (DPRLP)'' in alphabetical order by facility to read as follows:

Appendix IX to Part 261—Waste Excluded Under §§ 260.20 and 260.22

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES

*	*	*	*	*	*	*

Facility	Address	Waste description
*	*	*
Deer Park Refining Limited Partnership (DPRLP).	Deer Park, TX	Multi-source landfill leachate (EPA Hazardous Waste No. F039) generated at a maximum annual rate of 3.36 million gallons (16,619 cu. yards) per calendar year after August 23, 2005 and disposed in accordance with the TPDES permit. The delisting levels set do not relieve DPRLP of its duty to comply with the limits set in its TPDES permit. For the exclusion to be valid, DPRLP must implement a verification testing program that meets the following paragraphs: (1) Delisting Levels: All total concentrations for those constituents must not exceed the following levels (mg/l). The petitioner must analyze the aqueous waste on a total basis to measure constituents in the multi-source landfill leachate. Multi-source landfill leachate (i) Inorganic Constituents Antimony-0.0204; Arsenic-0.385; Barium-2.92; Copper-418.00; Chromium-5.0; Cobalt-2.25; Nickel-1.13; Selenium-0.0863; Thallium-0.005; Vanadium-0.838 (ii) Organic Constituents Acetone-1.46; Acetophenone-1.58; Benzene-0.0222; p-Cresol-0.0788; Bis(2-ethylhexyl)phthlate-15800.00; Dichloroethane, 1,2–0.0803; Ethylbenzene-4.51; Fluorene-1.87; Napthalene-1.05; Phenol-9.46; Phenanthrene-1.36; Pyridine-0.0146; 2,3,7,8-TCDD equivalents as TEQ–0.0000926; Toluene-4.43; Trichloropropane-0.000574; Xylenes (total)-97.60 (2) Waste Management: (A) DPRLP must manage as hazardous all multi-source landfill leachate generated, until it has completed initial verification testing described in paragraph (3)(A) and (B), as appropriate, and valid analyses show that paragraph (1) is satisfied. (B) Levels of constituents measured in the samples of the multi-source landfill leachate that do not exceed the levels set forth in paragraph (1) are non-hazardous. DPRLP can manage and dispose of the non-hazardous multi-source landfill leachate according to all applicable solid waste regulations. (C) If constituent levels in a sample exceed any of the delisting levels set in paragraph (1), DPRLP can collect one additional sample and perform expedited analyses to verify if the constituent exceeds the delisting level. If this sample confirms the exceedance, DPRLP must, from that point forward, treat the waste as hazardous until it is demonstrated that the waste again meets the levels in paragraph (1). (D) If the facility has not treated the waste, DPRLP must manage and dispose of the waste generated under Subtitle C of RCRA from the time that it becomes aware of any exceedance (E) Upon completion of the Verification Testing described in paragraph 3(A) and (B) as appropriate and the transmittal of the results to EPA, and if the testing results meet the requirements of paragraph (1), DPRLP may proceed to manage its multi-source landfill leachate as non-hazardous waste. If Subsequent Verification Testing indicates an exceedance of the delisting levels in paragraph (1), DPRLP must manage the multi-source landfill leachate as a hazardous waste until two consecutive quarterly testing samples show levels below the delisting levels in Table I. (3) Verification Testing Requirements: DPRLP must perform sample collection and analyses, including quality control procedures, using appropriate methods. As applicable to the method-defined parameters of concern, analyses requiring the use of SW–846 methods incorporated by reference in 40 CFR 260.11 must be used without substitution. As applicable, the SW–846 methods might include Methods 0010, 0011, 0020, 0023A, 0030, 0031, 0040, 0050, 0051, 0060, 0061, 1010A, 1020B, 1110A, 1310B, 1311, 1312, 1320, 1330A, 9010C, 9012B, 9040C, 9045D, 9060A, 9070A (uses EPA Method 1664, Rev. A), 9071B, and 9095B. Methods used must meet Performance Based Measurement System Criteria in which the Data Quality Objectives demonstrate that representative samples of the DPRLP multi-source landfill leachate are collected and meet the delisting levels in paragraph (1). (A) Initial Verification Testing: After EPA grants the final exclusion, DPRLP must do the following: (i) Within 60 days of this exclusions becoming final, collect four samples, before disposal, of the multi-source landfill leachate. (ii) The samples are to be analyzed and compared against the delisting levels in paragraph (1). (iii) Within sixty (60) days after this exclusion becomes final, DPRLP will report initial verification analytical test data for the multi-source landfill leachate, including analytical quality control information for the first thirty (30) days of operation after this exclusion becomes final. If levels of constituents measured in the samples of the multi-source landfill leachate that do not exceed the levels set forth in paragraph (1) are also non-hazardous in two consecutive quarters after the first thirty (30) days of operation after this exclusion become effective, DPRLP can manage and dispose of the multi-source landfill leachate according to all applicable solid waste regulations.

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	
	(B) Subsequent Verification Testing: Following written notification by EPA, DPRLP may substitute the testing conditions in (3)(B) for (3)(A). DPRLP must continue to monitor operating conditions, and analyze one representative sample of the multi-source landfill leachate for each quarter of operation during the first year of waste generation. The sample must represent the waste generated during the quarter. After the first year of analytical sampling verification sampling can be performed on a single annual sample of the multi-source landfill leachate. The results are to be compared to the delisting levels in paragraph (1). (C) Termination of Testing: (i) After the first year of quarterly testing, if the delisting levels in paragraph (1) are being met, DPRLP may then request that EPA not require quarterly testing. After EPA notifies DPRLP in writing, the company may end quarterly testing. (ii) Following cancellation of the quarterly testing, DPRLP must continue to test a representative sample for all constituents listed in paragraph (1) annually. (4) Changes in Operating Conditions: If DPRLP significantly changes the process described in its petition or starts any processes that generate(s) the waste that may or could significantly affect the composition or type of waste generated as established under paragraph (1) (by illustration, but not limitation, changes in equipment or operating conditions of the treatment process), it must notify EPA in writing; it may no longer handle the wastes generated from the new process as nonhazardous until the wastes meet the delisting levels set in paragraph (1) and it has received written approval to do so from EPA. (5) Data Submittals: DPRLP must submit the information described below. If DPRLP fails to submit the required data within the specified time or maintain the required records on-site for the specified time, EPA, at its discretion, will consider this sufficient basis to reopen the exclusion as described in paragraph 6. DPRLP must: (A) Submit the data obtained through paragraph 3 to the Section Supervisor, RCRA Corrective Action, UST, Solid Waste and Permit Branch, EPA Region 6, 1201 Elm Street, Suite 500, Dallas, Texas 75270, Mail Code, (6LCR–RC) within the time specified. (B) Compile records of operating conditions and analytical data from paragraph (3), summarized, and maintained on-site for a minimum of five years. (C) Furnish these records and data when EPA or the state of Texas request them for inspection. (D) Send along with all data a signed copy of the following certification statement, to attest to the truth and accuracy of the data submitted: Under civil and criminal penalty of law for the making or submission of false or fraudulent statements or representations (pursuant to the applicable provisions of the Federal Code, which include, but may not be limited to, 18 U.S.C. 1001 and 42 U.S.C. 6928), I certify that the information contained in or accompanying this document is true, accurate and complete. As to the (those) identified section(s) of this document for which I cannot personally verify its (their) truth and accuracy, I certify as the company official having supervisory responsibility for the persons who, acting under my direct instructions, made the verification that this information is true, accurate and complete. If any of this information is determined by EPA in its sole discretion to be false, inaccurate or incomplete, and upon conveyance of this fact to the company, I recognize and agree that this exclusion of waste will be void as if it never had effect or to the extent directed by EPA and that the company will be liable for any actions taken in contravention of the company's RCRA and CERCLA obligations premised upon the company's reliance on the void exclusion. (6) Reopener: (A) If, anytime after disposal of the delisted waste, DPRLP possesses or is otherwise made aware of any environmental data (including but not limited to leachate data or groundwater monitoring data) or any other data relevant to the delisted waste indicating that any constituent identified for the delisting verification testing is at a level higher than the delisting level allowed by the Division Director in granting the petition, then the facility must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (B) If the annual testing of the waste does not meet the delisting requirements in paragraph 1, DPRLP must report the data, in writing, to the Division Director within 10 days of first possessing or being made aware of that data. (C) If DPRLP fails to submit the information described in paragraphs (5), (6)(A) or (6)(B) or if any other information is received from any source, the Division Director will make a preliminary determination as to whether the reported information requires EPA action to protect human health and/or the environment. Further action may include suspending, or revoking the exclusion, or other appropriate response necessary to protect human health and the environment.

TABLE 1—WASTES EXCLUDED FROM NON-SPECIFIC SOURCES—Continued

Facility	
	(D) If the Division Director determines that the reported information does require action, he will notify the facility in writing of the actions the Division Director believes are necessary to protect human health and the environment. The notice shall include a statement of the proposed action and a statement providing the facility with an opportunity to present information as to why the proposed action by EPA is not necessary. The facility shall have 10 days from the date of the Division Director's notice to present such information. (E) Following the receipt of information from the facility described in paragraph (6)(D) or if no information is presented under paragraph (6)(D), the Division Director will issue a final written determination describing the actions that are necessary to protect human health and/or the environment. Any required action described in the Division Director's determination shall become effective immediately, unless the Division Director provides otherwise. (7) Notification Requirements: DPRLP must do the following before transporting the delisted waste. Failure to provide this notification will result in a violation of the delisting petition and a possible revocation of the decision. (A) Provide a one-time written notification to any state regulatory agency to which or through which it will transport the delisted waste described above for disposal, 60 days before beginning such activities. (B) Update the one-time written notification if it ships the delisted waste into a different disposal facility. (C) Failure to provide this notification will result in a violation of the delisting exclusion and a possible revocation of the decision.

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[FR Doc. 2024–12496 Filed 6–6–24; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 8 and 20

[WC Docket Nos. 23–320, 17–108; FCC 24–52, FR ID 224122]

Safeguarding and Securing the Open Internet; Restoring Internet Freedom; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission (FCC) is correcting an error in the **DATES** section of a document that was published in the **Federal Register** on May 22, 2024.

DATES: This correction is effective June 7, 2024.

FOR FURTHER INFORMATION CONTACT: For further information, contact Chris Laughlin, Wireline Competition Bureau, at 202–418–2193.

SUPPLEMENTARY INFORMATION: The FCC is correcting a compliance date in the *Declaratory Ruling, Report and Order, Order, and Order on Reconsideration,* published as a final rule in the **Federal Register** of May 22, 2024, at 89 FR 45404, for when China Mobile International (USA) Inc., China Telecom (Americas) Corporation, China Unicom (Americas) Operations Limited, Pacific Networks Corp., and ComNet (USA) LLC, and their affiliates and subsidiaries as defined pursuant to 47 CFR 2.903(c), shall discontinue any and all provision of broadband internet access service.

Correction

Accordingly, in FR Doc. 2024–10674, published in the **Federal Register** of May 22, 2024 (89 FR 45404), on page 45404, in the first column, correct the second paragraph of the **DATES** section to read as follows:

''As of September 20, 2024, China Mobile International (USA) Inc., China Telecom (Americas) Corporation, China Unicom (Americas) Operations Limited, Pacific Networks Corp., and ComNet (USA) LLC, and their affiliates and subsidiaries as defined pursuant to 47 CFR 2.903(c), shall discontinue any and all provision of broadband internet access service.''

Marlene Dortch,

Secretary.

[FR Doc. 2024–12565 Filed 6–6–24; 8:45 am]

BILLING CODE 6712–01–P

Proposed Rules

Federal Register
Vol. 89, No. 111
Friday, June 7, 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.

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[Docket No. DEA–1156]

Announcement of Stayed Hearing: Schedules of Controlled Substances: Placement of 2,5-dimethoxy-4-iodoamphetamine (DOI) and 2,5-dimethoxy-4-chloroamphetamine (DOC) in Schedule I

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Notification of stay of hearing on proposed rulemaking.

SUMMARY: This is a notification that the Drug Enforcement Administration has stayed the June 10, 2024 hearing on the proposed placement of two phenethylamine hallucinogens, as identified in the proposed rule, in schedule I of the Controlled Substances Act.

DATES: The hearing will not be taking place on June 10, 2024.

ADDRESSES: Office of the Administrative Law Judges, 8701 Morrissette Drive, Springfield, Virginia 22152.

FOR FURTHER INFORMATION CONTACT: Hearing Clerk, Debralynn Rosario, Office of the Administrative Law Judges, 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–7035.

SUPPLEMENTARY INFORMATION:

Background

On December 13, 2023, the Drug Enforcement Administration (DEA) published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (88 FR 86278) to place two phenethylamine hallucinogen substances in schedule I of the Controlled Substances Act (CSA) (21 U.S.C. 801, *et seq.*). Specifically, in this NPRM, DEA proposed to schedule the following two controlled substances in schedule I of the CSA, including their salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- 2,5-dimethoxy-4-iodoamphetamine (DOI), and
- 2,5-dimethoxy-4-chloroamphetamine (DOC).

On April 9, 2024, DEA published a Notice of Hearing on Proposed Rulemaking (Notice of Hearing) in the *FR* (89 FR 24750) stating that a hearing would commence on June 10, 2024. Subsequently, a collateral matter was filed in a U.S. District Court and the DEA Administrative Law Judge stayed the administrative hearing proceedings pending a decision from the U.S. District Court. As the matter before DEA is currently stayed, no hearing will commence on June 10, 2024.

Signing Authority

This document of the Drug Enforcement Administration was signed on June 3, 2024, by Administrator Anne Milgram. That document with the original signature and date is maintained by DEA. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DEA Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of DEA. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Heather Achbach,

Federal Register Liaison Officer, Drug Enforcement Administration.

[FR Doc. 2024–12504 Filed 6–6–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 151

[Docket No. USCG–2024–0046]

Recordkeeping and Reporting Requirements To Document Environmental Compliance on Certain Commercial Vessels

AGENCY: Coast Guard, Department of Homeland Security (DHS).

ACTION: Request for information.

SUMMARY: The Coast Guard seeks information about the recordkeeping and reporting procedures required under the Coast Guard ballast water regulations issued in 2012 and 2015 and the monitoring, recordkeeping, and reporting required under the U.S. Environmental Protection Agency (EPA) 2013 Vessel General Permit (VGP). The Coast Guard plans to use this information to evaluate new and updated solutions that inform data-driven policymaking, reduce the reporting and record-keeping burden on industry, and confirm environmental compliance.

DATES: Comments must be received by the Coast Guard on or before July 22, 2024.

ADDRESSES: You may submit comments using the Federal Decision-Making Portal at *https://www.regulations.gov.* See the ''Public Participation and Request for Comments'' portion of the **SUPPLEMENTAL INFORMATION** section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: For information about this document, email or phone Joseph Adamson, U.S. Coast Guard; email: *CG-OES@uscg.mil,* telephone: 206–836–3831.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Comments

We encourage you to submit comments or related material responding to this request for information. The Coast Guard views public participation as essential to understanding the recordkeeping and reporting requirements for documenting environmental compliance. We consider all submissions and may adjust agency policy based on your feedback. If you submit a comment, please include the docket number for this notice (USCG–2024–0046), indicate the specific section of this document to which each comment applies, and provide a detailed description of the issues, the reasoning, and suggestion or recommendations for solutions.

Methods for submitting comments. We encourage you to submit comments through the Federal Decision-Making Portal at *www.regulations.gov.* To do so, go to *www.regulations.gov,* type USCG–2024–0046 in the search box and click

''Search.'' Next, look for this document in the Search Results column, and click on it. Then click on the Comment option. If your material cannot be submitted using *www.regulations.gov,* contact the person in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Viewing material in the docket. Public comments will be placed in our online docket at *www.regulations.gov* and can be viewed by following that website's instructions, provided on its Frequently Asked Questions page. We review all comments received, but we will only post comments that address the topic of this request for information. We may choose not to post off-topic, inappropriate, or duplicate comments that we receive.

The Coast Guard will carefully consider each comment received, but may not issue separate responses. The Coast Guard may also propose regulatory changes or update guidance related to this topic. If the Coast Guard were to undertake any regulatory or guidance changes as a result of comments received, those changes would be announced separately.

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

II. Abbreviations

CFR Code of Federal Regulations
DHS Department of Homeland Security
DMR Discharge Monitoring Report
eNOI Electronic Notice of Intent
EPA Environmental Protection Agency
NBIC National Ballast Information Clearinghouse
VGP Vessel General Permit

III. Background

On March 23, 2012, the Coast Guard published a final rule about vessel ballast water management, titled ''Standards for Living Organisms in Ships' Ballast Water Discharge in U.S. Waters'' (77 FR 17254), which became effective on June 21, 2012. On November 24, 2015, the Coast Guard published a final rule amending the reporting and recordkeeping requirements to simplify and streamline the reporting process (80 FR 73105). Those amendments became effective on February 22, 2016. These regulations, codified in 33 CFR part 151, require vessel owners or operators to submit reports to the National Ballast Information Clearinghouse (NBIC). These reports must include, among other information, the number of ballast water tanks, the total ballast water capacity, and primary port of ballast water loading and discharge for each voyage. The Coast Guard uses this information to understand ballasting patterns in the waters of the United States and evaluate the effectiveness of regulations and guidance. The Coast Guard also uses this information to ensure that ballast water is managed in accordance with the regulatory requirements outlined in 33 CFR 151.1510.

On April 12, 2013, the Environmental Protection Agency (EPA) published its Notice of final permit issuance, titled Final National Pollutant Discharge Elimination System (NPDES) General Permit for Discharges Incidental to the Normal Operation of a Vessel (78 FR 21938). The notice finalizes Vessel General Permit (VGP) requirements for certain commercial vessels that are 79 feet or longer operating within waters of the United States. The VGP requirements do not apply to fishing vessels (except for ballast water), recreational vessels as defined in section 502(25) of the Clean Water Act (CWA) (33 U.S.C. 1362), or vessels of the Armed Forces as defined in CWA section 312(a)(14) (33 U.S.C. 1322).

The VGP requires vessel owners or operators to monitor vessel discharges, retain records necessary to demonstrate compliance, and submit an annual report to the EPA. This annual report is currently electronically submitted to the EPA by uploading a datasheet or manually completing an online form. In the report, vessel owners or operators must:

1. Identify the regions of the United States where the vessel operated during the year;
2. Provide details about the vessel, vessel discharges, and onboard pollution control devices;
3. Provide details of required sampling and inspection; and
4. Identify any instances of noncompliance with the permit requirements.

The EPA uses this information to assess compliance with permit requirements. The Coast Guard also uses this information to assist EPA with compliance under the VGP as detailed in the February 11, 2011, memorandum of understanding between the Coast Guard and the EPA (available in the docket for this notice, see the Public Participation and Comments section of this preamble.).

Electronic reporting systems have become more user-friendly, powerful, efficient, intelligent, and secure since the 2012 and 2015 ballast water final rules and VGP were issued. The Coast Guard hopes to leverage these advances to improve the environmental compliance reporting processes, reduce the reporting burden, streamline procedures, and encourage direct entry into Federal data systems. These centrally housed systems facilitate consistent data analysis, policy development, and public transparency and access.

IV. Request for Information

The Coast Guard seeks information, comments, and suggestions about the convenience, costs, time spent, content, applicability, and functionality of the current EPA and Coast Guard monitoring, recordkeeping, and reporting procedures. Questions are divided into four categories pertaining to the vessel's VGP annual report, including the Discharge Monitoring Report (DMR) required by the EPA, and the vessel's ballast water management reporting form (see OMB number 1625–0069) required by the Coast Guard:

A. General question;

B. Information collection;

C. Compiling data and preparing reports; and

D. Submission of reports.

The purpose of these questions is to obtain details on the resources needed to collect, document, compile, and report information, and to solicit comments on existing electronic reporting systems to identify opportunities to streamline any future Coast Guard monitoring, recordkeeping, and reporting activities. The questions below illustrate the type of information sought by the Coast Guard and are intended to help guide your responses.

Please respond to as many questions as you like. We ask that you provide as much specificity and rationale as possible to explain your responses and suggestions and, in particular, whether your responses relate to the EPA VGP, Coast Guard ballast water management reporting requirements, or both.

A. General Question

What amount of time and resources are devoted per vessel to monitoring, recordkeeping, compiling data, and preparing reports to comply with the EPA's VGP and the Coast Guard's ballast water management requirements? Please provide information about who collects this information, such as the Master, environmental compliance officer, or vessel operator, and the amount of time these individuals spend on the different elements of this activity.

B. Information Collection by Vessel Owner or Operator for Submission to the Coast Guard, EPA, or Both

(1) Do you recommend any specific improvements for completing the vessel's ballast water management reporting form for submission to the NBIC and why? Please provide details.

(2) Based on your current experience with collecting information for the EPA's VGP via the Electronic Notice of Intent (eNOI) application, do you recommend any specific improvements to a potential future compliance and enforcement data system and why? Please provide details.

C. Compiling Data and Preparing Reports by Vessel Owner or Operator for Submission to the Coast Guard, EPA, or Both

(1) Based on your current user experience with the instructions provided on the vessel's VGP annual report and the vessel's ballast water management reporting form, what improvements to a potential future compliance and enforcement data system do you recommend? Please provide details.

(2) Based on your current user experience with completing the vessel's VGP annual report and the vessel's ballast water management reporting form, what improvements to a potential future compliance and enforcement data system do you recommend? Please provide details.

(3) Are there any other types of software, in addition to using Microsoft Office file formats, that you use for compiling EPA's VGP information? Please provide details.

(4) Does your vessel owner or operator prepare the vessel's VGP annual report, including DMR data, locally or is information compiled using other means and forwarded to a central location or separate office? Please provide details.

(5) Based on your current user experience with compiling and preparing information for submission to either the EPA's VGP eNOI application or to the NBIC, are there any specific improvements to any potential future compliance and enforcement data system you recommend? Please provide details.

D. Submission of Reports by Vessel Owner or Operators to the Coast Guard or EPA

(1) What improvements with submitting the vessel's ballast water management reporting form do you recommend? Please provide details.

(2) Are there are any specific improvements you suggest for submitting information to the NBIC website? Please provide details and examples of what works well and data fields that could be improved for ease of submission.

(3) Based on your user experience with completing and submitting the vessel's VGP annual report, including any DMR data, what recommendations do you have for any potential future compliance and enforcement data system? Please provide details.

(4) Based on your user experience with the EPA's VGP eNOI system and the submission process (including data verification) for the annual report, what recommendations do you have for any potential future compliance and enforcement data system? Please provide details and examples of what works well.

Dated: June 4, 2024.

J.G. Lantz,

Director of Commercial Regulations and Standards.

[FR Doc. 2024–12572 Filed 6–6–24; 8:45 am]

BILLING CODE 9110–04–P

DEPARTMENT OF EDUCATION

34 CFR Chapter VI

[ED–2024–OPE–0069]

Postsecondary Student Success Grant

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Proposed priorities, requirements, and definitions.

SUMMARY: The Department of Education (Department) proposes priorities, requirements, and definitions for use in the Postsecondary Student Success Grant (PSSG) program, Assistance Listing Number 84.116M. The Department may use one or more of these priorities, requirements, and definitions for competitions in fiscal year (FY) 2024 and later years. We intend for these priorities, requirements, and definitions to support projects that equitably improve postsecondary student outcomes, including retention, upward transfer, and completions of value, by leveraging data and implementing, scaling, and rigorously evaluating evidence-based activities to support data-driven decisions and actions that lead to credentials that support economic success and further education.

DATES: We must receive your comments on or before July 8, 2024.

ADDRESSES: Comments must be submitted via the Federal eRulemaking Portal at *www.regulations.gov.* However, if you require an accommodation or cannot otherwise submit your comments via *www.regulations.gov,* please contact the program contact person listed under **FOR FURTHER INFORMATION CONTACT**. The Department will not accept comments submitted by fax or by email, or comments submitted after the comment period closes. To ensure the Department does not receive duplicate copies, please submit your comments only once. In addition, please include the Docket ID at the top of your comments.

Federal eRulemaking Portal: Go to *www.regulations.gov* to submit your comments electronically. Information on using *Regulations.gov*, including instructions for accessing agency documents, submitting comments, and viewing the docket, is available on the site under ''FAQ.''

Note: The Department's policy is generally to make comments received from members of the public available for public viewing in their entirety on the Federal eRulemaking Portal at *www.regulations.gov.* Therefore, commenters should be careful to include in their comments only information that they wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Nemeka Mason-Clercin, U.S. Department of Education, 400 Maryland Avenue SW, 5th Floor, Washington, DC 20202–4260. Telephone: (202) 987–1340. Nalini Lamba-Nieves, U.S. Department of Education, 400 Maryland Avenue SW, Room 5C127, Washington, DC 20202–4260. Telephone: (202) 453–7953. Email: *PSSG@ed.gov.*

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

SUPPLEMENTARY INFORMATION:

Invitation to Comment: We invite you to submit comments regarding the proposed priorities, requirements, and definitions. To ensure that your comments have maximum effect in developing the final priorities, requirements, and definitions, we urge you to clearly identify the specific section of the proposed priorities, requirements, and definitions that each comment addresses.

We invite you to assist us in complying with the specific requirements of Executive Orders 12866, 13563, and 14094 and their overall requirement of reducing regulatory burden that might result from these proposed priorities, requirements, and definitions. Please let us know of any further ways we could reduce potential costs or increase potential

benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect public comments about the proposed priorities, requirements, and definitions by accessing *Regulations.gov*. To inspect comments in person, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Assistance to Individuals with Disabilities in Reviewing the Rulemaking Record: On request we will provide an appropriate accommodation or auxiliary aid to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed priorities, requirements, and definitions. If you want to schedule an appointment for this type of accommodation or auxiliary aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

Purpose of Program: The purpose of the PSSG program is to equitably improve postsecondary student outcomes, including retention, upward transfer, and completions of value, by leveraging data and implementing, scaling, and rigorously evaluating evidence-based activities to support data-driven decisions and actions that lead to credentials that support economic success and further education.

Program Authority: 20 U.S.C. 1138–1138d.

Proposed Priorities

We propose five priorities. We may use one or more of these priorities in any year in which this program is in effect.

Background

In today's economy, 67 percent of U.S. jobs require a postsecondary credential, and by 2031, this percentage is projected to grow to 71 percent.[1] Data show that as educational attainment increases, median earnings steadily increase.[2] One in three first-time students at two-year colleges, and two in three first-time students at four-year colleges, graduate from the first institution they attend within three and six years respectively.[3] Students from low-income backgrounds, first-generation students, students of color, adult students, students with disabilities, veterans, and other students who have been historically underserved in postsecondary education often fare worse.[4] It is critical for institutions of higher education (IHEs) to provide student support systems to improve retention, progression, and completion rates for all students, while decreasing economic and social equity gaps for students of color and students from low-income backgrounds.

Students of color and students from low-income backgrounds still face barriers to successfully enrolling in and completing college.[5] [6] Between 2018 and 2022, there was a seven percent decrease in undergraduate enrollment overall, but larger decreases for Black (8 percent), American Indian/Alaska Native (10 percent) students, and Pacific Islander students (13 percent). From 2018 to 2022, there also has been a decrease in enrollment for Pell Grant recipients (13 percent).[7] In addition, while graduation rates (within 6 years after entry) have increased in four-year institutions overall (5.2 percentage points) since 2015 (2009 cohort), double-digit graduation rate gaps between some underrepresented students of color and White students remain (*e.g.,* 22 percentage point gap for Black students), and there is a 17 percentage point gap in completers (within 8 years after entry) between Pell and non-Pell full-time, first-time students in public four-year institutions.[8] The same issues are occurring in two-year institutions, with a modest overall graduation rate (within 3 years after entry) increase (3.1 percentage points) since 2012 (2009 cohort), but declining rates for Black and Hispanic students, which has increased the graduation gap between White students and some underrepresented students of color.[9]

Furthermore, as more underserved students attend college, additional and different resources are often required to support them in successfully completing their credentials. Today, 25 percent of postsecondary students are age 25 or older,[10] about 70 percent of students work while enrolled,[11] and 22 percent of students are parents.[12] At public, 2-year degree-granting institutions, 31 percent of students enrolled are age 25 or older,[13] and 42 percent of all student parents attend community colleges.[14]

Research has found that IHEs can employ a multifaceted and integrated approach and mitigate the barriers that hinder students in their educational trajectories, by addressing academic, financial, and other challenges.[15] Moreover, IHEs that have improved completion rates, including for underserved students, use timely, disaggregated, actionable data to identify institutional barriers to student success, implement interventions, and evaluate impact on an ongoing basis.[16]

[1] Carnevale, A.P., Smith, N., Van Der Werf, M., & Quinn, M.C. (2023). After Everything: Projections of jobs, education, and training requirements through 2031. *Georgetown University—Georgetown Public Policy Institute Center on Education and the Workforce.*

[2] U.S. Bureau of Labor Statistics (2023, September 6). *Education pays—Earnings and unemployment rates by educational attainment, 2023.* Retrieved from *nces.ed.gov/ipeds/Search?query=&query2=&resultType=all&page=1&sortBy=date_desc&surveyComponents=Outcome%20Measures%20(OM)&collectionYears=2021-22&sources=Tables%20Library&overlayTableId=36029.*

[3] U.S. Department of Education, National Center for Education Statistics (2023). Retrieved from: *https://nces.ed.gov/programs/digest/d23/tables/dt23_326.10.asp* and U.S. Department of Education, National Center for Education Statistics (2024). Retrieved from: *https://nces.ed.gov/programs/digest/d23/tables/dt23_326.20.asp.*

[4] U.S. Department of Education, National Center for Education Statistics (2023). Retrieved from: *https://nces.ed.gov/pubs2020/2020237.pdf.*

[5] Thiem, K.C., & Dasgupta, N. (2022). From precollege to career: Barriers facing historically marginalized students and evidence-based solutions. *Social Issues and Policy Review, 16*(1), 212–251.

[6] Rabourn, K.E., BrckaLorenz, A., & Shoup, R. (2018). Reimagining student engagement: How nontraditional adult learners engage in traditional postsecondary environments. *The Journal of Continuing Higher Education, 66*(1), 22–33.

[7] U.S. Department of Education, National Center for Education Statistics (2023). Retrieved from: *https://nces.ed.gov/programs/digest/d23/tables/dt23_306.10.asp* and College Board. (2023, October). Trends in Higher Education Series: Trends in Student Aid 2023.

[8] U.S. Department of Education, National Center for Education Statistics (2023). Retrieved from: *https://nces.ed.gov/programs/digest/d23/tables/dt23_326.10.asp and* U.S. Department of Education, National Center for Education Statistics (2023).

[9] U.S. Department of Education, National Center for Education Statistics (2024). Retrieved from: *https://nces.ed.gov/programs/digest/d23/tables/dt23_326.20.asp.*

[10] National Center for Education Statistics (2022). *Retrieved from: https://nces.ed.gov/programs/digest/d22/tables/dt22_303.50.asp?current=yes.*

[11] Carnevale, A.P., Smith, N., Melton, M., & Price, E.W. (2015). Learning while earning: The new normal. *Georgetown University—Georgetown Public Policy Institute Center on Education and the Workforce.*

[12] Cruse, L.R., Holtzman, T., Gault, B., Croom, D., & Polk, P. (2019). Parents in College: By the Numbers. *Institute for Women's Policy Research.*

[13] National Center for Education Statistics (2022). *Retrieved from: https://nces.ed.gov/programs/digest/d22/tables/dt22_303.50.asp?current=yes.*

[14] Cruse, L.R., Holtzman, T., Gault, B., Croom, D., & Polk, P. (2019). Parents in College: By the Numbers. *Institute for Women's Policy Research.*

[15] Scrivener, S., Weiss, M.J., Ratledge, A., Rudd, T., Sommo, C., & Fresques, H. (2015). *Doubling Graduation Rates: Three-Year Effects of CUNY's Accelerated Study in Associate Programs (ASAP) for Developmental Education Students. New York: MDRC.*

[16] Phillips, B.C., & Horowitz, J.E. (2013). Maximizing data use: A focus on the completion agenda. In *Special Issue: The College Completion Agenda-Practical Approaches for Reaching the Big Goal.* New Directions for Community Colleges, 2013(164), 17–25.

Institutional leadership is critical to ensure that the student experience is intentionally designed to increase student retention, progression, and completion rates.[17]

The first three proposed priorities in this document would establish a multitier structure to enable the Department to link the amount of funding an applicant may receive to the quality of evidence supporting the efficacy of a proposed project and to the proposed project's plan to scale the evidence-based strategy. This approach would enable the Department to meet the congressional intent outlined in the House Report 117–403 and the explanatory statement accompanying Division H of the Consolidated Appropriations Act, 2023 (117 Pub. L. 328) to execute the grant program as a tiered-evidence competition in the same structure as the Education Innovation and Research (EIR) program. Congress continued this directive to the Department through the explanatory statement accompanying Division D of the Further Consolidated Appropriations Act, 2024 (118 Pub. L. 47). The first proposed priority would give the Department the flexibility to select either Demonstrates a Rationale or Promising Evidence as the applicable evidence standard for Early Phase grants in a particular competition. The second and third proposed priorities would establish the applicable evidence and scale requirements for Mid Phase and Expansion Phase grants. The Department is particularly interested in receiving comments on our proposed scale requirements under these two priorities, which have been determined by taking into consideration prior grantee awards.

The fourth proposed priority would establish a priority for applicants who use data for continuous improvement in their programs. The fifth proposed priority would incentivize strategies that focus on credentials that lead to career outcomes that support graduates' economic success.

Proposed Priorities

Proposed Priority 1—Early Phase.

Projects that are designed to improve postsecondary success for underserved students, including retention, upward transfer, and completions of value that lead to economic success and/or further education, and are supported by evidence that meets the definition of Demonstrates a Rationale (as defined in 34 CFR 77.1) or Promising Evidence (as defined in 34 CFR 77.1).

Proposed Priority 2—Mid-Phase: Projects Supported by Moderate Evidence.

Projects that are designed to improve success for underserved students, including retention, upward transfer, and completions of value that lead to economic success and/or further education, and are supported by evidence that meets the definition of Moderate Evidence (as defined in 34 CFR 77.1). Projects under this priority must be implemented at multiple institutions of higher education or multiple campuses of the same institution and propose to serve at least 2,000 students.

Proposed Priority 3—Expansion: Projects Supported by Strong Evidence.

Projects that are designed to improve postsecondary success for underserved students, including retention, upward transfer, and completions of value that lead to economic success and/or further education, and are supported by evidence that meets the definition of Strong Evidence (as defined in 34 CFR 77.1). Projects under this priority must be implemented at multiple institutions of higher education and propose to serve at least 10,000 students.

Proposed Priority 4—Using Data for Continuous Improvement.

Projects that propose to build upon demonstrated progress toward improved student outcomes, or that propose a plan to improve student outcomes, for underserved students by using data to continually assess and improve the outcomes associated with funded activities and sustain data-driven continuous improvement processes at the institution after the grant period.

Applicants addressing this priority must—

(a) Identify, or describe how they will develop, the performance and outcome measures they will use to monitor and evaluate implementation of the intervention(s), including baseline data, intermediate and annual targets, and disaggregation by student subgroups;

(b) Describe how they will assess and address gaps in current data systems, tools, and capacity, and how they will monitor and respond to performance and outcome data to improve implementation of the intervention(s) on an ongoing basis and as part of formative and summative evaluation of the intervention(s); and

(c) Describe how institutional leadership will be involved with, and supportive of, project leadership and how the project relates to the institution's broader student success priorities and improvement processes.

Proposed Priority 5—Projects That Support College-to-Career Pathways and Supports.

Projects that propose to build upon demonstrated progress toward integrating, or that propose a plan to integrate, career-connected learning and advising support into their postsecondary success strategies to ensure students earn credentials of value that lead to economic success and/or further education that leads to career progression. Projects may include aligning academic coursework with career pathways and outcomes; developing and implementing program-level credential maps to create college-to-career pathways, including across institutions via transfer; integrating career planning, counseling, and coaching into holistic advising support; offering work-based learning opportunities aligned with students' programs of study; and providing navigation support to help graduates transition from college to career.

Types of Priorities

When inviting applications for a competition using one or more priorities, we designate the type of each priority as absolute, competitive preference, or invitational through a notice in the **Federal Register**. The effect of each type of priority follows:

Absolute priority: Under an absolute priority, we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority, we give competitive preference to an application by (1) awarding additional points, depending on the extent to which the application meets the priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority, we are particularly interested in applications that meet the priority. However, we do not give an application that meets the priority a preference over other applications (34 CFR 75.105(c)(1)).

Proposed Requirements

The Department proposes the following program requirements for this program. We may apply one or more of these requirements in any year in which this program is in effect and may limit the application of these requirements to one or more of the proposed priorities. The Department will announce within the notice inviting applications the final requirements that will apply to a

[17] McNair, T.B., Albertine, S., McDonald, N., Major Jr., T., & Cooper, M.A. (2022). *Becoming a student-ready college: A new culture of leadership for student success* (2nd ed.). John Wiley & Sons.

particular grant competition, and whether those requirements will apply to grantees applying under each proposed priority for this program.

Proposed Requirement–1—Uses of Funds.

Background: PSSG is funded under the Fund for the Improvement of Postsecondary Education (FIPSE) authority and was first authorized in FY 2023 as described in the explanatory statement accompanying Division H of the Consolidated Appropriation Act, 2023 (117 Pub. L. 328). In order to fully implement this program in the manner that Congress has directed, the Department proposes Uses of Funds to clarify to applicants and grantees flexibility, where applicable, and also specificity about the allowable activities under this program. The Department believes each of these activities would support the overall goal of the PSSG program.

Proposed Requirement 1 would also clarify flexibility around using PSSG funding to provide financial assistance to students. Many of the strategies that meet the Moderate and Strong Evidence standard, including the evidence-based interventions explicitly mentioned in the explanatory statement, include financial assistance as a key project component. The Department believes that this program cannot fulfill congressional intent without providing the flexibility to use funding for this activity. We do, however, note that under section 741(d) of the Higher Education Act of 1965, as amended (HEA) these funds cannot be used to provide direct financial assistance to students who do not meet the eligibility requirements of section 484(a).

Proposed Requirement

Program funds must be used for one or more of the following allowable uses of funds:

(a) Developing and using data systems, tools, and training to implement data-driven processes and interventions as part of a comprehensive continuous improvement effort; and

(b) Implementing student success strategies, including whole-college improvement models such as Guided Pathways; course redesign to implement co-requisite remediation or career-connected math pathways; intensive, integrated advising models including program maps with progress checks, case management approaches, and coaching; financial support, including need-based aid, emergency aid, and basic needs and behavioral health support and services; transfer support (as applicable), including four-year transfer maps, co-enrollment and co-advising across institutions, and regional transfer partnerships; career support, including integrated career planning, counseling, and coaching, work-based learning opportunities, and college-to-career navigation support; or other evidence-based student success strategies.

Proposed Requirement 2—Indirect Cost Rate Information.

Background: To maximize the grant resources that support direct costs, the Department is proposing to limit indirect costs to eight percent of a modified total direct cost base.

Proposed Requirement

A grantee's indirect cost reimbursement is limited to eight percent of a modified total direct cost base. For more information regarding indirect costs, or to obtain a negotiated indirect cost rate, please see *www.ed.gov/about/offices/list/ocfo/intro.html.*

Proposed Requirement 3—Matching Requirements and Exceptions.

Background: The Department proposes to require that grantees provide a ten percent match of non-Federal to Federal contributions. This proposed requirement is intended to leverage the Federal funds and to ensure alignment of such activities to the institution's strategic plan. The Department also proposes waiver authority so that institutions located in high-poverty areas, that enroll high numbers of low-income students, or that are otherwise under-resourced such that complying with this matching requirement would be overly burdensome, can still benefit from this program.

Proposed Requirement 3:

(a) *Matching Requirement.* Grantees must provide a ten percent match, which may include in-kind donations.

(b) *Waiver Authority.* The Secretary may waive the matching requirement on a case-by-case basis upon a showing of any of the following exceptional circumstances:

(1) The difficulty of raising matching funds for a program to serve as an area with high rates of poverty in the lead applicant's geographic location, defined as a Census tract, a set of contiguous Census tracts, an American Indian Reservation, Oklahoma Tribal Statistical Area (as defined by the U.S. Census Bureau), Alaska Native Village Statistical Area or Alaska Native Regional Corporation Area, Native Hawaiian Homeland Area, or other Tribal land or county that has a poverty rate of at least 25 percent as determined every 5 years using American Community Survey 5-Year data;

(2) Serving a significant population of students from low-income backgrounds at the lead applicant location, defined as at least 50 percent (or the eligibility threshold for the appropriate institutional sector available at *https://www2.ed.gov/about/offices/list/ope/idues/eligibility.html#app*) of degree-seeking enrolled students receiving need-based grant aid under title IV of the HEA; or

(3) Significant economic hardship as demonstrated by low average educational and general expenditures per full-time equivalent undergraduate student at the lead applicant institution, in comparison with the average educational and general expenditures per full-time equivalent undergraduate student of institutions that offer similar instruction without need of a waiver, as determined by the Secretary in accordance with the annual process of designation of title III and title V institutions.

Proposed Requirement 4: Limitation on Grant Awards.

Background: The Department proposes to allow the Secretary, in a given PSSG competition, to limit eligibility for new awards to applicants without current active grants under this program. The Department believes that this proposed requirement is necessary to support the program's evidence-building objective by ensuring the integrity of the project evaluations funded under this program. Supporting multiple PSSG projects for the same grantee could introduce bias that would negatively impact the quality of the evaluations. For example, if project participants receive support under multiple PSSG grants, the evaluation of the PSSG-supported strategies may overstate the results of a specific project. Similarly, if students in the comparison group for one PSSG project are receiving services under a separate PSSG project, then the evaluation of the initial project could understate the impact of the intervention.

Proposed Requirement

The Department will make awards to only applicants that are not the individual or lead applicant in a current active grant from the PSSG grant program.

Proposed Requirement 5: Supplement-not-Supplant.

Background: The Department recognizes that many institutions are engaged in efforts to increase postsecondary success for their students using both Federal and non-Federal funding. To ensure that the PSSG funding does not either duplicate or replace, but instead augments such

efforts, we are proposing a supplement-not-supplant requirement.

Proposed Requirement

Grant funds must be used so that they supplement and, to the extent practical, increase the funds that would otherwise be available for the activities to be carried out under the grant and in no case supplant those funds.

Proposed Requirement 6: Independent Evaluation.

Background: The Department proposes to require grantees to conduct an independent evaluation of the project and submit the evaluation report to ERIC, the Department of Education's comprehensive bibliographic and full-text database of education research and information, sponsored by the Institute of Education Sciences (IES). ERIC is available at *https://eric.ed.gov.* This proposed requirement would enable the Department to meet the congressional intent outlined in the House Report 117–403 and the Explanatory Statement accompanying Division H of the Consolidated Appropriations Act, 2023 (Pub. L. 117–328) that all grantees carry out rigorous independent evaluations of their projects. By requiring timely sharing of the evaluations with IES so that the evaluations can be reviewed by the What Works Clearinghouse, the Department would meet its goals of both supporting the implementation of evidence-based interventions and building the evidence base about what works to improve retention, upward transfer, and completions of value that lead to economic success and/or further education.

Proposed Requirement

Grantees must conduct an independent evaluation of the effectiveness of the project and submit the evaluation report to ERIC, available at *https://eric.ed.gov/,* in a timely manner.

Proposed Requirement 7: Eligible Entities.

Background: The Department proposes limiting eligibility to institutions that are designated as eligible under the HEA titles III and V programs, nonprofits that are not IHEs or associated with an IHE in partnership with institutions that are designated as eligible under the HEA titles III and V programs, States in partnerships with institutions that are designated as eligible under the HEA titles III and V programs, and systems of public institutions of higher education. Institutions designated as eligible under titles III and V include Historically Black Colleges or Universities (HBCUs), Tribally Controlled Colleges or Universities (TCCUs), Minority-Serving Institutions (MSIs), and other institutions with high enrollment of needy students and below average full-time equivalent (FTE) expenditures, including community colleges. The Department believes that targeting funding to these IHEs is the best use of the available funding because these institutions disproportionately enroll students from groups who are underrepresented among college completers, such as low-income students. Supporting retention, upward transfer, and completion strategies at these institutions offers the greatest potential to close gaps in postsecondary outcomes and to increase economic mobility in this country. Additionally, these under-resourced institutions are most in need of Federal assistance to implement and evaluate evidence-based postsecondary college retention, upward transfer, and completion interventions.

Proposed Requirement

Eligible entities are title III or V institutions; nonprofits in partnership with title III or V institutions; States in partnership with title III or V institutions; or systems of public institutions of higher education.

Proposed Definitions

The Department proposes the following definitions for this program. We propose to define ''English learner,'' ''Historically Black College or University,'' ''minority-serving institution,'' ''Tribal College or University,'' and ''underserved student'' similarly to the definitions in the Secretary's Supplemental Priorities and Definitions for Discretionary Grant Programs published in the **Federal Register** on December 10, 2021 (86 FR 70612). The Department also proposes a novel definition of ''students with disabilities'' which we believe would be less burdensome for eligible applicants to administer while providing full coverage for the range of students with disabilities enrolled at an institution of higher education who may benefit from receiving support services under this program. We may apply these definitions in any year in which this program is in effect.

Completions of value means credentials that lead to further education through upward transfer or graduate education and/or that lead to economic mobility through earning enough to experience a premium over high school graduates and earning enough to recoup investment in postsecondary education.

Continuous improvement means using plans for collecting and analyzing data about a project component's implementation and outcomes (including the pace and extent to which project outcomes are being met) to inform necessary changes throughout the project. These plans may include strategies to gather ongoing feedback from participants and stakeholders on the implementation of the project component.

English learner means an individual who is an English learner as defined in section 8101(2) of the Elementary and Secondary Education Act of 1965, as amended, or an individual who is an English language learner as defined in section 203(7) of the Workforce Innovation and Opportunity Act.

Historically Black College or University means an institution that meets the eligibility requirements under section 322(2) of the HEA.

Independent evaluation means an evaluation of a project component that is designed and carried out independently of, but in coordination with, the entities that develop or implement the project component.

Minority-serving institution means an institution that is eligible to receive assistance under sections 317 through 320 of part A of title III, or under title V of the HEA.

Student with a disability means any student enrolled at an institution of higher education (including those accepted for dual enrollment) who meets the definition of an individual with a disability as defined in section 3 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102).

Tribal College or University has the meaning ascribed it in section 316(b)(3) of the HEA.

Underserved student means a student in one or more of the following subgroups:

(a) A student who is living in poverty or is served by schools with high concentrations of students living in poverty.

(b) A student of color.

(c) A student who is a member of a federally recognized Indian Tribe.

(d) An English learner.

(e) A student with a disability.

(f) A student experiencing homelessness or housing insecurity.

(g) A lesbian, gay, bisexual, transgender, queer or questioning, or intersex (LGBTQI+) student.

(h) A pregnant, parenting, or caregiving student.

(i) A student who is the first in their family to attend postsecondary education.

(j) A student enrolling in or seeking to enroll in postsecondary education for the first time at the age of 20 or older.

(k) A student who is working full-time while enrolled in postsecondary education.

(l) A student who is enrolled in, or is seeking to enroll in, postsecondary education who is eligible for a Pell Grant.

(m) An adult student in need of improving their basic skills or an adult student with limited English proficiency.

Final Priorities, Requirements, and Definitions

We will announce the final priorities, requirements, and definitions in a document in the **Federal Register**. We will determine the final priorities, requirements, and definitions after considering public comments on the proposed priorities, requirements, and definitions and other information available to the Department. This document does not preclude us from proposing additional priorities, requirements, definitions, or selection criteria, subject to meeting applicable rulemaking requirements.

Note: This document does *not* solicit applications. In any year in which we choose to use one or more of these priorities, requirements, and definitions, we invite applications through a notice in the **Federal Register**.

Executive Orders 12866, 13563, and 14094

Regulatory Impact Analysis

Under Executive Order 12866, the Office of Management and Budget (OMB) determines whether this regulatory action is ''significant'' and, therefore, subject to the requirements of the Executive order and subject to review by OMB. Section 3(f) of Executive Order 12866, as amended by Executive Order 14094, defines a ''significant regulatory action'' as an action likely to result in a rule that may—

(1) Have an annual effect on the economy of $200 million or more (adjusted every three years by the Administrator of Office of Information and Regulatory Affairs (OIRA) for changes in gross domestic product); or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, territorial, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise legal or policy issues for which centralized review would meaningfully further the President's priorities, or the principles set forth in this Executive order, as specifically authorized in a timely manner by the Administrator of OIRA in each case.

This proposed regulatory action is not a significant regulatory action subject to review by OMB under section 3(f) of Executive Order 12866, as amended by Executive Order 14094.

We have also reviewed this proposed regulatory action under Executive Order 13563, which supplements and explicitly reaffirms the principles, structures, and definitions governing regulatory review established in Executive Order 12866, as amended by Executive Order 14094. To the extent permitted by law, Executive Order 13563 requires that an agency—

(1) Propose or adopt regulations only upon a reasoned determination that their benefits justify their costs (recognizing that some benefits and costs are difficult to quantify);

(2) Tailor its regulations to impose the least burden on society, consistent with obtaining regulatory objectives and taking into account—among other things and to the extent practicable—the costs of cumulative regulations;

(3) In choosing among alternative regulatory approaches, select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity);

(4) To the extent feasible, specify performance objectives, rather than the behavior or manner of compliance a regulated entity must adopt; and

(5) Identify and assess available alternatives to direct regulation, including economic incentives—such as user fees or marketable permits—to encourage the desired behavior, or provide information that enables the public to make choices.

Executive Order 13563 also requires an agency ''to use the best available techniques to quantify anticipated present and future benefits and costs as accurately as possible.'' The Office of Information and Regulatory Affairs of OMB has emphasized that these techniques may include ''identifying changing future compliance costs that might result from technological innovation or anticipated behavioral changes.''

We are issuing these proposed priorities, requirements, and definitions only on a reasoned determination that their benefits would justify their costs. In choosing among alternative regulatory approaches, we selected those approaches that would maximize net benefits. Based on the analysis that follows, the Department believes that this regulatory action is consistent with the principles in Executive Order 13563.

The potential costs associated with these priorities, requirements, and definitions would be minimal, while the potential benefits are significant. The Department believes that this proposed regulatory action would not impose significant costs on eligible entities. Participation in this program is voluntary, and the costs imposed on applicants by this regulatory action would be limited to paperwork burden related to preparing an application. The potential benefits of implementing the program would outweigh the costs incurred by applicants, and the costs of carrying out activities associated with the application would be paid for with program funds. For these reasons, we have determined that the costs of implementation would not be burdensome for eligible applicants, including small entities.

We also have determined that this regulatory action would not unduly interfere with State, local, and Tribal governments in the exercise of their governmental functions.

In accordance with these Executive orders, the Department has assessed the potential costs and benefits, both quantitative and qualitative, of this regulatory action. The potential costs are those resulting from statutory requirements and those we have determined as necessary for administering the Department's programs and activities.

Clarity of the Regulations

Executive Order 12866 and the Presidential memorandum ''Plain Language in Government Writing'' require each agency to write regulations that are easy to understand. The Secretary invites comments on how to make these proposed priorities, requirements, and definitions easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed priorities, requirements, and definitions clearly stated?
- Do the proposed priorities, requirements, and definitions contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed priorities, requirements, and definitions (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed priorities, requirements, and definitions be easier

to understand if we divided them into more (but shorter) sections?

• Could the description of the proposed priorities, requirements, and definitions in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed priorities, requirements, and definitions easier to understand? If so, how?

• What else could we do to make the proposed priorities, requirements, and definitions easier to understand?

To send any comments that concern how the Department could make these proposed priorities, requirements, and definitions easier to understand, see the instructions in the **ADDRESSES** section.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed priorities, requirements, and definitions would not have a significant economic impact on a substantial number of small entities.

The small entities that this proposed regulatory action would affect are institutions that meet the applicable eligibility requirements. The Secretary believes that the costs imposed on applicants by the proposed priorities, requirements, and definitions would be limited to paperwork burden related to preparing an application and that the benefits would outweigh any costs incurred by applicants.

Participation in this program is voluntary. For this reason, the proposed priorities, requirements, and definitions would impose no burden on small entities unless they applied for funding under the program. We expect that in determining whether to apply for PSSG program funds, an eligible applicant would evaluate the requirements of preparing an application and any associated costs and weigh them against the benefits likely to be achieved by receiving PSSG funds. Eligible applicants most likely would apply only if they determine that the likely benefits exceed the costs of preparing an application. The likely benefits include the potential receipt of a grant as well as other benefits that may accrue to an entity through its development of an application.

This proposed regulatory action would not have a significant economic impact on any small entity once it receives a grant because it would be able to meet the costs of compliance using the funds provided under this program. We invite comments from eligible small entities as to whether they believe this proposed regulatory action would have a significant economic impact on them and, if so, request evidence to support that belief.

Paperwork Reduction Act of 1995

These proposed priorities, requirements, and definitions do not contain any information collection requirements.

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

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

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

Nasser Paydar,

Assistant Secretary for Postsecondary Education.

[FR Doc. 2024–12502 Filed 6–6–24; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R03–OAR–2024–0024; FRL–11529–01–R3]

Air Plan Approval; Pennsylvania; Attainment Plan for the Indiana Nonattainment Area for the 2010 1-Hour Sulfur Dioxide National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania (Pennsylvania). This revision pertains to the attainment plan for the Indiana, Pennsylvania (PA) nonattainment area for the 2010 1-Hour Sulfur Dioxide (SO_2) national ambient air quality standard (NAAQS). This action is being taken under the Clean Air Act (CAA).

DATES: Written comments must be received on or before July 8, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R03–OAR–2024–0024 at *www.regulations.gov,* or via email to *goold.megan@epa.gov.* For comments submitted at *Regulations.gov,* follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be confidential business information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *www.epa.gov/dockets/commenting-epa-dockets.*

FOR FURTHER INFORMATION CONTACT: Megan Goold, Planning & Implementation Branch (3AD30), Air & Radiation Division, U.S. Environmental Protection Agency, Region III, 1600 John F Kennedy Boulevard, Philadelphia, Pennsylvania 19103. The telephone number is (215) 814–2027. Ms. Goold can also be reached via electronic mail at *goold.megan@epa.gov.*

SUPPLEMENTARY INFORMATION: On October 5, 2023, the Pennsylvania Department of Environmental Protection (PADEP) submitted a revision to its SIP to demonstrate attainment of the 2010 SO_2 NAAQS in the Indiana, PA nonattainment area. This plan includes Pennsylvania's attainment demonstration and other attainment plan elements required under the CAA, including the requirement for meeting reasonable further progress (RFP) toward attainment of the NAAQS, reasonably available control measures and reasonably available control technology (RACM/RACT), enforceable emission limitations and control measures, and contingency measures. Notably, the submission does not contain information regarding the required emissions inventory or the state's Nonattainment New Source Review (NNSR) program, as these were previously approved by the EPA (87 FR 50778, August 18, 2022).

I. Background

On June 22, 2010, the EPA published a new 1-hour primary SO_2 NAAQS of 75 parts per billion (ppb) at 40 CFR 50.17(a), which is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations does not exceed 75 ppb, as determined in accordance with 40 Code of Federal Regulations (CFR) part 50 appendix T (75 FR 35520, June 22, 2010). Under CAA section 107(d)(1), the EPA is required to designate areas as ''nonattainment,'' ''attainment,'' or ''unclassifiable'' within two years of establishing a new or revising an existing standard. As part of this process, states must submit recommendations for area designations and boundaries to the EPA within one year of the effective date of the standard. Effective on October 4, 2013,[1] the Indiana Area (which encompasses Indiana County, and Plumcreek Township, South Bend Township and Eldertown Borough of Armstrong County) was designated as nonattainment for the 2010 SO_2 NAAQS for an area that encompasses the primary SO_2 emitting sources: the Keystone Generating Station (Keystone), Conemaugh Generating Station (Conemaugh), Homer City Generating Station (Homer City), and Seward Generating Station (Seward) (hereafter referred to as ''the Indiana, PA NAA''). The October 4, 2013, final designation triggered a requirement for Pennsylvania to submit by April 4, 2015 (within 18 months per CAA section 191(a)), a SIP revision with an attainment plan for how the Indiana, PA NAA would attain the 2010 SO_2 NAAQS as expeditiously as practicable, but no later than October 4, 2018, (five years from the designation per CAA section 192(a)) in accordance with CAA sections 110(a), 172(c) and 191–192.

For a number of areas, including the Indiana, PA NAA, the EPA published a March 18, 2016 Finding of Failure to Submit, with an effective date of April 18, 2016, finding that Pennsylvania and other pertinent states had failed to submit the required SO_2 attainment plan by this submittal deadline. (see 81 FR 14736, March 18, 2016). This finding initiated a deadline under CAA section 179(a) for the potential imposition of new source review and highway funding sanctions. However, as a result of Pennsylvania's October 11, 2017 submittal (hereafter referred to as ''the 2017 SIP submittal''), and the EPA's subsequent October 13, 2017 letter to Pennsylvania finding the submittal complete, the CAA section 179(a) sanctions were not imposed. Additionally, under CAA section 110(c), the March 18, 2016, finding triggered a requirement that the EPA promulgate a Federal implementation plan (FIP) within two years of the effective date of the finding unless, by that time, the state has made the necessary complete submittal and the EPA has approved the submittal as meeting applicable requirements. The EPA took final action approving this attainment plan on October 19, 2020 (85 FR 66240, October 19, 2020), which removed the FIP obligation.

On December 18, 2020, the Sierra Club, Clean Air Council, and Citizens for Pennsylvania's Future filed a petition for judicial review with the U.S. Court of Appeals for the Third Circuit, challenging that final approval.[2] On April 5, 2021, the EPA filed a motion for voluntary remand without vacatur of its approval of the Indiana, PA SO_2 attainment plan.

On August 17, 2021, the U.S. Court of Appeals for the Third Circuit granted the EPA's request for remand without vacatur of the final approval of Pennsylvania's SO_2 attainment plan for the Indiana, PA NAA, and required that the EPA take final action in response to the remand no later than one year from the date of the court's order.

On August 18, 2022, the EPA revised and corrected its prior full approval action (85 FR 66240, October 19, 2020) without further submission from Pennsylvania (effective September 19, 2022) (87 FR 50778, August 18, 2022). Specifically, the EPA retained the approval of the emissions inventory and NNSR program requirements, and disapproved the attainment demonstration, RACM/RACT requirements, RFP requirements, and contingency measures (hereafter referred to as the ''2022 Partial Approval/Partial Disapproval'') (87 FR 50778, August 18, 2022). The partial disapproval action initiated a sanctions clock under CAA section 179, providing for emission offset sanctions for new sources if EPA has not fully approved a revised attainment plan within 18 months (March 19, 2024) after final partial disapproval, and providing for highway funding sanctions if the EPA has not fully approved a revised plan within 6 months thereafter (September 19, 2024). The sanctions clock can be stopped only if the conditions of the EPA's regulations at 40 CFR 52.31 are met. Also, under CAA section 110(c), the partial disapproval action initiated an obligation for EPA to promulgate a FIP within two years unless Pennsylvania has submitted, and EPA has fully approved, a plan addressing the disapproved attainment planning requirements.

On October 5, 2023, Pennsylvania submitted a 2023 SO_2 Attainment Plan SIP Revision for the Indiana, PA NAA (hereafter referred to as the ''2023 SIP submittal''). The 2023 SIP submittal addresses the requirements of CAA sections 172(c), 191 and 192 and the disapproved attainment planning requirements in the EPA's 2022 Partial Approval/Partial Disapproval. Specifically, this SIP revision contains a modified attainment demonstration using dispersion modeling, evaluates sources for RACT/RACM purposes, gives an RFP explanation, and provides for contingency measures, and includes revised emissions limitations and control measures.

Nonattainment area SO_2 SIPs must meet the applicable requirements of the CAA, specifically CAA sections 110, 172, 191 and 192. The EPA's regulations governing nonattainment area SIPs are set forth at 40 CFR part 51, with specific procedural requirements and control strategy requirements residing at subparts F and G, respectively. Soon

[1] 78 FR 47191 (August 5, 2013).

[2] *Sierra Club, et al.* v. *EPA,* Case No. 20–3568 (3d Cir.).

after Congress enacted the 1990 amendments to the CAA, the EPA issued comprehensive guidance on SIPs in a document entitled the ''General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' published in the **Federal Register** at 57 FR 13498 (April 16, 1992) (General Preamble). Among other things, the General Preamble addressed SO_2 SIPs and fundamental principles for SIP control strategies. *Id.* at 13545–49, 13567–68. On April 23, 2014, the EPA issued guidance and recommendations for meeting the statutory requirements in SO_2 SIPs addressing the 2010 primary NAAQS, in a document entitled, ''Guidance for 1-Hour SO_2 Nonattainment Area SIP Submissions'' (hereafter referred to as ''2014 SO_2 Nonattainment Guidance'').[3] In the 2014 SO_2 Nonattainment Guidance, the EPA described the statutory requirements for a complete nonattainment area SIP, which include an accurate emissions inventory of current emissions for all sources of SO_2 within the nonattainment area; an attainment demonstration; enforceable emissions limitations and control measures; demonstration of RFP; implementation of RACM (including RACT); nonattainment new source review; and adequate contingency measures for the affected area.

For the EPA to fully approve a SIP as meeting the requirements of CAA sections 110, 172, 191, and 192 and the EPA's regulations at 40 CFR part 51, the SIP for the affected area needs to demonstrate to the EPA's satisfaction that each of the aforementioned requirements have been met. Under CAA sections 110(l) and 193, the EPA may not approve a SIP that would interfere with any applicable requirement concerning NAAQS attainment and RFP, or any other applicable requirement, and no requirement in effect before November 15, 1990 (or required to be adopted by an order, settlement, agreement, or plan in effect before November 15, 1990), in any area which is a nonattainment area for any air pollutant, may be modified in any manner unless it ensures equivalent or greater emission reductions of such air pollutant.

CAA section 172(c)(1) directs states with areas designated as nonattainment to demonstrate that the submitted plan provides for attainment of the NAAQS. 40 CFR part 51, subpart G further delineates the control strategy requirements that SIPs must meet, and the EPA has long required that all SIPs and control strategies reflect the four fundamental principles of quantification, enforceability, replicability, and accountability. See General Preamble, at 13567–68. SO_2 attainment plans must consist of two components: (1) emission limits and other control; measures that assure implementation of permanent, enforceable and necessary emission controls, and (2) a modeling analysis which meets the requirements of 40 CFR part 51, appendix W and demonstrates that these emission limits and control measures provide for timely attainment of the primary SO_2 NAAQS as expeditiously as practicable, but by no later than the attainment date for the affected area. In all cases, the emission limits and control measures must be accompanied by appropriate methods and conditions to determine compliance with the respective emission limits and control measures, and must be quantifiable (*i.e.,* a specific amount of emission reduction can be ascribed to the measures), fully enforceable (specifying clear, unambiguous and measurable requirements for which compliance can be practicably determined), replicable (the procedures for determining compliance are sufficiently specific and non-subjective so that two independent entities applying the procedures would obtain the same result), and accountable (source-specific limits must be permanent and must reflect the assumptions used in the SIP demonstrations).

The EPA's 2014 SO_2 Nonattainment Guidance recommends that the emission limits established for the attainment demonstration be expressed as short-term average limits (*e.g.,* addressing emissions averaged over one or three hours), but also describes the option to utilize emission limits with longer averaging times of up to 30 days so long as the state meets various suggested criteria. See 2014 SO_2 Nonattainment Guidance, pp. 22 to 39. The guidance recommends that—should states and sources utilize longer averaging times—the longer-term average limit should be set at an adjusted level that reflects a stringency comparable to the 1-hour average limit at the critical emission value (CEV) shown to provide for attainment that the plan otherwise would have set.

The 2014 SO_2 Nonattainment Guidance provides an extensive discussion of the EPA's rationale for concluding that appropriately set, comparably stringent limitations based on averaging times as long as 30 days can be found to provide for attainment of the 2010 SO_2 NAAQS. In evaluating this option, the EPA considered the nature of the standard, conducted detailed analyses of the impact of 30-day average limits on the prospects for attaining the standard, and carefully reviewed how best to achieve an appropriate balance among the various factors that warrant consideration in judging whether a state's plan provides for attainment. *Id.* at pp. 22–39, and Appendices B, C, and D.

As specified in 40 CFR 50.17(b), the 1-hour primary SO_2 NAAQS is met at an ambient air quality monitoring site when the 3-year average of the annual 99th percentile of daily maximum 1-hour average concentrations is less than or equal to 75 ppb. In a year with 365 days of valid monitoring data, the 99th percentile would be the fourth highest daily maximum 1-hour value. The 2010 SO_2 NAAQS, including this form of determining compliance with the standard, was upheld by the U.S. Court of Appeals for the District of Columbia Circuit in *Nat'l Envt'l Dev. Ass'n's Clean Air Project* v. *EPA,* 686 F.3d 803 (D.C. Cir. 2012). Because the standard has this form, a single hourly exceedance of the 75 ppb NAAQS level does not by itself result in a violation of the standard. Instead, at issue is whether a source operating in compliance with a properly set longer-term average could cause multiple hourly exceedances over multiple days in a year, and if so, the resulting frequency and magnitude of such exceedances, and in particular, whether the EPA can have reasonable confidence that a properly set longer-term average limit will provide that the 3-year average of annual fourth highest daily maximum hourly values will be at or below 75 ppb. A synopsis of how the EPA evaluates whether such plans ''provide for attainment,'' based on modeling of projected allowable emissions and in light of the SO_2 NAAQS' form for determining attainment at monitoring sites, follows.

For SO_2 attainment plans based on 1-hour emission limits, the standard approach is to conduct modeling using fixed 1-hour emission rates. The maximum modeled emission rate that results in attainment is labeled the ''critical emissions value'' (CEV). The modeling process for identifying this CEV inherently considers the numerous variables that affect ambient concentrations of SO_2, such as meteorological data, background concentrations, and topography. In the standard approach, the state would then provide for attainment by setting a continuously applicable 1-hour emission limit for each stationary SO_2 source at this CEV.

[3] *www.epa.gov/sites/default/files/2016-06/documents/20140423guidance_nonattainment_sip.pdf.*

The EPA recognizes that some sources have highly variable emissions, for example due to variations in fuel sulfur content and operating rate, that can make it extremely difficult, even with a well-designed control strategy, to ensure in practice that emissions for any given hour do not exceed the CEV. The EPA also acknowledges the concern that longer-term emission limits can allow short periods with emissions above the CEV, which, if coincident with meteorological conditions conducive to high SO_2 concentrations, could in turn create the possibility of an hourly NAAQS exceedance occurring on a day when an exceedance would not have occurred if emissions were continuously controlled at the level corresponding to the CEV. However, for several reasons, EPA believes that the approach recommended in its guidance document suitably addresses this concern.

First, from a practical perspective, the EPA expects the actual emission profile of a source subject to an appropriately set longer-term average limit to be similar to the emission profile of a source subject to an analogous 1-hour average limit. The EPA expects this similarity because it has recommended that the longer-term average limit be set at a level that is comparably stringent to the otherwise applicable 1-hour limit (reflecting a downward adjustment from the CEV) and that takes the source's emissions profile (and inherent level of emissions variability) into account. As a result, the EPA expects either form of emission limit to yield comparable air quality.

Second, from a more theoretical perspective, the EPA has compared the likely air quality with a source having maximum allowable emissions under an appropriately set longer-term limit, to the likely air quality with the source having maximum allowable emissions under the comparable 1-hour limit. In this comparison, in the 1-hour average limit scenario, the source is presumed at all times to emit at the CEV, and in the longer-term average limit scenario, the source is presumed occasionally to emit more than the CEV, but on average, and presumably at most times, to emit well below the CEV. In an ''average year,'' [4] compliance with the 1-hour limit is expected to result in three exceedance days (*i.e.,* three days with maximum hourly values above 75 ppb) and a fourth day with a maximum hourly value at 75 ppb. By comparison, with the source complying with a longer-term limit, it is possible that additional hourly exceedances would occur that would not occur in the 1-hour limit scenario (if emissions exceed the CEV at times when meteorology is conducive to poor air quality). However, this comparison must also factor in the likelihood that exceedances that would be expected in the 1-hour limit scenario would not occur in the longer-term limit scenario. This result arises because the longer-term limit requires lower emissions most of the time (because the limit is set below the CEV), so a source complying with an appropriately set longer-term limit is likely to have lower emissions at critical times than would be the case if the source were emitting as allowed with a 1-hour limit.

To illustrate this point, the EPA conducted a statistical analysis using a range of scenarios using actual plant data. The analysis is described in appendix B of EPA's 2014 SO_2 Nonattainment Guidance. Based on the analysis described in the 2014 SO_2 Nonattainment Guidance, the EPA expects that an emission profile with maximum allowable emissions under an appropriately set, comparably stringent 30-day average limit is likely to have the net effect of having a *lower* number of hourly exceedances and better air quality than an emission profile with maximum allowable emissions under a 1-hour emission limit at the CEV. This result provides a compelling policy rationale for allowing the use of a longer averaging period, in appropriate circumstances where the facts indicate this result can be expected to occur.

The 2014 SO_2 Nonattainment Guidance offers specific recommendations for determining an appropriate longer-term average limit. The recommended method starts with determination of the 1-hour emission limit that would provide for attainment (*i.e.,* the CEV), and applies an adjustment factor to determine the (lower) level of the longer-term average emission limit that would be estimated to have a stringency comparable to the otherwise necessary 1-hour emission limit. This method uses a database of continuous emission data reflecting the type of control that the source will be using to comply with the SIP emission limits, which (if compliance requires new controls) may require use of an emission database from another source. The recommended method involves using these data to compute a complete set of emission averages, computed according to the averaging time and averaging procedures of the prospective emission limitation (*i.e.,* using 1-hour historical emission values from the emissions database to calculate 30-day average emission values). In this recommended method, the ratio of the 99th percentile among these long-term averages to the 99th percentile of the 1-hour values represents an adjustment factor that may be multiplied to the candidate 1-hour emission limit (CEV) to determine a longer-term average emission limit that may be considered comparably stringent.[5]

The 2014 SO_2 Nonattainment Guidance also addresses a variety of related topics, including the potential utility of setting supplemental emission limits, such as mass-based limits or work practice requirements for the operation of SO_2 control equipment, to reduce the likelihood and/or magnitude of elevated emission levels that might occur under the longer-term emission rate limit.

Preferred air quality models for use in regulatory applications are described in appendix A of the EPA's *Guideline on Air Quality Models (40 CFR part 51, appendix W).* In 2005, the EPA promulgated AERMOD as the Agency's preferred near-field dispersion modeling for a wide range of regulatory applications addressing stationary sources (for example in estimating SO_2 concentrations) in all types of terrain based on extensive developmental and performance evaluation. Supplemental guidance on modeling for purposes of demonstrating attainment of the SO_2 standard is provided in appendix A to the 2014 SO_2 Nonattainment Guidance. Appendix A provides extensive guidance on the modeling domain, the source inputs, assorted types of meteorological data, and background concentrations. Consistency with the recommendations in this guidance is generally necessary for the attainment demonstration to offer adequately reliable assurance that the plan provides for attainment.

Attainment demonstrations for the 2010 1-hour primary SO_2 NAAQS must demonstrate future attainment and maintenance of the NAAQS in the entire area designated as nonattainment (*i.e.,* not just at the violating monitor) by using air quality dispersion modeling (*see* appendix W to 40 CFR part 51) to show that the mix of sources and enforceable control measures and emission rates in an identified area will not lead to a violation of the SO_2

[4] An ''average year'' is used to mean a year with average air quality. While 40 CFR part 50, appendix T, provides for averaging three years of annual 99th percentile daily maximum hourly values (*e.g.,* the fourth highest maximum daily hourly concentration in a year with 365 days with valid data), this discussion and an example below uses a single ''average year'' in order to simplify the illustration of relevant principles.

[5] For example, if the CEV is 1,000 pounds of SO_2 per hour, and a suitable adjustment factor is determined to be 70 percent, the recommended longer-term average limit would be 700 pounds per hour.

NAAQS. For a short-term (*i.e.,* 1-hour) standard, the EPA believes that dispersion modeling, using allowable emissions and addressing stationary sources in the affected area (and in some cases those sources located outside the nonattainment area which may affect attainment in the area) is technically appropriate, efficient, and effective in demonstrating attainment in nonattainment areas because it takes into consideration combinations of meteorological and emission source operating conditions that may contribute to peak ground-level concentrations of SO_2.

The meteorological data used in the analysis should generally be processed with the most recent version of AERMET. AERMET is a meteorological data preprocessor that incorporates air dispersion based on planetary boundary layer turbulence structure and scaling concepts. Estimated concentrations should include ambient background concentrations, should follow the form of the standard, and should be calculated as described in section 2.6.1.2 of the August 23, 2010, clarification memo on ''Applicability of Appendix W Modeling Guidance for the 1-hour SO_2 National Ambient Air Quality Standard'' (U.S. EPA, 2010).

II. Summary of SIP Revision and EPA Analysis

Pennsylvania's 2023 SIP submittal contained an attainment demonstration that located, identified, and quantified sources of emissions contributing to violations of the 2010 SO_2 NAAQS in the Indiana, PA NAA; a determination that the control strategy for the primary SO_2 sources (Keystone, Conemaugh, Homer City, and Seward) constitutes RACM/RACT; requirements for RFP toward attaining the SO_2 NAAQS in the Indiana, PA NAA; contingency measures; and the request that emission limitations and compliance parameters for Keystone, Conemaugh, and Seward be incorporated into the SIP.[6] The EPA disapproved these elements of PADEP's 2017 SIP submittal because they were based on longer-term averaging SO_2 limits for Keystone and Seward that EPA could not approve. Those particular longer-term averaging limits were unsupportable because PADEP's modeling and analysis fell short of demonstrating that the longer-term limits were comparably stringent to the 1-hour CEV and that such limits would provide for attainment under worst-case emission scenarios, unlike the approach set forth in the 2014 SO_2 Nonattainment Guidance. But PADEP's 2023 SIP submittal includes appropriate modeling and revised longer-term averaging emission limits for Keystone, Conemaugh, and Seward that are comparably stringent to the 1-hour CEV for each facility. Therefore, the 2023 SIP submittal's attainment plan elements, the effectiveness of which are dependent upon correct longer-term averaging emission limits, are similarly approvable. The EPA already determined that Pennsylvania satisfied the emissions inventory and NNSR requirements and approved those elements of the attainment plan into Pennsylvania's SIP as stated in the 2022 Partial Approval/Partial Disapproval of Pennsylvania's 2017 submittal (87 FR 50778, August 18, 2022).

A. Attainment Demonstration–Air Quality Modeling

The SO_2 attainment demonstration provides air quality dispersion modeling analyses to demonstrate that control strategies chosen to reduce SO_2 source emissions will bring the Indiana, PA NAA into attainment. The modeling analyses, conducted pursuant to recommendations outlined in appendix W to 40 CFR part 51 (EPA's Modeling Guidance), are used to assess the control strategy for a nonattainment area and establish emission limits that will provide for attainment. The analysis requires five years of meteorological data to simulate the dispersion of pollutant plumes from multiple point, area, or volume sources across the averaging times of interest.[7] The modeling demonstration typically also relies on maximum allowable emissions from sources in the nonattainment area. Though the actual emissions are likely to be below the allowable emissions, sources have the ability to run at higher production rates or optimize controls such that emissions approach the allowable emissions limits. A modeling analysis that provides for attainment under all scenarios of operation for each source must therefore consider the worst-case scenario of both the meteorology (*e.g.,* predominant wind directions, stagnation, etc.) and the maximum allowable emissions.

Air dispersion modeling served as the basis for developing SO_2 emission limits that provide for attainment of the 2010 SO_2 NAAQS throughout the Indiana, PA NAA. PADEP's air dispersion modeling methodology is fully described in appendix A of the state submittal, the Air Dispersion Modeling Technical Support Document.

PADEP's air dispersion modeling utilized the AERMOD v22112 and its associated preprocessors, the building downwash preprocessor (BPIPPRM) v04274, the AERMOD terrain preprocessor (AERMAP) v18081, and the AERMOD meteorological preprocessor (AERMET) v22112.

The modeling analysis included the following SO_2 sources in the NAA: (1) Keystone's SO_2 emission sources include two coal-fired boilers (Unit 1 & Unit 2 or Source ID 031 & 032). The SO_2 emissions vent from each source to the atmosphere through separate flues within a common stack, which was characterized in AERMOD as a point source; (2) Homer City's SO_2 emission sources include three coal-fired boilers (Unit 1, Unit 2 & Unit 3 or Source ID 031, 032 & 033). The SO_2 emissions vent from each source to the atmosphere through separate stacks, which were each characterized in AERMOD as a point source; (3) Conemaugh's SO_2 emission sources include two coal-fired boilers (Unit 1 & Unit 2 or Source ID 031 & 032). The SO_2 emissions vent from each source to the atmosphere through separate flues within a common stack, which was characterized in AERMOD as a point source; and (4) Seward's SO_2 emission sources include two refuse coal-fired boilers (Unit 1 & Unit 2 or Source ID 034 & 035). The SO_2 emissions vent from each source to the atmosphere through a common stack, which was characterized in AERMOD as a point source.

PADEP modeled three domains with three meteorological data sets. Domain 1, the Armstrong County portion of the Indiana, PA NAA, included SO_2 emissions data from Keystone and Homer City in AERMOD. Domain 2, the Indiana County portion of the Indiana, PA NAA, included SO_2 emissions data from all four power plant facilities in AERMOD. The air dispersion modeling in Domains 1 and 2 utilized representative meteorological datasets from the Johnstown—Cambria County Airport (KJST) meteorological site. The KJST meteorological dataset consists of a 5-year period of hourly records from January 1, 2011, through December 31, 2015, consistent with the meteorological data period that was utilized in the air dispersion modeling for PADEP's 2017 SIP submittal for the Indiana, PA NAA. Additionally, a second KJST meteorological dataset was utilized, which consists of a more recent 5-year

[6] SO_2 emission limits for Homer City that were used in the attainment modeling were already approved into the SIP. (87 FR 50778, August 18, 2022).

[7] The period of meteorological data needed for an air-quality analysis is described in section 8.4.2(e) of Appendix W: ''The use of 5 years of adequately representative [National Weather Service] or comparable meteorological data, at least 1 year of site-specific, or at least 3 years of prognostic meteorological data, are required.''

period of hourly records from January 1, 2017, through December 31, 2021.

Domain 3, the portion of Indiana County near Conemaugh and Seward, included SO_2 emissions data from those two plants. PADEP used data from the Conemaugh-Seward meteorological site to represent atmospheric conditions in the vicinity of Conemaugh and Seward. A 1-year (September 1, 2015–August 31, 2016) Conemaugh-Seward meteorological dataset was utilized with AERMOD.

Background SO_2 was represented in AERMOD by temporally varying (by season and hour-of-day), 99th-percentile concentrations that were derived from data measured at the Allegheny County Health Department's South Fayette monitor (Site ID: 42–003–0067) for the 3-year period, 2019–2021.

AERMOD was used to determine the CEVs for Conemaugh, Keystone, and Seward where the modeled 1-hour emission rates demonstrate attainment of the 2010 1-hour SO_2 NAAQS. The SO_2 emission rates for Homer City were based on the unit 1, unit 2, and unit 3 combined mass-based SO_2 emission limits established in Plan Approval 32–00055H,[8] which authorized the installation of Novel Integrated Desulfurization (NID) systems, often referred to as Dry Flue Gas Desulphurization (FGD) systems on unit 1 and unit 2. This 1-hour SO_2 limit was based on air dispersion modeling that demonstrated attainment of the 2010 1-hour SO_2 NAAQS. The CEV rates used in the demonstration analysis for each of the four sources are summarized in Table 1, in this document. The modeled emission rate in grams per second (g/s) was converted to pounds per hour (lbs/hr), which is the CEV.[9]

TABLE 1—CRITICAL EMISSION VALUES (CEV) FROM INDIANA, PA SIP MODELING DEMONSTRATION

Facility	Modeled rate (g/s)	CEV limit (lbs/hr)
Conemaugh Generating Station	398.02731	3,159
Homer City Generating Station, Unit 1	195.29672	1,550
Homer City Generating Station, Unit 2	195.29672	1,550
Homer City Generating Station, Unit 3	410.75310	3,260
Keystone Generating Station	1,224.44741	9,718
Seward Generating Station	482.57189	3,830

Using the EPA conversion factor for the SO_2 NAAQS, the maximum 1-hour CEV model run design values for Domain 1 (196.00 $\mu g/m^3$), Domain 2 (187.51 $\mu g/m^3$) and Domain 3 (195.99 $\mu g/m^3$) of the Indiana Area are less than 75 ppb.[10] EPA has reviewed the modeling that Pennsylvania submitted to support the attainment demonstration for the Indiana Area and has determined that the AERMOD modeling is consistent with CAA requirements, appendix W to 40 CFR part 51, and EPA's 2014 SO_2 Guidance for SO_2 attainment demonstration modeling. Unlike the 2017 SIP submittal which the EPA partially disapproved in 2022 (87 FR 50778, August 18, 2022), PADEP's 2023 SIP submittal used an appropriate analysis to show that the modeled 1-hour CEV and longer-term emission limits were comparably stringent. In doing so, the 2023 SIP submission followed EPA guidance to develop an adjustment factor to convert the modeled 1-hour CEV to the comparably stringent longer-term emission limit. The 2023 SIP submission appropriately developed the adjustment factor by comparing the 99th percentile of historic hourly emissions to the 99th percentile of the longer-term averaged emissions of the same dataset to develop the longer-term emission limits. Conversely, the 2017 SIP submittal developed longer-term limits based on a novel modeling approach with a different variability metric without appropriate justification—PADEP had not demonstrated that the longer-term emission limits would provide for attainment under worst-case scenarios permissible under the limits. (87 FR 15166 at 15171–74, March 17, 2022).

EPA's review supports PADEP's modeling methodology and conclusions. More information about EPA's review of PADEP's attainment demonstration and modeling can be found in EPA's March 2024 ''Technical Support Document the Critical Emissions Value Modeling Analysis for the Indiana, PA 1-Hour SO_2 Nonattainment Area'' under Docket ID No. EPA–R03–OAR–2024–0024 and online at *www.regulations.gov.*

1. Longer-Term Emission Limits

The 2017 SIP submittal established longer-term average SO_2 limits for Keystone, Conemaugh, and Seward, and a 1-hour SO_2 limit for Homer City. As described above, the limits in the 2017 submittal for Keystone and Seward were based on a novel modeling approach and an analysis that did not demonstrate that the longer-term emission limits were comparably stringent to the 1-hour CEV. (87 FR 15166 at 15171–74, March 17, 2022). EPA thus disapproved the longer-term average SO_2 limits for Keystone and Seward as not properly characterizing maximally possible emissions. (87 FR 15166 at 15173, March 17, 2022). Nonetheless, the EPA retained the limits as SIP strengthening in its partial approval and partial disapproval. (87 FR 15166 at 15176, March 17, 2022).

PADEP's 2023 SIP submittal established revised longer-term average SO_2 emission limits for Keystone, Conemaugh, and Seward facilities and retained the 1-hour SO_2 emission limit previously established and approved for the Homer City facility.[11] PADEP's 2023 SIP submittal established comparably stringent limits because PADEP used the ratio of the 99th percentile values of the hourly and longer-term emission rates as the adjustment factors for calculating

[8] Plan Approval 32–00055H was issued on April 2, 2012, and modified on April 4, 2013, by the DEP.

[9] Based on the National Institute of Standards and Technology conversion: 1 pound = 453.59237 grams.

[10] The SO_2 NAAQS level is expressed in ppb but AERMOD gives results in $\mu g/m^3$. The conversion factor for SO_2 (at the standard conditions applied in the ambient SO_2 reference method) is 1 ppb = approximately 2.619 $\mu g/m^3$. *See* Pennsylvania's SO_2 Round 3 Designations Proposed Technical Support Document at *www.epa.gov/sites/production/files/2017-08/documents/35_pa_so2_rd3-final.pdf.*

[11] While at the time of publication, the evidence suggests that Homer City's three units have ceased operations, EPA's approval of this attainment plan is independent of Homer City's ceasing operations. Emissions data indicates that Units 1 and 2 last emitted on March 24, 2023, and December 11, 2022, and Unit 3 on May 17, 2023. However, as the EPA is not aware of PADEP rescinding Homer City's operating permits,-Homer City ceasing operations does not guarantee that the units are permanently and enforceably shutdown. Importantly, PADEP's 2023 SIP submittal and the accompanying attainment demonstration, which the EPA is proposing to approve, properly accounted for Homer City's continued operation. To be clear, the EPA's proposed approval of this attainment plan is based on Homer City's possible continued operation.

the longer-term limits.[12] The revised longer-term emission limits were calculated from the 1-hour SO_2 CEVs using adjustment factors that correspond to the averaging periods already established in emission limits for each facility (*i.e.,* Seward's emission limit uses a 30-operating day averaging period, Keystone uses a 24-hour block averaging period, and Conemaugh uses a 3-hour block averaging period). The adjustment factors which are used for deriving longer-term emission limits that are as comparably stringent as the 1-hour SO_2 CEVs were calculated in accordance with the EPA's 2014 SO_2 Nonattainment Guidance. All and only operating hours with measured values were used in the calculations.[13] PADEP utilized four years of stable operations hourly emissions data from 2018–2022. In accordance with the 2014 SO_2 Nonattainment Guidance's recommendation to use data from years with stable operations, data from March through September of 2020, during which operations at Keystone and Conemaugh shifted toward low-load conditions as a result of the COVID–19 pandemic, were excluded from adjustment factor calculations for both stations. To have a complete four calendar years' worth of data, data from March through September of 2022 were used as replacement for the March through September of 2020 data. The calculation of the adjustment factors is described in detail in appendix B of the state submittal and was based on the data reduction criteria and average emission rate calculation established for demonstrating compliance with the longer-term emission limits. For example, Seward's 30-operating day rolling average is the average of all the hourly emission data, using only hours during which fuel is combusted from the preceding 30 operating days. An operating day is defined as a 24-hour period between 12midnight and the following 12 midnight during which any fuel is combusted at any time. This compliance approach is the same as the calculations and definitions used in developing the adjustment factor for this source.

The 1-hour SO_2 CEVs, the adjustment factors, the longer-term SO_2 emission limits, and the averaging periods for the three other facilities are summarized in Table 2, in this document.

TABLE 2—SOURCES IN INDIANA, PA NAA WITH LONGER-TERM SO_2 EMISSION LIMITS

Source	1-Hour CEV (lbs/hr)	Adjustment factor	Longer-term limit (lbs/hr)	Averaging period
Keystone	9,718	0.857	8,328	24-hr block.
Conemaugh	3,159	0.975	3,080	3-hour block.
Seward	3,830	0.756	2,895	30-operating day rolling.

Additionally, PADEP implemented a supplemental measure to control any potential hourly emissions spikes at Seward station. Seward shall inject limestone into Source ID 034 and Source ID 035 during initial firing each time Source ID 034 and Source ID 035 are operated to reduce the magnitude and frequency of SO_2 emission spikes in accordance with good air pollution control practices.

The EPA reviewed PADEP's adjustment factor calculations, including the selected years of emissions data and the exclusion of March through September of 2020 due to the COVID pandemic and the claim that the operation of Keystone and Conemaugh was not considered stable during that time period. The EPA notes that removing this period of time, and adding the period of March through September of 2022, produced similar adjustment factors as would have been calculated without replacing the data. The EPA reviewed the justification provided by PADEP regarding this issue and concludes that PADEP properly characterized the hourly load impact of the COVID pandemic in the data (*i.e.,* shift from high load to low load operation during this time), and properly included data where stable operation of the sources was verified. PADEP followed the EPA's 2014 SO_2 Nonattainment Guidance in developing the comparably stringent longer-term limits for Seward, Conemaugh and Keystone. The EPA is proposing to approve the longer-term emission limits described above as being comparably stringent to the 1-hour CEV for Seward, Conemaugh and Keystone, and as correcting the deficiencies of the 2017 submittal previously identified in 2022 by removing the previously approved (and retained as SIP strengthening) longer-term averaging SO_2 limits for Keystone, Conemaugh, and Seward as described in the RACM/RACT section that follows.

B. RACM/RACT and Enforceable Emission Limitations

Section 172(c)(1) of the CAA requires states to adopt and submit all RACM, including RACT, as needed to attain the standards as expeditiously as practicable. Section 172(c)(6) requires the SIP to contain enforceable emission limits and control measures necessary to provide for timely attainment of the standard.

Pennsylvania's submittal discusses that the main SO_2 emitting sources at Conemaugh, Homer City, Keystone, and Seward are all equipped with FGD systems (wet limestone scrubbers, dry FGD, or in-furnace limestone injection systems) to reduce SO_2 emissions. Table 3, in this document, lists the control technology at each of the main SO_2 emitting sources at each facility.

[12] Conemaugh's 3-hour block average emission limits in PADEP's October 11, 2017 submission for each individual unit was roughly in line with the CEV modeled limit and the ratio from appendix C in EPA's 2014 SO_2 Guidance. (87 FR 15166 at 15175, March 17, 2022). Nonetheless, in its 2023 SIP submittal PADEP included a combined 3-hour block average emission limit using the 99th percentile ratio to develop the adjustment factor to calculate Conemaugh's 3-hour block combined averaging SO_2 limit.

[13] Substituted values and nonoperating hours were not used in the calculations.

TABLE 3—CONTROL TECHNOLOGY AT THE FOUR MAJOR SO_2 SOURCES IN THE INDIANA AREA

Facility	Unit	SO_2 control	Control installation date
Conemaugh	031—Main Boiler 1	Wet limestone scrubber	~1994
	031—Main Boiler 2	Wet limestone scrubber	~1995
Homer City	031—Boiler 1	Dry FGD	11/18/2015
	032—Boiler 2	Dry FGD	5/23/2016
	033—Boiler 3	Wet limestone scrubber	~2002
Keystone	031—Boiler 1	Wet limestone scrubber	9/24/2009
	032—Boiler 2	Wet limestone scrubber	11/22/2009
Seward	034—CFB Boiler 1	In-furnace limestone injection	~2004
	035—CFB Boiler 2	In-furnace limestone injection	~2004

With these controls installed, Pennsylvania's submittal discusses facility-specific control measures, namely SO_2 emission limits for Homer City, Conemaugh, Seward and Keystone. Homer City has a 1-hour averaging period emission limit which was previously in its existing Title V Operating Permit (TVOP). The 1-hour SO_2 CEV is equivalent to the 1-hour SO_2 emission limit in the current TVOP #32–00055.

PADEP issued Consent Order and Agreements (COAs) with both Keystone and Conemaugh on August 15, 2023, as well as Seward on August 17, 2023 (2023 COAs), which established new emission limits that were demonstrated to provide for attainment in the Indiana, PA Area. PADEP has asked the EPA to incorporate into the SIP the following updated combination of SO_2 emission limits for these three facilities (as well as the compliance strategies listed in the unredacted portion of the COAs found in appendix C of the state submittal):

- Keystone—Remove 9,600 lbs/hr on a 24-hour (daily) block average and replace with 8,328 lbs/hr combined based on a 24-hour block average for Boiler 1 & Boiler 2 (Source IDs 031 & 032).
- Seward—Remove 3,038.4 lbs/hr and replace with 2,895 lbs/hr combined based on a 30-day operating hours average rolling by one day for Source IDs 034 & 035. Remove 13,308 tpy and replace with 12,680 tpy combined for Source IDs 034 & 035.[14] Add the requirement to inject limestone into Source ID 034 and Source ID 035 during initial firing each time Source ID 034 and Source ID 035 are operated to reduce the magnitude and frequency of SO_2 emission spikes in accordance with good air pollution control practices.
- Conemaugh—Add 3,080 lbs/hr combined on a 3-hour block average for Units 1 & 2 (Source IDs 031 & 032).[15]

These emissions limits and associated compliance parameters will be federally enforceable upon the EPA's approval of the SIP. The EPA retained Homer City's 1-hour SO_2 emission limit as a SIP strengthening measure in its 2022 Partial Approval/Partial Disapproval and now proposes to retain that limit as part of PADEP's attainment demonstration here.

The emission limits described here have been shown to provide for attainment of the NAAQS, and thus the EPA is proposing to determine that these are emissions limitations as defined under CAA section 302(k) that are necessary and appropriate to meet the applicable requirements of the CAA under CAA section 110(a)(2)(A), including that the state's plan satisfies requirements for RACM/RACT under CAA section 172(c)(1) and includes enforceable emission limitations as may be necessary and appropriate to provide for attainment of the NAAQS under CAA section 172(c)(6). The EPA is also proposing to determine that the removal of Keystone and Seward's previously SIP-approved SO_2 emission limits (87 FR 50778, August 18, 2022) and replacement with the new SO_2 emission limits listed in Table 2 of this document does not pose an issue with respect to CAA section 110(l) or 193.[16]

C. Reasonable Further Progress (RFP)

Section 172 of the CAA requires Pennsylvania's attainment plan to provide for RFP toward attainment. The relationship between SO_2 and sources is more directly quantifiable as compared to other NAAQS pollutants, and there is usually a single step between pre-control nonattainment and post-control attainment. Therefore, for SO_2 SIPs, which address a small number of affected sources, requiring expeditious compliance with attainment emission limits can address the RFP requirement. To be approved by the EPA under CAA section 192(a), attainment plans need to provide for future attainment of the NAAQS as expeditiously as practicable, but no later than 5 years from the effective date of the area's designation as nonattainment. For areas designated nonattainment effective October 4, 2013, attainment plans were required to contain demonstrations that the area would attain as expeditiously as practicable, but no later than October 4, 2018.

The four sources in the Indiana, PA NAA were subject to federally enforceable SO_2 emissions limits since the EPA's initial approval of the 2017 SIP submittal on October 19, 2020 (85 FR 66240, October 19, 2020). After the 2022 Partial Approval/Partial Disapproval of the 2017 SIP submittal, those emission limits remained in the SIP as SIP strengthening measures. The appropriate SO_2 limits were already established for Homer City effective February 28, 2017 in the state permit, and remain the same as they were since being incorporated into the SIP effective November 18, 2020. For the remaining three sources, Keystone, Seward, and

[14] The new annual limit is calculated to be consistent with the new 30-day limit, and is considered a supplemental limit.

[15] Conemaugh's new 3,080 lbs/hr combined 3-hour block average limit for Units 1 and 2 is in addition to the emission limits retained as SIP strengthening in the 2022 Partial Approval/Partial Disapproval. Specifically, this action does not remove the 1,656 lbs/hr emission limit on a 3-hour block average for Units 1 and 2 individually.

[16] Under CAA sections 110(l) and 193, the EPA may not approve a SIP that would interfere with any applicable requirement concerning NAAQS attainment and RFP, or any other applicable requirement, and no requirement in effect before November 15, 1990 (or required to be adopted by an order, settlement, agreement, or plan in effect before November 15, 1990), in any area which is a nonattainment area for any air pollutant, may be modified in any manner unless it ensures equivalent or greater emission reductions of such air pollutant. The newly established emissions limit for Keystone of 8,328 on 24-hour block period is more stringent that the previously SIP-approved emission limit of 9,600 lb/hr on a 24-hour block period, and the newly established emission limits for Seward of 2,895 lb/hr on a 30-operating day rolling average is more stringent that the previously SIP-approved emission limit of 3,084.4 lb/hr on a 30-operating day rolling average.

Conemaugh, due to the timeline of events, it was not practical for Pennsylvania to have a compliance schedule which provided for attainment no later than 5 years from the area's designation of nonattainment (*i.e.,* October 4, 2018). However, in response to the EPA's 2022 partial disapproval of its SIP for the Indiana, PA NAA, Pennsylvania acted quickly in establishing new emission limits which provide for attainment in the Indiana, PA NAA as expeditiously as practicable with this 2023 SIP submittal. Through the aforementioned COAs dated August 15, 2023 for Keystone and Conemaugh and August 17, 2023 for Seward, the new limits were effective immediately after the date of each of the 2023 COAs. The EPA asserts that PADEP established the emission limits as expeditiously as practicable to provide for attainment in the Indiana, PA NAA and to remedy the EPA's 2022 partial disapproval, and therefore the EPA proposes to find that Pennsylvania's plan provides for RFP, based on the proposed determination that the revised emissions limitations as defined under CAA section 302(k) are necessary and appropriate to meet the applicable requirements of the CAA, including the RFP requirement of CAA section 172(c)(2).

D. Contingency Measures

Section 172 of the CAA requires that attainment plans include additional measures, called contingency measures, which will take effect if an area fails to meet RFP or fails to attain the standard by the attainment date. The EPA's 2014 SO_2 Nonattainment Guidance describes special features of SO_2 planning that influence the suitability of alternative means of addressing the requirement in CAA section 172(c)(9) for contingency measures for SO_2. That is, SO_2 control measures are based on what is directly and quantifiably necessary to attain the SO_2 NAAQS, and consequently, an area that implements such control measures would be unlikely to fail to attain the NAAQS.[17] Therefore, an appropriate means of satisfying the contingency measures requirement is for the state to have a comprehensive enforcement program that identifies sources of violations of the SO_2 NAAQS and for the state to undertake aggressive follow-up for compliance and enforcement. Pennsylvania's plan provides for satisfying the contingency measure requirement in this manner for the nonattainment area. PADEP has a comprehensive compliance and enforcement program to identify sources of violations of the 2010 1-hour SO_2 NAAQS and can undertake aggressive follow-up for compliance and enforcement including the ability to enact a COA in a timely manner (section 4(27) of the Pennsylvania Air Pollution Control Act, 35 P.S. section 4004(27)). The EPA is proposing to approve the emissions limits from the 2023 SIP submittal as enforceable limitations under CAA section 302(k) which are necessary and appropriate to provide for attainment of the standard in the Indiana, PA NAA and meet the requirements of the CAA, including sections 110(a)(2)(A), 172(c)(1), 172(c)(2), and 172(c)(6). Consequently, the EPA is proposing to find that PA's comprehensive enforcement program for such necessary and appropriate emission limitations is an appropriate contingency measure for this area and meets the requirement of CAA section 172(c)(9).

[17] See 75 FR 35520 at 35576 (June 22, 2010) and the 2014 SO_2 Nonattainment Guidance.

III. Proposed Action

The EPA is proposing to approve Pennsylvania's SIP revision submitted to the EPA on October 5, 2023, for the purpose of attaining the 2010 1-hour SO_2 NAAQS for the Indiana, PA NAA. Specifically, the EPA is proposing to approve the following elements of this SO_2 attainment plan: Pennsylvania's attainment demonstration for the nonattainment area, RACT/RACM and emission limitations, RFP plan, and contingency measures. The EPA previously approved Pennsylvania's attainment plan requirements regarding nonattainment area Emissions Inventory and NNSR.

The EPA is proposing to conclude that the modeling and comparably stringent longer-term emission limits in Pennsylvania's plan adequately demonstrate that the control requirements in the COAs provide for attainment in the area. This attainment plan also properly addresses requirements for RACT/RACM and emission limitations, RFP, and contingency measures because the plan now includes emission limits that provide for attainment. Thus, the EPA is proposing to determine that Pennsylvania's Indiana Area SO_2 attainment plan meets the applicable requirements of CAA sections 172, 191, and 192. The EPA is taking public comments for thirty days following the publication of this proposed action in the **Federal Register**. The EPA will take these comments into consideration in our final action.

IV. Incorporation by Reference

In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the SO_2 emission limits and compliance parameters established in (the unredacted portions of) the COAs for Seward, Conemaugh and Keystone facilities as discussed in section II. of this document. The EPA has made, and will continue to make, these materials generally available through *https://www.regulations.gov* and at the EPA Region III Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. 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, the 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 proposed action:

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

• Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, February 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. The EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' The EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.'' PADEP 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. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

In addition, this proposed rulemaking, approval of Pennsylvania's Indiana Area SO_2 attainment plan, does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the State, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

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

Adam Ortiz,

Regional Administrator, Region III.

[FR Doc. 2024–11175 Filed 6–6–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R01–OAR–2023–0235; FRL–12018–01–R1]

Air Plan Approval; Connecticut; Plan for Inclusion of a Consent Order and Removal of State Orders

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the Connecticut Department of Energy and Environmental Protection (CT DEEP) to (1) remove State Order 7002B issued to Dow Chemical USA (Dow) in Gales Ferry on May 25, 1982 from the Connecticut SIP, (2) remove State Order 2087 issued to Pratt & Whitney Division of United Technologies Corporation (Pratt & Whitney) in North Haven on March 22, 1989 from the Connecticut SIP, and (3) add Consent Order 8381 issued to Thames Shipyard and Repair Company (Thames Shipyard) in New London, CT on December 3, 2021, to the Connecticut SIP. State Orders 2087 and 7002B addressed reasonably available control technology (RACT) for volatile organic compound (VOC) emissions and sulfur fuel content limits for Pratt & Whitney and Dow, respectively. Approving the Thames Shipyard Order into Connecticut's SIP would ensure RACT requirements with respect to VOC emissions from shipbuilding and repair operations continue to be implemented at Thames Shipyard. This action is being taken under the Clean Air Act.

DATES: Written comments must be received on or before July 8, 2024.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA–R01–OAR–2023–0235 at *https://www.regulations.gov,* or via email to *kosin.michele@epa.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov.* For either manner of submission, the EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* Publicly available docket materials are available at *https://www.regulations.gov* or at the U.S. Environmental Protection Agency, EPA Region 1 Regional Office, Air and Radiation Division, 5 Post Office Square—Suite 100, Boston, MA. EPA requests that, if at all possible, you contact the contact 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 legal holidays and facility closures due to COVID–19.

FOR FURTHER INFORMATION CONTACT: Michele Kosin, Physical Scientist, Air Quality Branch, Air & Radiation Division (Mail Code 5–MI), U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Boston, Massachusetts 02109–3912; (617) 918–1175; *kosin.michele@epa.gov.*

SUPPLEMENTARY INFORMATION:

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

Table of Contents

I. Background and Purpose

On February 8, 1983 (48 FR 5723), EPA approved Connecticut Source-Specific State Order 7002B into the SIP. State Order 7002B, which controls SO_2 emissions from combustion equipment by limiting fuel sulfur content, was issued to Dow on May 24, 1982. State Order 7002B is no longer necessary because most of the regulated equipment has been removed from the

property and the remaining equipment is subject to more stringent regulatory requirements than those established in the Order. On May 25, 2016 (81 FR 33134), EPA approved a SIP revision submitted by the State of Connecticut on April 22, 2014 (which included supplemental submittals submitted on June 18, 2015, and September 25, 2015). The May 25, 2016, rulemaking established sulfur in fuel oil content limits for use in stationary sources. In addition, the rulemaking included a revision to the sampling and emission testing methods for sulfur content in liquid fuels. A sulfur in fuel limit for use in stationary sources was previously 0.5% sulfur by weight as required on or after January 1, 2002, but this limit was superseded by the more stringent fuel limits (0.3% Sulfur, by weight) required under Sec–19a (e) in the Regulations of Connecticut State Agencies (RCSA) Section 22a–174–19a (Sec–19a).[1]

State Order 8027, a single-source VOC RACT order, was issued on March 22, 1989, to Pratt & Whitney. On May 30, 1989 (54 FR 22890), EPA approved Connecticut Source-Specific State Order 8027 into the SIP. However, State Order 8027 is no longer necessary to implement RACT because the equipment subject to the Order has been removed from the property. The Order was rescinded by CT DEEP on November 8, 2016.

On December 3, 2021, the CT DEEP issued Consent Order 8381 to Thames Shipyard. Consent Order 8381 requires source-specific VOC RACT to addresses VOC emissions from miscellaneous metal and plastic parts coating operations.

On May 31, 2022, the CT DEEP proposed to revise the Connecticut SIP by removing State Orders 7002B and 8027 and adding Consent Order 8381 to the Connecticut SIP. In accordance with 40 CFR 51.102, to demonstrate satisfaction of federal public participation requirements, public notice of this proposed action was published on the CT DEEP website on June 6, 2022. Copies of the notice were mailed electronically on June 8, 2022, to the directors of the air pollution agencies in New York, New Jersey, Rhode Island, and Massachusetts, along with a copy to the Director of the Air & Radiation Division of Region 1 of the U.S. Environmental Protection Agency. In accordance with the public notice requirements, materials were available for review on the CT DEEP website. The public hearing scheduled for July 7, 2022, was cancelled because no one requested a hearing by the July 6, 2022, deadline. In accordance with the notice, the comment period was open through July 5, 2022. No comments were received. On July 19, 2022, the CT DEEP submitted the proposed SIP revision to EPA.

On February 14, 2024, CT DEEP submitted a partial revision to its July 2022 SIP submission by removing the last clause of the last sentence of paragraph B.21 from Consent Order 8381 from consideration as a SIP measure. CT DEEP removed the last clause of the notification of noncompliance which states, ''unless specifically so stated by the Commissioner in writing.''

II. Description and Review of Submittals

State Order #7002B Issued to Dow

CT DEEP issued State Order #7002B to Dow on May 24, 1982, to limit sulfur dioxide emissions from fuel burning sources located at the facility in Gales Ferry. The Order limited the sulfur content of fuel combusted in the units to 1% by weight. The Order also prohibited the concurrent operation of the Wickes boilers (E7C and E7D). During an inspection conducted by CT DEEP on April 20, 2022, it was determined that Heat Transfer Media Heater EA and EB, Cyclotherm Boilers E7A and E7B, and Wickes Boilers E7C and E7D had all been decommissioned and removed from the premises. Dowtherm Heater A and Dowtherm Heater B remain onsite and are owned and operated by Americas Styrenics, LLC. The Dowtherm heaters are identified as EU–1 and EU–2 in Americas Styrenics, LLC's Title V permit (Permit #092–0027–TV).

On May 25, 2016 (81 FR 33134), EPA approved a SIP revision submitted by the State of Connecticut on April 22, 2014 (which included supplemental submittals submitted on June 18, 2015, and September 25, 2015). This revision established a more stringent sulfur in fuel oil content limit of 0.3% sulfur by weight for use in stationary sources (RCSA Sec–19a (e)), which superseded the previous limit of 0.5% sulfur by weight under RCSA Sec–19a (c). The revision also incorporated new provisions under RCSA section 22a–174–19b (Sec–19b) ''Fuel Sulfur content Limitations for Stationary Sources'' that limited the fuel sulfur content of distillate oil to 0.0015% by weight and residual oil to 0.3% by weight. Therefore, these regulations contained more stringent limits than the limit specified in State Order 7002B. In addition, the submittal included a more recent version of the American Society for Testing and Materials (ASTM) test method D4294 and automatic sampling equipment conformance to ASTM test method D4177–82 for sulfur content in liquid fuels. On April 28, 2022, the Connecticut DEEP's Enforcement Division of the Bureau of Air Management reviewed the information regarding State Order Number 7002B and determined that the Order was obsolete. Order 7002B was determined no longer necessary because most of the subject equipment had been removed from the property and the remaining equipment was subject to more stringent regulatory requirements than those established in the Order. Accordingly, the Connecticut DEEP rescinded the Order on April 28, 2022.

State Order 8027 Issued to Pratt & Whitney

State Order 8027, a single-source VOC RACT Order, was issued by CT DEEP on March 22, 1989, to Pratt & Whitney with requirements for the use of vapor degreasers and solvent cleaning at its facility in North Haven. During an inspection conducted on October 6, 1995, CT DEEP determined that there was no vapor or conveyorized degreasers in service at the facility. Subsequently, Pratt & Whitney sold the property on December 31, 2001, and ceased all operations at the facility on December 31, 2002. During an inspection conducted on June 6, 2012, the CT DEEP confirmed that the site appeared to be abandoned because the building and parking lot were in disrepair, the landscaping was overgrown, and the entrance was gated and padlocked. Accordingly, State Order 8027 is no longer necessary because the subject equipment has been removed from the property, and the Order was rescinded by CT DEEP on October 8, 2016.

Consent Order No. 8381 Issued to Thames Shipyard

Thames Shipyard conducts ship building and repair operations at its facility in New London. Thames Shipyard is classified as a major source of HAP for the Shipbuilding and Ship Repair Surface Coating National Emission Standards for Hazardous Air Pollutants, at 40 CFR 63 Subpart II (''Shipbuilding NESHAP'') and is subject to the emission control requirements promulgated in the Shipbuilding NESHAP. However, Thames Shipyard can accept an enforceable limit on its potential to emit

[1] RCSA Section 22a–174–19a (c) required a sulfur in fuel limit (0.5% sulfur, by weight) on or after January 1, 2002. The May 25, 2016, SIP revision removed the requirement at Sec–19a (c) and established the more stringent limit at Sec–19a (e). See 81 FR 33134.

and apply to the state regulatory authority to be reclassified from a NESHAP major source to an area source.[2] [3] If Thames Shipyard is reclassified as an area source of HAP, it must satisfy the requirements of Connecticut's RACT rule for the miscellaneous metal and plastic parts coating source category at Section 22a–174–20(s). Therefore, Thames Shipyard requested the VOC content limits set forth in the Shipbuilding NESHAP to be issued as a state-issued consent order for incorporation into the SIP. In response to this request, CT DEEP issued Consent Order 8381 on December 3, 2021, which ensures that the VOC emissions from shipbuilding and repair operations at Thames Shipyard continue to be no less stringent than the NESHAP requirements and consistent with the EPA Control Techniques Guidelines (CTG) for Shipbuilding and Ship Repair Operations (Surface Coating) published August 27, 1996 (61 FR 44050).

On February 14, 2024, CT revised its SIP submission to remove the last clause of the last sentence of paragraph B.21 of Consent Order 8381 from consideration as a SIP measure. Specifically, CT DEEP removed the last clause of the notification of noncompliance which states, ''unless specifically so stated by the Commissioner in writing.'' This phrase was removed because SIP-approved requirements cannot be open-ended and later arbitrarily established or waived by the state.

The information provided by Thames Shipyard indicated that the identified shipbuilding coatings are necessary to protect ships from corrosion. As shown in Table 1 below, the VOC content limit for each coating category in Consent Order 8381 is no greater than the analogous limit in the Shipbuilding NESHAP and CTG. Consent Order 8381 also grants the use of the thinning formula prescribed in the Shipbuilding NESHAP in lieu of the formula found in Section 22a–174–20(s)(9)(A) of the RCSA. According to Thames Shipyard, the thinner formula prescribed in Section 22a174–20(s) of the RCSA fails to address the use of the thinner outdoors under cold conditions. Because the formula prescribed in the Shipbuilding NESHAP (Equation 1 in 40 CFR 63.785(c)(2)) considers the solids content of the batch, this formula is more appropriate for Thames Shipyard than the formula prescribed in Section 22a–174–20(s)(9)(A) of the RCSA when determining the maximum allowable thinning ratio or ratios to be applied at the facility, as the facility repairs ships year-round and outdoors. Because this calculation method is based upon the methodology at 40 CFR 63.785, this provision would achieve no less than the level of VOC emission control as provided for in the Shipbuilding NESHAP.

The VOC content limits for each coating category is no greater than the analogous limit in the Shipbuilding NESHAP and CTG. Table 1 below summarizes the comparison between the VOC content limits for the Shipbuilding NESHAP and CTG in each coating category. As demonstrated in Table 1 below, the requirements in Consent Order 8381 with respect to VOC limits are consistent with the limits in the Shipbuilding NESHAP and CTG, and achieve the same or a more stringent level of emission control as the Shipbuilding NESHAP and CTG.

TABLE 1—COMPARISON OF SHIPBUILDING NESHAP VOLATILE ORGANIC COMPOUND (VOC) CONTENT LIMITS AND THE CONTROL TECHNIQUES GUIDELINE (CTG) VOC CONTENT LIMITS WITH RESPECT TO THE VOC CONTENT LIMITS FOR THAMES SHIPYARD & REPAIR COMPANY

Coating category	Shipbuilding NESHAP VOC content limits (grams/liter of coating)	Shipbuilding & repair CTG VOC content limits (grams/liter of coating)	RACT Order 8381 for Thames Shipyard & Repair Company VOC content limits (grams/liter of coating)
General Use inventory	340	340	340
High-Gloss	420	420	420
Antifoulant	400	400	400
Nonskid	340	340	340
Organic Zinc	360	360	360
Pretreatment Wash Primer	780	780	780
High-Temperature	500	500	500
Heat Resistant	420	420	420
Inorganic Zinc High-Build	360	340	340

To further analyze whether Consent Order No. 8381 issued to Thames Shipyard adequately implements RACT, EPA reviewed multiple potential VOC control requirements that might apply to shipbuilding and repair operations, which were drawn from EPA's own guidance and regulations, Ozone Transport Commission (OTC) model rules and guidelines,[4] and neighboring states' regulatory requirements. EPA's relevant CTG and NESHAP requirements have not changed since August 27,1996 (61 FR–44050) and November 21, 2011 (76 FR 72050), and were evaluated against other regulations to ensure Consent Order 8381 adequately implements RACT. EPA was unable to identify any OTC model rules or guidelines for implementing RACT with respect to VOC emissions for this category of operations.

With respect to neighboring states' requirements, Massachusetts has source-specific requirements for Boston Ship Repair, LLC, that are in accordance with the NESHAP for Shipbuilding and Ship Repair in 40 CFR part 63 subpart II. Rhode Island issued a single source RACT order for US Watercraft, LLC in Warren, Rhode Island, which was approved as implementing RACT for VOC emissions by EPA on September 21, 2017 (82 FR 44103). Massachusetts and Rhode Island requirements very closely mimic the EPA CTG and NESHAP requirements and collectively contain as many as twenty-two specialty coating categories with VOC content

[2] See EPA's November 19, 2020 final rulemaking titled ''Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act''. 85 FR 73854.

[3] Thames Shipyard has accepted federally enforceable permit limits to its facility-wide potential-to-emit to below major source thresholds. See CT DEEP NSR Permit Nos. 128–0062 and 128–0063 in the administrative docket for this action.

[4] Ozone Transport Commission. *Model Rules and Guidelines.* Retrieved January 3, 2024, *https://otcair.org/materials/model-rules-and-guidelines.*

limits ranging from 340 to 780 grams of VOC per liter of coating, as well as a general use limit of 340 grams of VOC per liter of coating. To compare, the Connecticut Order for Thames Shipyard contains eight specialty coating categories with VOC content limits ranging from 340 to 780 grams of VOC per liter of coating and a general use VOC limit of 340 grams of VOC per liter of coating.

New York added Title 6 NYCRR Part 228 to its SIP on January 23, 2004 (69 FR 3237) and re-certified that state regulation as implementing RACT with respect to VOC emissions on November 9, 2023 (88 FR 77208). New York's requirements are different in character in that they primarily pertain to ''pleasure craft'' which are smaller, non-commercial, recreational type vessels, whereas the EPA CTG and NESHAP shipbuilding and repair operations address larger ships, barges, and other vessels for military and commercial use. Since New York's regulation focuses on pleasure craft, it lacks some of the specialty coating requirements for shipbuilding repair. The New York regulation contains seven specialty coating categories with VOC content limits ranging from 330 to 780 grams of VOC per liter of coating and a general use category VOC content limit of 420 grams of VOC per liter of coating. Finally, New Jersey made a negative declaration for the shipbuilding and ship repair CTG category on October 9, 2018 (83 FR 50506), which indicates they have no relevant operations. Therefore, a review of CT's limits as compared to neighboring states with similar regulations indicates that CT's limits are the same or more stringent than the limits prescribed by neighboring states, including Massachusetts, New York, New Jersey, and Rhode Island.

EPA has reviewed the CT DEEP SIP submittal with respect to Consent Order No. 8381 issued to Thames Shipyard and proposes to determine that the VOC stationary source controls requirements in the Consent Order implement RACT and we are therefore proposing to approve the addition of Consent Order into the CT SIP.

Clean Air Act Subsection 110(l) and Section 193 Compliance

Subsection 110(l) of the CAA is referred to as the ''anti-backsliding'' provision because the subsection prohibits EPA from approving a revision of a plan if the revision would interfere with any applicable requirement in the chapter, including reasonable further progress and attainment of the national ambient air quality standards. Similarly, section 193 of the CAA prohibits EPA from modifying control requirements in effect before November 15, 1990, unless the modification insures equivalent or greater emission reductions. EPA is proposing to determine that CAA sections 110(l) and 193 are not implicated by this action because the Orders proposed to be removed from the CT SIP no longer control sources of VOC or SO_2 emissions, and the Order we are proposing to add to the CT SIP would ensure equivalent or greater emission reductions when compared to the current CT SIP.

As explained above, the Dow units subject to State Order #7002B were decommissioned and removed, and the low-sulfur fuel oil requirements that now apply to the other units still present at the facility are currently required by a statewide regulation, which was approved into the CT SIP on May 25, 2016 (81 FR 33134). Also as explained above, the Pratt & Whitney vapor degreasers and solvent cleaning equipment described in State Order 8027 have been removed from the property, and Pratt & Whitney sold the property on December 31, 2001, and ceased all operations at the facility on December 31, 2002. With regard to adding Consent Order 8381 issued to the Thames Shipyard to the SIP, as explained above, the requirements in Consent Order 8381 implement RACT for VOC emissions and achieve no less VOC control as compared to the existing NESHAP regulations currently applicable to the facility. Therefore, EPA proposes that the SIP revision complies with subsection 110(l) and section 193 of the CAA because the revision ensures equivalent or greater emission reductions when compared to the current CT SIP and the equipment subject to State Order #7002B and 8027 has been decommissioned and is no longer in use.

III. Proposed Action

EPA is proposing to approve the CT DEEP's request to revise the Connecticut SIP to (1) remove State Order 7002B issued to Dow Chemical USA in Gales Ferry on May 25, 1982 from the Connecticut SIP, (2) remove State Order issued to Pratt & Whitney Division of United Technologies Corporation in North Haven on March 22, 1989 from the Connecticut SIP, and (3) add Consent Order 8381issued to Thames Shipyard and Repair Company in New London on December 3, 2021, to the Connecticut SIP, with the exception of the language that was removed from the proposed SIP revision on February 14, 2024 as described above.

EPA is soliciting public comments on the issues discussed in this notice and other relevant considerations. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to this proposed rule by following the instructions listed in the **ADDRESSES** section of this **Federal Register**.

IV. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference RACT Order Consent Order 8381, dated December 3, 2021, which establishes VOC RACT requirements for Thames Shipyard and Repair Company. In this rule, the EPA is proposing to remove a single-source VOC RACT Order 2087 issued to Pratt & Whitney Division of United Technologies Corporation, in North Haven, Connecticut, which was approved by EPA into the SIP on May 30, 1989 (54 FR 22890) and State Order 7002B, issued to Dow Chemical USA, in Gales Ferry, Connecticut, which was approved by EPA into the SIP on February 8, 1983 (48 FR 5723) because the regulated activities have ceased operation and no longer exist. The proposed changes are described in sections I. and II. of this document. The EPA has made, and will continue to make, these documents generally available through *https://www.regulations.gov* and at the EPA Region 1 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *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 Clean Air Act. Accordingly, this proposed 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 proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders12866 (58 FR 51735,

October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.
- 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, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. EPA defines environmental justice (EJ) as ''the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.'' EPA further defines the term fair treatment to mean that ''no group of people should bear a disproportionate burden of environmental harms and risks, including those resulting from the negative environmental consequences of industrial, governmental, and commercial operations or programs and policies.''

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

List of Subjects in 40 CFR Part 52

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

Dated: June 3, 2024.

David Cash,

Regional Administrator, EPA Region 1.

[FR Doc. 2024–12516 Filed 6–6–24; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

45 CFR Part 5b

[Docket Number NIH–2022–0002]

RIN 0925–AA69

Privacy Act; Implementation

AGENCY: National Institutes of Health (NIH), Department of Health and Human Services (HHS).

ACTION: Notice of proposed rulemaking.

SUMMARY: In accordance with subsections (j)(2) and (k)(2) of the Privacy Act of 1974, as amended (the Privacy Act or the Act), the Department of Health and Human Services (HHS or Department) is proposing to exempt a new system of records maintained by the National Institutes of Health (NIH), System No. 09–25–0224, ''NIH Police Records,'' from certain requirements of the Act. The new system of records will cover criminal and non-criminal law enforcement investigatory material maintained by the NIH Division of Police, a component of NIH which performs criminal law enforcement as its principal function. The exemptions are necessary and appropriate to protect the integrity of law enforcement proceedings and records compiled in the course of NIH Division of Police activities, prevent disclosure of investigative techniques, and protect the identity of confidential sources involved in those activities. Elsewhere in the **Federal Register**, HHS/NIH has published a System of Records Notice (SORN) for System No. 09–25–0224 for public notice and comment which describes the new system of records in more detail.

DATES: Submit either electronic or written comments regarding this document by August 6, 2024.

ADDRESSES: Submit comments, identified by Docket No NIH–2022–0002, by any of the following methods:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

Written Submissions

Submit written submissions in the following ways:

- *Fax:* 301–402–0169 (not a toll-free number).
- *Mail:* Daniel Hernandez, NIH Regulations Officer, Office of Management Assessment, National Institutes of Health, 6705 Rockledge Drive, (RK1) 601–U, Rockville, MD 20892–7901.

To ensure timelier processing of comments, HHS/NIH is no longer accepting comments submitted to the agency by email. HHS/NIH encourages you to continue to submit electronic comments by using the Federal eRulemaking Portal, as described previously, in the **ADDRESSES** portion of this document under *Electronic Submissions.*

Instructions: All submissions received must include the agency name and Docket No. for this rulemaking. All comments received may be posted without change to *https://www.regulations.gov,* including any personal information provided.

Docket: For access to the docket to read background documents or comments received, go to *https://www.regulations.gov* and follow the instructions provided for conducting a search, using the docket number(s) found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: General questions about the exemptions may be submitted to Daniel Hernandez, NIH Regulations Officer, Office of Management Assessment, National Institutes of Health, 6705 Rockledge

Drive, (RK1) 601–U, Rockville, MD 20892–7901, telephone 301–496–4607, fax 301–402–0169, email *dhernandez@mail.nih.gov.*

SUPPLEMENTARY INFORMATION:

I. Background on the NIH Police Division and New System of Records 09–25–0224

Elsewhere in the **Federal Register**, HHS/NIH has published notice of its establishment of a new system of records 09–25–0224, ''NIH Police Records.'' The purpose of this rulemaking is to exempt that system of records from certain requirements of the Privacy Act as permitted by 5 U.S.C. 552a(j)(2) and (k)(2). The new system of records will cover records maintained by the NIH Division of Police, Office of Research Services (ORS), in the NIH Office of the Director. The Division of Police was established in 1968 to provide an immediate and primary law enforcement program for the NIH and derives its authority from Memorandum from the Assistant Secretary for Administration, OS, to the Director, NIH, June 13, 1968; Memorandum from the Assistant Secretary for Administration, OS, to the Director, NIH, June 13, 1968, entitled: Delegation of Authority to Assist in Controlling Violations of Law at Certain HEW Facilities Located in Montgomery County, Maryland; 40 U.S.C. 1315 (Law enforcement authority of Secretary of Homeland Security for protection of public property; a Department of Homeland Security (DHS) delegation of authority to HHS/NIH; and an NIH delegation of authority to the NIH Division of Police); General Administrative Delegation of Authority Number 08, Control of Violations of Law at Certain NIH Facilities (Sept. 1, 2020). Based on that establishing authority, the Division of Police performs criminal law enforcement as its principal function. However, the Division of Police conducts both criminal and non-criminal (*e.g.,* civil, administrative, regulatory) law enforcement investigations.

The NIH Division of Police is directly responsible for the provision of daily law enforcement and criminal and civil investigative activities required to protect the life, safety, and property of NIH employees, contractors, patients, and visitors at NIH. To perform these responsibilities, the NIH Division of Police compiles and maintains records of complaints of incidents, inquiries, investigative findings, arrest records, and court dispositions which are retrieved by personal identifiers and therefore constitute a ''system of records'' as defined by the Privacy Act at 5 U.S.C. 552a(a)(5). The primary purposes for which the records are used are to: (1) record incidents of crime, civil disturbance, and traffic accidents on the NIH enclave, and the investigation of such incidents; (2) maintain information essential to the protection of life, safety, and property at NIH; (3) provide official records of law enforcement investigative efforts for use in administrative, criminal and/or civil proceedings; and (4) document criminal and civil law enforcement investigations.

II. Eligible Records and Exemptions

The new system of records will include both criminal and non-criminal (*e.g.,* civil, administrative, regulatory) law enforcement investigatory records which will be retrieved by subject individuals' personal identifiers. Such records are eligible to be exempted from certain Privacy Act requirements, as follows:

- Subsection (j)(2) of the Privacy Act (5 U.S.C. 552a(j)(2)) allows an agency head to exempt from certain Privacy Act provisions a system of records maintained by the agency or component thereof which performs as its principal function any activity pertaining to the enforcement of criminal laws.
- Subsection (k)(2) of the Act (5 U.S.C. 552a(k)(2)) allows an agency head to exempt from certain Privacy Act provisions a system of records containing investigatory material compiled for law enforcement purposes, other than material within the scope of subsection (j)(2) (for example, material compiled for a civil, administrative, or regulatory law enforcement purpose, or material compiled for a criminal law enforcement purpose by an agency component that does not perform criminal law enforcement as its principal function). This exemption's effect on the subject individual's access rights is qualified in that if any individual is denied any right, privilege, or benefit to or for which the individual otherwise would be entitled by Federal law, or for which the individual would otherwise be eligible, as a result of the maintenance of the system of records, the individual must be provided the requested materials except to the extent that disclosure would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

HHS/NIH is establishing the following exemptions for the records:

- Based on 5 U.S.C. 552a(k)(2), HHS/NIH is exempting non-criminal (*e.g.,* civil, administrative, regulatory) law enforcement investigatory material in System No. 09–25–0224 from the requirements in subsections (c)(3), (d)(1) through (4), (e)(1), (e)(4)(G) through (I), and (f) of the Privacy Act, which require the agency to provide an accounting of disclosures; provide notification, access, and amendment rights; maintain only relevant and necessary information authorized by a statute or Executive order; establish and describe procedures whereby an individual can be notified if a system of records contains information pertaining to that individual and how to gain access to pertinent records; identify categories of record sources; and promulgate rules regarding these procedures. The effect of this exemption on a subject individual's access rights will be limited as required by subsection (k)(2) to information that would reveal the identity of a source who was expressly promised confidentiality in cases in which maintenance of the records results in denial of a Federal right, privilege, or benefit to or for which the individual would otherwise be entitled or eligible.
- Based on subsection 5 U.S.C. 552a(j)(2), HHS/NIH is exempting criminal law enforcement investigatory material in System No. 09–25–0224 from the same requirements identified above, and from these additional subsections:
  - (c)(4), requiring the agency to inform disclosure recipients of corrections and notations of dispute affecting disclosed records;
  - (e)(2) and (3), requiring the agency to collect information directly from the subject individual to the greatest extent practicable and to provide a Privacy Act notice to the individual at the time of collection;
  - (e)(5), requiring the agency to maintain records used in agency determinations with sufficient accuracy, relevance, timeliness, and completeness to ensure fairness to individuals;
  - (e)(8), requiring the agency to attempt to notify an individual when a record about the individual is disclosed under compulsory legal process; and
  - (g), subjecting the agency to civil action and civil remedies for noncompliance with access, amendment, and accuracy, relevance, timeliness, and completeness requirements, and for noncompliance that adversely affects an individual.

Notwithstanding the establishment of these exemptions, individual record subjects may submit accounting, access, notification, and correction requests, and HHS/NIH will consider such requests on a case-by-case basis. Only information that is not factually

accurate, or is not relevant, timely, or complete may be contested.

In addition to the exemptions that HHS/NIH is establishing for system of records 09–25–0224 in this proposed rule, if any law enforcement investigatory material compiled in that system of records is from another system of records in which such material was exempted from access and other requirements of the Privacy Act based on 5 U.S.C. 5525a(j)(2), it will be exempt in system of records 09–25–0224 on the same basis (*i.e.,* 5 U.S.C. 552a(j)(2)) and from the same requirements as in the source system.

III. Exemption Rationales

The following specific rationales explain why each exemption is necessary and appropriate for law enforcement investigation records maintained by the NIH Division of Police, in order to prevent interference with and protect the integrity of pending, closed, and future investigations, including related investigations. All subsections referenced are subsections of 5 U.S.C. 552a.

• Subsection (c)(3) (Provide Accountings of Disclosures). This exemption will apply to both criminal and non-criminal law enforcement investigatory material. Providing an accounting of disclosures to an individual record subject could reveal the existence of a pending or prior investigation or present or past investigative interest on the part of NIH or another agency. This would pose a serious impediment to law enforcement efforts and undermine the investigative process by enabling a subject individual or others in concert with that individual to harass, intimidate, or collude with witnesses, destroy, conceal, or tamper with evidence, threaten or endanger law enforcement personnel, alter patterns of behavior, and avoid detection or apprehension by law enforcement authorities.

• Subsection (c)(4) (Inform Disclosure Recipients of Corrections and Notations of Dispute). This exemption applies to only criminal law enforcement investigatory material. Because system of records 09–25–0224 will be exempt from amendment requirements in subsection (d) and HHS/NIH's compliance with amendment requirements therefore will be voluntary, it is necessary and appropriate that HHS/NIH's compliance with the requirement in subsection (c)(4) be voluntary also. This will give HHS/NIH the flexibility to decide which cases warrant expending resources to meet those administratively burdensome requirements.

• Subsection (d)(1) through (4) (Provide Notification, Access, and Amendment Rights). These exemptions apply to both criminal and non-criminal law enforcement investigatory material. Providing subject individuals with the right to be notified of whether the system of records contains a record about them and to access and amend such records could reveal the existence of a pending or prior investigation or present or past investigative interest by NIH or another agency and details about the investigation, including identities of sources of information, personal information about third parties, and sensitive investigative techniques. This could impair pending and future investigations by chilling or deterring sources of information from providing information to investigators (particularly if they are not certain of its accuracy or fear retribution), by providing an opportunity for subject individuals and others acting in concert with subject individuals to tamper with witnesses or evidence, and by allowing individuals to alter their behavior to defeat investigative techniques and avoid detection or apprehension. Complying with amendment requirements could significantly delay investigations while attempts are made to resolve questions of accuracy, relevance, timeliness, and completeness and would impose an impossible administrative burden by requiring investigations to be continuously reinvestigated. In the case of criminal investigations, since the system of records will be exempt from having to maintain records that are accurate, relevant, timely, and complete, the exemption from amendments seeking to correct to those standards is also appropriate.

• Subsection (e)(1) (Maintain Only Relevant and Necessary Information Authorized by Statute or Executive order). This exemption applies to both criminal and non-criminal law enforcement investigatory material. In the course of a law enforcement investigation, and especially in the early stages of an investigation, the relevance and necessity of information obtained or introduced may be unclear or the information may not be strictly relevant or necessary to a specific investigation but may lead to discovery of relevant information. In the interests of effective law enforcement, it is appropriate to retain all information that may aid in establishing patterns of unlawful activity.

• Subsections (e)(2) and (3) (Collect Information Directly From the Subject Individual to the Greatest Extent Practicable, and Provide a Privacy Act Notice). These exemptions apply to only criminal law enforcement investigatory material. It is not always practicable to collect information sought in a criminal law enforcement investigation directly from subject individuals. Individuals who could be adversely affected by an investigation may intentionally provide unreliable information to avoid being implicated in criminal activity. Questioning subject individuals and providing a Privacy Act notice to them (*i.e.,* informing them of the purposes for which information collected from them will be used and disclosed and how providing or not providing it could affect them), could inappropriately reveal the existence, nature, scope, and details of the investigation. This would provide an opportunity for the subject individual or others acting in concert with that individual to conceal evidence, alter patterns of behavior, or take other actions that could thwart investigative efforts; reveal the identity of witnesses in investigations, thereby providing an opportunity for the subjects of the investigations or others to harass, intimidate, or otherwise interfere with the collection of evidence or other information from such witnesses; or reveal the identity of confidential or other informants who provide information to investigators, which would negatively affect an informant's usefulness in any ongoing or future investigations and discourage members of the public from cooperating with future investigations.

• Subsections (e)(4)(G) and (H) (Describe Procedures for Notification, Access, and Amendment). These exemptions apply to both criminal and non-criminal law enforcement investigatory material. Because system of records 09–25–0224 will be exempt from request requirements in subsection (d)(1) through (4) (Provide Notification, Access, and Amendment Rights) and HHS/NIH's compliance with those request requirements will therefore be voluntary, it is appropriate that HHS/NIH's compliance with the requirements in subsection (e)(4)(G) and (H) to provide request procedures be voluntary also. Notwithstanding these exemptions, HHS/NIH has included request procedures in the SORN for system of records 09–25–0224 because, notwithstanding the exemptions, individual record subjects may submit access and amendment requests, and HHS/NIH will consider such requests on a case-by-case basis.

• Subsection (e)(4)(I) (Identify Categories of Record Sources in the SORN). This exemption applies to both

criminal and non-criminal law enforcement investigatory material. Because the information in these records may come from any source, it is not possible to know every category in advance in order to include them all in the SORN. Further, some record source categories would not be appropriate to publish in the SORN if, for example, revealing them could thwart or impede pending and future law enforcement investigations by enabling record subjects or other individuals to discover sensitive investigative techniques and devise ways to bypass or defeat them to evade detection and apprehension.

• Subsection (e)(5) (Maintain Records Used in Agency Determinations with Sufficient Accuracy, Relevance, Timeliness, and Completeness to Ensure Fairness). This exemption applies to only criminal law enforcement investigatory material. It is not always possible to know whether criminal law enforcement investigation information is accurate, relevant, timely, and complete. With regard to relevance, in the course of a law enforcement investigation, and especially in the early stages of an investigation, the relevance of information obtained or introduced may be unclear or the information may not be strictly relevant to a specific investigation. Compliance with (e)(5) would preclude NIH agents from using their investigative training and exercise of good judgment to both conduct and report on investigations.

• Subsection (e)(8) (Make Reasonable Efforts to Provide Notice of Disclosures Made Under Compulsory Legal Process When Such Process Becomes A Matter of Public Record). This exemption applies to only criminal law enforcement investigatory material. Compliance with this requirement would risk revealing an ongoing criminal investigation to the target of an investigation who otherwise might not be aware of it, defeating a law enforcement advantage in those cases. Compliance with this requirement would also risk revealing a criminal investigation by mistake or inappropriately in cases in which an investigation was not in fact a matter of public record or was not intended to be made public.

• Subsection (g) (Civil Liability for Noncompliance with Notification, Access, Amendment, and Accuracy, Relevance, Timeliness, and Completeness Requirements, or for Noncompliance That Causes an Adverse Effect). This exemption applies to only criminal law enforcement investigatory material. The exemption would prevent a subject individual from bringing a civil action against the agency for violations of Privacy Act requirements as to those records; this would include violations of the preceding requirements, from which the agency would be exempt anyway (which violations therefore would be unlikely to support a successful civil action), and any other violations causing an adverse effect on the individual. Any civil action (even an untenable one) could interfere with, delay, and undermine pending and prospective investigations, reveal sensitive investigative techniques and evidence, cause unwarranted invasions of personal privacy, and reveal identities of witnesses, potential witnesses, and confidential sources.

Other Federal agencies have promulgated the same or similar exemptions for their law enforcement investigatory systems of records based on rationales that are the same or similar to those stated for this system of records. See, *e.g.,* the Final Rules published at 68 FR 4923 (Jan. 31, 2003) and 74 FR 42578 (Aug. 24, 2009) by the Department of Justice for *Criminal Investigation Report System,* Justice/ATF–003, and by the Department of Homeland Security for *Security Facility and Perimeter Access Control and Visitor Management,* DHS/ALL–024, respectively. For the same reasons, HHS/NIH believes that the exemptions authorized in 5 U.S.C. 552a(j)(2) and (k)(2) are essential to system of records 09–25–0224 to ensure that law enforcement investigatory material in NIH Division of Police files is not disclosed inappropriately to subject individuals. In NIH's past experience, access to such material by record subjects has led to the destruction, fabrication, alteration, or creation of information. The proposed exemptions will help prevent such problems from recurring in the future.

Accordingly, HHS proposes to exempt both criminal and non-criminal law enforcement investigatory material in system of records 09–25–0224 NIH Police Records from the requirements in subsections (c)(3), (d)(1) through (4), (e)(1), (e)(4)(G) through (I), and (f) of the Privacy Act, based on 5 U.S.C. 552a(j)(2) and (k)(2), and to exempt criminal law enforcement investigatory material in the same system of records from the additional requirements in subsections (c)(4), (e)(2) and (3), (e)(5), (e)(8), and (g) of the Privacy Act, based on 5 U.S.C. 552a(j)(2).

Analysis of Impacts

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

The agency believes that this proposed rule is not a significant rule under Executive Orders 12866, Regulatory Planning and Review; 13563, Improving Regulation and Regulatory Review; or 14094, Modernizing Regulatory Review, because it will not (1) have an annual effect on the economy of $200 million or more; or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with any action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees or loan programs, or the rights and obligations of recipients thereof; or (4) raise legal or policy issues for which centralized review would meaningfully further the President's priorities or the principles set forth in these Executive orders. This proposed rule renders certain Privacy Act requirements inapplicable to certain records (in this case, law enforcement investigatory records) in accordance with criteria established in the Privacy Act based on a showing that agency compliance with those requirements with respect to those records would harm the effectiveness or integrity of the agency function or process for which the records are maintained (in this case, law enforcement investigations). However, the Office of Management and Budget (OMB) has reviewed this regulation under its Privacy Act oversight authority.

II. Review Under the Regulatory Flexibility Act (5 U.S.C. 601–612)

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Because the proposed rule concerns records about individuals, it imposes no duties or obligations on small entities; the agency therefore certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities.

III. Review under the Unfunded Mandates Reform Act of 1995 (Section 202, Pub. L. 104–4)

Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement, which includes an assessment of anticipated costs and benefits, before proposing ''any rule that includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more (adjusted annually for inflation)

in any one year.'' The current inflation-adjusted statutory threshold is approximately $156 million based on the Bureau of Labor Statistics inflation calculator. The agency does not expect that this proposed rule will result in any one-year expenditure that would meet or exceed this amount.

IV. Review Under the Paperwork Reduction Act of 1995 (44 U.S.C. 35–1 et seq.)

This proposed rule does not contain any information collection requirements subject to the Paperwork Reduction Act.

V. Review Under Executive Order 13132, Federalism

This proposed rule will not have any direct effects on States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, no federalism assessment is required.

List of Subjects in 45 CFR Part 5b

Privacy.

For the reasons set out in the preamble, the Department of Health and Human Services proposes to amend 45 CFR part 5b as follows:

PART 5b—PRIVACY ACT REGULATIONS

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

Authority: 5 U.S.C. 301, 5 U.S.C. 552a.

■ 2. Amend § 5b.11 by adding paragraph (b)(2)(ix) to read as follows:

§ 5b.11 Exempt systems.

* * * * *

(b) * * *

(2) * * *

(ix) Pursuant to subsections (j)(2) and (k)(2) of the Act:

(A) *NIH Police Records, 09–25–0224.* (All law enforcement investigatory records are exempt from subsections (c)(3), (d)(1) through (4), (e)(1), (e)(4)(G) through (I), and (f) of the Act; criminal law enforcement investigatory records are exempt from additional subsections (c)(4), (e)(2) and (3), (e)(5), (e)(8), and (g); the access exemption for non-criminal law enforcement investigatory records is limited as provided in subsection (k)(2).)

(B) [Reserved]

* * * * *

Xavier Becerra,

Secretary, Department of Health and Human Services.

[FR Doc. 2024–12469 Filed 6–6–24; 8:45 am]

BILLING CODE 4140–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 4

[PS Docket Nos. 21–346 and 15–80, ET Docket No. 04–35, FR ID 221493]

Petition for Reconsideration of Action in a Rulemaking Proceeding

AGENCY: Federal Communications Commission.

ACTION: Petition for reconsideration.

SUMMARY: In this document, the Public Safety and Homeland Security Bureau provides notice that it is seeking comment on a Petition for Reconsideration of Action in a Rulemaking Proceeding expanding network outage reporting requirements, FCC 24–5, adopted by the Commission on January 25, 2024, by Thomas Goode on behalf of Alliance for Telecommunications Industry Solutions.

DATES: Oppositions to the Petition must be filed within June 24, 2024. Replies to oppositions to the Petition must be filed July 2, 2024.

ADDRESSES: Federal Communications Commission, 445 12th Street SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: For additional information on this proceeding, contact Michael Antonino of the Public Safety and Homeland Security Bureau, Cybersecurity and Communications Reliability Division, at *Michael.Antonino@fcc.gov* or (202) 418–7965.

SUPPLEMENTARY INFORMATION: This is a summary of the Public Safety and Homeland Security Bureau's document, DA 24–463, released May 15, 2024. The full text of the Petition can be accessed online via the Commission's Electronic Comment Filing System at: *https://docs.fcc.gov/public/attachments/DA-24-463A1.pdf.* The Commission will not send a Congressional Review Act (CRA) submission to Congress or the Government Accountability Office pursuant to the CRA, 5 U.S.C. 801(a)(1)(A), because no rules are being adopted by the Commission.

Subject: Resilient Networks; Amendments to Part 4 of the Commission's Rules Concerning Disruptions to Communications; New Part 4 of the Commission's Rules Concerning Disruptions to Communications (PS Docket Nos. 21–346 and 15–80, ET Docket No. 04–35).

Number of Petitions Filed: 1.

Federal Communications Commission.

Debra Jordan,

Chief, Public Safety and Homeland Security Bureau.

[FR Doc. 2024–12472 Filed 6–6–24; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 19, 42, and 52

[FAR Case 2023–001; Docket No. FAR–2023–0001; Sequence No. 1]

RIN 9000–AO50

Federal Acquisition Regulation: Subcontracting to Puerto Rican and Covered Territory Small Businesses

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement regulatory changes made by the Small Business Administration to add incentives for certain United States territories under the Small Business Administration mentor-protégé program.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before August 6, 2024 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2023–001 to the Federal eRulemaking portal at *https://www.regulations.gov* by searching for ''FAR Case 2023–001''. Select the link ''Comment Now'' that corresponds with ''FAR Case 2023–001''. Follow the instructions provided on the ''Comment Now'' screen. Please include your name, company name (if any), and ''FAR Case 2023–001'' on your attached document. If your comment cannot be submitted using *https://www.regulations.gov,* call or email the points of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite ''FAR Case 2023–001'' in all correspondence related to this case. Comments received generally will be posted without change to *https://*

www.regulations.gov, including any personal and/or business confidential information provided. Public comments may be submitted as an individual, as an organization, or anonymously (see frequently asked questions at *https://www.regulations.gov/faq*). To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Carrie Moore, Procurement Analyst, at 571–300–5917, or by email at *carrie.moore@gsa.gov.* For information pertaining to status, publication schedules, or alternate instructions for submitting comments if *https://www.regulations.gov* cannot be used, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAR Case 2023–001.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to amend the FAR to implement regulatory changes made by the Small Business Administration (SBA) in its final rule published on October 16, 2020, at 85 FR 66146, to implement paragraphs (a) and (d) of section 861 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232). Paragraphs (a) and (d) of section 861 amended 15 U.S.C. 632(ee) and 15 U.S.C. 657r(a) to add Puerto Rico to the list of territories from which small businesses are eligible for preferential treatment under the SBA mentor-protégé program.

In addition, this rule implements SBA's final rule published on August 19, 2022, at 87 FR 50925, to implement paragraphs (a) and (c) of section 866 of the NDAA for FY 2021 (Pub. L. 116–283). Paragraphs (a) and (c) of section 866 amended 15 U.S.C. 632(ff) and 15 U.S.C. 657r(a) to add the U.S. Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI) to the list of territories from which small businesses are eligible for preferential treatment under the SBA mentor-protégé programs. Section 866 also defines a ''covered territory business'' as a small business concern that has its principal office located in one of the following: (1) the U.S. Virgin Islands; (2) American Samoa; (3) Guam; and (4) CNMI. Sections 861 and 866 created two new incentives for SBA's small business mentor-protégé Program for mentor-protégé pairs in which the protégé has its principal office located in the Commonwealth of Puerto Rico or is a covered territory business. Specifically, such a mentor that subcontracts to its protégé is able to receive positive consideration for the mentor's past performance evaluation and is able to apply costs incurred for training provided to its protégé to its subcontracting plan goals.

In addition, this rule implements changes SBA made to its regulations to clarify that subcontracting plans are not required from firms owned by an Alaska Native Corporation (ANC) because they are treated as small business concerns according to statute; and to clarify that prime contractors may rely on a subcontractor's representations of its size and socioeconomic status unless the prime contractor has reason to doubt the representations.

II. Discussion and Analysis

The proposed changes to the FAR and the rationale are summarized as follows:

—Modify FAR 19.702, 42.1501, and FAR clause 52.219–9, Small Business Subcontracting Plan, to implement SBA's regulations at 13 CFR 125.9(d)(6) to provide two new incentives for SBA's mentor-protégé program as follows: A mentor that subcontracts to its protégé that has its principal office located in Puerto Rico or that is a covered territory business may receive positive consideration for the mentor's past performance evaluation, and the mentor may apply costs incurred for training provided to its protégé toward the mentor's subcontracting plan goals. This rule also proposes to modify FAR 2.101 to add a definition of covered territory business to implement SBA's regulations at 13 CFR 125.1.

—Modify FAR 19.702 to implement SBA's regulations at 13 CFR 125.3(b)(2) to clarify that subcontracting plans are not required from entities that are treated as small business concerns by statute, such as ANCs.

—Modify FAR 19.703 and FAR clauses 52.219–8, Utilization of Small Business Concerns, and 52.219–9 to implement SBA's regulations at 13 CFR 121.404(e) to clarify that a contractor may rely upon a subcontractor's representations of its size and socioeconomic status unless the contractor has reason to question the representations.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items) or for Commercial Services

This rule amends the clauses at FAR 52.212–5, 52.213–4, 52.219–8, and 52.219–9. However, this rule does not change the applicability of these clauses, which continue to apply to contracts valued at or below the SAT, or on contracts for commercial products, including COTS items, or commercial services. This rule proposes to apply paragraphs (a) and (d) of section 861 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232), and paragraphs (a) and (c) of section 866 of the NDAA for FY 2021 (Pub. L. 116–283), to acquisitions at or below the SAT and to acquisitions for commercial products, including COTS items, and commercial services, as the two new incentives for SBA's mentor-protégé program are available to all contractors in the program, regardless of the dollar value of the contract awarded or the commercial nature of the products and services procured.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to acquisitions at or below the SAT. Section 1905 generally limits the applicability of new laws when agencies are making acquisitions at or below the SAT, but provides that such acquisitions will not be exempt from a provision of law under certain circumstances, including when the Federal Acquisition Regulatory Council (FAR Council) makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts and subcontracts in amounts not greater than the SAT from the provision of law. The FAR Council intends to make a determination to apply this statute to acquisitions at or below the SAT.

B. Applicability to Contracts for the Acquisition of Commercial Products and Commercial Services, Including Commercially Available Off-the-Shelf (COTS) Items

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial products and commercial services, and is intended to limit the applicability of laws to contracts for the acquisition of commercial products and commercial services. Section 1906 provides that if

the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial contracts, the provision of law will apply to contracts for the acquisition of commercial products and commercial services.

41 U.S.C. 1907 states that acquisitions of COTS items will be exempt from certain provisions of law unless the Administrator for Federal Procurement Policy makes a written determination and finds that it would not be in the best interest of the Federal Government to exempt contracts for the procurement of COTS items.

The FAR Council intends to make a determination to apply this statute to acquisitions for commercial products and commercial services. The Administrator for Federal Procurement Policy intends to make a determination to apply this statute to acquisitions for COTS items.

IV. Expected Impact of the Rule

This proposed rule is expected to benefit mentors with an SBA-approved mentor-protégé agreement that subcontract to covered territory small businesses and small businesses that have their principal office located in the Commonwealth of Puerto Rico. These benefits are expected to extend to covered territory small businesses and small businesses located in the Commonwealth of Puerto Rico, as mentors may be incentivized to enter into SBA-approved mentor-protégé agreements with such small businesses and issue subcontracts to them.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 (as amended by E.O. 14094) and 13563 direct agencies to assess costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612, because this rule provides incentives to mentors with SBA-approved mentor-protégé agreements that subcontract to its protégé that has its primary office located in the Commonwealth of Puerto Rico or is a covered territory small business; therefore, the number of small entities that may be impacted is limited. However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement regulatory changes made by the Small Business Administration (SBA) in its final rule published on October 16, 2020, at 85 FR 66146, to implement paragraphs (a) and (d) of section 861 of the John S. McCain National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2019 (Pub. L. 115–232). Paragraphs (a) and (d) of section 861 amended 15 U.S.C. 632(ee) and 15 U.S.C. 657r(a) to add Puerto Rico to the list of territories from which small businesses are eligible for preferential treatment under the SBA mentor-protégé program. In addition, this rule implements SBA's final rule published on August 19, 2022, at 87 FR 50925 to implement paragraphs (a) and (c) of section 866 of the NDAA for FY 2021 (Pub. L. 116–283). Paragraphs (a) and (c) of section 866 amended 15 U.S.C. 632(ff) and 15 U.S.C. 657r(a) to add the U.S. Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands (CNMI) to the list of territories from which small businesses are eligible for preferential treatment under the SBA mentor-protégé programs. Section 866 also defines a ''covered territory business'' as a small business concern that has its principal office located in one of the following: (1) the U.S. Virgin Islands; (2) American Samoa; (3) Guam; and (4) CNMI. Sections 861 and 866 created two new incentives for SBA's small business mentor-protégé program for mentor-protégé pairs in which the protégé has its principal office located in the Commonwealth of Puerto Rico or is a covered territory business. Specifically, such a mentor that subcontracts to its protégé is able to receive positive consideration for the mentor's past performance evaluation and is able to apply costs incurred for training provided to its protégé to its subcontracting plan goals.

The objective of this rule is to implement SBA's final rules published on October 16, 2020, at 85 FR 66146, and on August 19, 2022, at 87 FR 50925, which created two new incentives for SBA's small business mentor-protégé program for mentor-protégé pairs in which the protégé has its principal office located in the Commonwealth of Puerto Rico or is a covered territory business. Such a mentor that subcontracts to its protégé is able to receive positive consideration for the mentor's past performance evaluation and is able to apply the costs incurred for training provided to its protégé to its subcontracting plan goals. Promulgation of the FAR is authorized by 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113. The legal basis for this rule is as stated in the preceding paragraph.

This proposed rule will impact small businesses whose principal office is located in the Commonwealth of Puerto Rico or that are covered territory businesses that enter into SBA-approved mentor-protégé agreements. In its final rule, SBA identified 219 small businesses across the covered territories that had contracted with the Federal Government in FY 2021. In addition and according to the System for Award Management, there are 4,483 small businesses in the Commonwealth of Puerto Rico that are currently engaged in business with the Government. Although a total of 4,702 small businesses were identified, the number of small entities that may be impacted by this proposed rule cannot be estimated more precisely as the number of entities that may enter into SBA-approved mentor-protégé agreements is unknown.

The proposed rule does not impose any new reporting, recordkeeping, or other compliance requirements for small entities.

The proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternative approaches to the proposed rule.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 610 (FAR Case 2023–001), in correspondence.

VII. Paperwork Reduction Act

This rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501–3521).

List of Subjects in 48 CFR Parts 2, 19, 42, and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 2, 19, 42, and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 2, 19, 42, and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 2—DEFINITIONS OF WORDS AND TERMS

■ 2. Amend section 2.101 by adding in alphabetic order the definition ''Covered territory business'' to read as follows:

2.101 Definitions.

* * * * *

Covered territory business, as defined at 15 U.S.C. 632(ff) and 13 CFR 125.1, means a small business concern that has its principal office located in the United States Virgin Islands, American Samoa, Guam, or the Commonwealth of the Northern Mariana Islands.

* * * * *

PART 19—SMALL BUSINESS PROGRAMS

■ 3. Amend section 19.702 by revising paragraph (b)(1) and adding paragraph (e) to read as follows:

19.702 Statutory requirements.

* * * * *

(b) * * *

(1) From small business concerns, including entities that are treated as small business concerns by statute for certain purposes (*e.g.,* ANCs, see 43 U.S.C. 1626(e) and 13 CFR 125.3(b)(2));

* * * * *

(e) In accordance with 15 U.S.C. 657r(a), a mentor with an SBA-approved mentor-protégé agreement (see 13 CFR 125.9) that provides a subcontract to its protégé may apply the costs incurred for training it provides to its protégé toward its subcontracting plan goals, provided that protégé is a covered territory business or that protégé has its principal office located in the Commonwealth of Puerto Rico.

■ 4. Amend section 19.703 by revising paragraphs (a)(2)(i) and (a)(2)(ii) introductory text to read as follows:

19.703 Eligibility requirements for participating in the program.

(a) * * *

(2)(i) Unless the prime contractor has reason to question the representation, it may accept a subcontractor's written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, or a women-owned small business, if the subcontractor represents that the size and socioeconomic status representation with its offer are current, accurate, and complete as of the date of the offer for the subcontracts; or

(ii) Unless the prime contractor has reason to question the representation, it may accept a subcontractor's representation of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, or a women-owned small business in the System for Award Management (SAM) if—

* * * * *

PART 42—CONTRACT ADMINISTRATION AND AUDIT SERVICES

■ 5. Amend section 42.1501 by revising paragraph (a)(5) to read as follows:

42.1501 General.

(a) * * *

(5) Complying with the requirements of the small business subcontracting plan (see 19.705–7(b)), including favorable consideration of a mentor with an SBA-approved mentor-protégé agreement (see 13 CFR 125.9) that subcontracts to its protégé, and that protégé is a covered territory business or that protégé's principal office is located in the Commonwealth of Puerto Rico (see 15 U.S.C. 657r(a));

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 6. Amend section 52.212–5 by—

■ a. Revising the date of the clause;

■ b. Removing from paragraph (b)(20) ''(FEB 2024)'' and adding ''(DATE)'' in its place;

■ c. Removing from paragraphs (b)(21)(i) and (v) ''(SEP 2023)'' and adding ''(DATE)'' in their places, respectively;

■ d. In Alternate II:

■ i. Revising the date of the Alternate; and

■ ii. Removing from paragraph (e)(1)(ii)(H) ''(FEB 2024)'' and adding ''(DATE)'' in its place.

The revisions read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services (DATE)

* * * * *

Alternate II (DATE). * * *

* * * * *

■ 7. Amend section 52.213–4 by—

■ a. Revising the date of the clause; and

■ b. Removing from paragraph (a)(2)(vii) ''(FEB 2024)'' and adding ''(DATE)'' in its place.

The revision reads as follows:

52.213–4 Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services).

* * * * *

Terms and Conditions—Simplified Acquisitions (Other Than Commercial Products and Commercial Services) (DATE)

* * * * *

■ 8. Amend section 52.219–8 by revising the date of the clause and paragraphs (e)(1) and (2) introductory text to read as follows:

52.219–8 Utilization of Small Business Concerns.

* * * * *

Utilization of Small Business Concerns (DATE)

* * * * *

(e)(1) Unless the Contractor has reason to question the representation, it may accept a subcontractor's written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(2) Unless the Contractor has reason to question the representation, it may accept a subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small

business in the System for Award Management (SAM) if—

* * * * *

■ 9. Amend section 52.219–9 by—
■ a. Revising the date of the clause;
■ b. Revising paragraphs (c)(2)(i), (c)(2)(ii) introductory text, and (d)(1) introductory text;
■ c. In Alternate IV:
■ i. Revising the date of the Alternate; and
■ ii. Revising paragraphs (c)(2)(i), (c)(2)(ii) introductory text, (d)(1) introductory text, and (d)(15).

The revisions read as follows:

52.219–9 Small Business Subcontracting Plan.

* * * * *

Small Business Subcontracting Plan (DATE)

* * * * *

(c) * * *

(2)(i) Unless the Contractor has reason to question the representations, it may accept a subcontractor's written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(ii) Unless the Contractor has reason to question the representations, it may accept a subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if—

* * * * *

(d) * * *

(1) Separate goals, expressed in terms of total dollars subcontracted, and as a percentage of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. For individual subcontracting plans, and if required by the Contracting Officer, goals shall also be expressed in terms of percentage of total contract dollars, in addition to the goals expressed as a percentage of total subcontract dollars. The Offeror shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 15 U.S.C. 657r(a), an Offeror that is a mentor with an SBA-approved mentor-protégé agreement (see 13 CFR 125.9) that provides a subcontract to its protégé may apply the costs incurred for training it provides to its protégé toward its subcontracting plan goals, provided that protégé is a covered territory business or that protégé has its principal office located in the Commonwealth of Puerto Rico. In accordance with 43 U.S.C. 1626—

* * * * *

(15) Assurances that the Contractor will pay its small business subcontractors on time and in accordance with the terms and conditions of the underlying subcontract, and notify the contracting officer when the prime contractor makes either a reduced or an untimely payment to a small business subcontractor (see 52.242–5).

* * * * *

Alternate IV (DATE). * * *

(c) * * *

(2)(i) Unless the Contractor has reason to question the representations, it may accept a subcontractor's written representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business if the subcontractor represents that the size and socioeconomic status representations with its offer are current, accurate, and complete as of the date of the offer for the subcontract.

(ii) Unless the Contractor has reason to question the representations, it may accept a subcontractor's representations of its size and socioeconomic status as a small business, small disadvantaged business, veteran-owned small business, service-disabled veteran-owned small business, or a women-owned small business in the System for Award Management (SAM) if—

* * * * *

(d) * * *

(1) Separate goals, expressed in terms of total dollars subcontracted and as a percentage of total planned subcontracting dollars, for the use of small business, veteran-owned small business, service-disabled veteran-owned small business, HUBZone small business, small disadvantaged business, and women-owned small business concerns as subcontractors. For individual subcontracting plans, and if required by the Contracting Officer, goals shall also be expressed in terms of percentage of total contract dollars, in addition to the goals expressed as a percentage of total subcontract dollars. The Contractor shall include all subcontracts that contribute to contract performance, and may include a proportionate share of products and services that are normally allocated as indirect costs. In accordance with 15 U.S.C. 657r(a), a Contractor that is a mentor with an SBA-approved mentor-protégé agreement (see 13 CFR 125.9) that provides a subcontract to its protégé may apply the costs incurred for training it provides to its protégé toward its subcontracting plan goals, provided that protégé is a covered territory business or that protégé has its principal office located in the Commonwealth of Puerto Rico. In accordance with 43 U.S.C. 1626—

* * * * *

■ 10. Amend section 52.244–6 by—
■ a. Revising the date of the clause; and
■ b. Removing from paragraph (c)(1)(x) ''(FEB 2024)'' and adding ''(DATE)'' in its place.

The revision reads as follows:

52.244–6 Subcontracts for Commercial Products and Commercial Services.

* * * * *

Subcontracts for Commercial Products and Commercial Services (DATE)

* * * * *

[FR Doc. 2024–12501 Filed 6–6–24; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 19 and 52

[FAR Case 2023–013; Docket No. FAR–2023–0013; Sequence No. 1]

RIN 9000–AO36

Federal Acquisition Regulation: HUBZone Program

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA.

ACTION: Proposed rule.

SUMMARY: DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement a final rule published by the Small Business Administration (SBA) to implement a section of the National

Defense Authorization Act for Fiscal Year 2022.

DATES: Interested parties should submit written comments to the Regulatory Secretariat Division at the address shown below on or before August 6, 2024 to be considered in the formation of the final rule.

ADDRESSES: Submit comments in response to FAR Case 2023–013 to the Federal eRulemaking portal at *https://www.regulations.gov* by searching for ''FAR Case 2023–013''. Select the link ''Comment Now'' that corresponds with ''FAR Case 2023–013''. Follow the instructions provided on the ''Comment Now'' screen. Please include your name, company name (if any), and ''FAR Case 2023–013'' on your attached document. If your comment cannot be submitted using *https://www.regulations.gov,* call or email the point of contact in the **FOR FURTHER INFORMATION CONTACT** section of this document for alternate instructions.

Instructions: Please submit comments only and cite ''FAR Case 2023–013'' in all correspondence related to this case. Comments received generally will be posted without change to *https://www.regulations.gov,* including any personal and/or business confidential information provided. Public comments may be submitted as an individual, as an organization, or anonymously (see frequently asked questions at *https://www.regulations.gov/faq*). To confirm receipt of your comment(s), please check *https://www.regulations.gov,* approximately two to three days after submission to verify posting.

FOR FURTHER INFORMATION CONTACT: For clarification of content, contact Ms. Carrie Moore, Procurement Analyst, at 571–300–5917, or by email at *carrie.moore@gsa.gov.* For information pertaining to status, publication schedules, or alternate instructions for submitting comments if *https://www.regulations.gov* cannot be used, contact the Regulatory Secretariat Division at 202–501–4755 or *GSARegSec@gsa.gov.* Please cite FAR Case 2023–013.

SUPPLEMENTARY INFORMATION:

I. Background

DoD, GSA, and NASA are proposing to amend the FAR to implement regulatory changes made by the SBA in its final rule published on April 10, 2023 (88 FR 21086) to implement section 864 of the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2022 (Pub. L. 117–81). Section 864 authorizes the SBA Office of Hearings and Appeals (OHA) to decide all appeals from formal status protest determinations in connection with the status of a Historically Underutilized Business Zone (HUBZone) concern. Prior to section 864 and SBA's final rule, appeals of HUBZone status determinations were decided by the SBA's Associate Administrator, Office of Government Contracting and Business Development (AA/GC&BD).

This rulemaking proposes to implement SBA's final rule, dated April 10, 2023, to specify in the FAR that OHA is responsible for deciding all appeals of status protest determinations for a HUBZone concern, identify the information that must be included in an appeal of a HUBZone status protest determination, and remove the requirement for a HUBZone concern to represent its status in the System for Award Management (SAM), as it is no longer necessary since HUBZone concerns are certified by the SBA.

II. Discussion and Analysis

The proposed changes to the FAR and the rationale are summarized as follows:

—Update FAR 19.306 with the title of the office that decides HUBZone protests, and the procedures for appealing a HUBZone status protest decision to align with SBA's regulations at 13 CFR 126.800 through 126.805 and 13 CFR 134.1301 through 134.1316; and

—Modify FAR provisions 52.212–3, Offeror Representations and Certifications—Commercial Products and Commercial Services, and 52.219–1, Small Business Program Representations, and FAR clause 52.219–28, Post Award Small Business Program Representation, to remove the existing HUBZone small business concern representation, since HUBZone small business concerns must be certified by the SBA in order to be eligible for HUBZone sole-source awards and awards set aside for HUBZone concerns. The representation is currently in these provisions and clauses as a mechanism for a HUBZone concern to indicate that it will attempt to maintain an employment rate of HUBZone residents of 35 percent of its employees during performance of a HUBZone contract. This rulemaking proposes to add this statement to FAR clause 52.219–3, Notice of HUBZone Set-Aside or Sole-Source Award, to include the requirement for HUBZone concerns to attempt to maintain the required employment rate of HUBZone employees during performance of the contract as a term and condition of the contract. HUBZone joint ventures will continue to be required to represent their status as the SBA does not certify HUBZone joint ventures. The definition of HUBZone small business concern in FAR clause 52.219–3 is also updated to conform with the definition of that same term at FAR 2.101.

III. Applicability to Contracts at or Below the Simplified Acquisition Threshold (SAT) and for Commercial Products (Including Commercially Available Off-the-Shelf (COTS) Items) or for Commercial Services

This rulemaking proposes to amend the following provisions and clauses at FAR: 52.212–3, Offeror Representations and Certifications—Commercial Products and Commercial Services; 52.212–5, Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services; 52.219–1, Small Business Program Representations; 52.219–3, Notice of HUBZone Set-Aside or Sole-Source Award, and 52.219–28, Post-Award Small Business Program Rerepresentation. However, this rulemaking does not change the applicability of these provisions and clauses, which continue to apply to contracts valued at or below the SAT, and contracts for commercial products, including COTS items, or commercial services.

This rulemaking proposes to apply section 864 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117–81) to acquisitions at or below the SAT and to acquisitions for commercial products, including COTS items, and commercial services, as OHA has the authority, and is the only entity, to decide all HUBZone status protest appeals. As a result, the section must be applied to acquisitions of these types to ensure that all concerns that can appeal a HUBZone status protest decision, regardless of the subject contract's dollar value or commerciality, have a process for doing so.

A. Applicability to Contracts at or Below the Simplified Acquisition Threshold

41 U.S.C. 1905 governs the applicability of laws to acquisitions at or below the SAT. Section 1905 generally limits the applicability of new laws when agencies are making acquisitions at or below the SAT, but provides that such acquisitions will not be exempt from a provision of law under certain circumstances, including when the Federal Acquisition Regulatory Council (FAR Council) makes a written determination and finding that it would not be in the best interest of the Federal Government to exempt contracts and subcontracts in amounts not greater than the SAT from

the provision of law. The FAR Council intends to make a determination to apply this statute to acquisitions at or below the SAT.

B. Applicability to Contracts for the Acquisition of Commercial Products and Commercial Services, Including Commercially Available Off-the-Shelf (COTS) Items

41 U.S.C. 1906 governs the applicability of laws to contracts for the acquisition of commercial products and commercial services and is intended to limit the applicability of laws to contracts for the acquisition of commercial products and commercial services. Section 1906 provides that if the FAR Council makes a written determination that it is not in the best interest of the Federal Government to exempt commercial products and commercial services contracts, the provision of law will apply to contracts for the acquisition of commercial products and commercial services.

41 U.S.C. 1907 states that acquisitions of COTS items will be exempt from certain provisions of law unless the Administrator for Federal Procurement Policy makes a written determination and finds that it would not be in the best interest of the Federal Government to exempt contracts for the procurement of COTS items.

The FAR Council intends to make a determination to apply this statute to acquisitions for commercial products and commercial services. The Administrator for Federal Procurement Policy intends to make a determination to apply this statute to acquisitions for COTS items.

IV. Expected Impact of the Rule

This proposed rule is expected to impact Government and contractor operations.

As a result of this proposed rule, interested parties seeking to appeal a HUBZone status protest decision will be required to send the appeal to OHA in lieu of the Associate Administrator, Office of Government Contracting and Business Development. This change in decision authority does not add any burden to or create any savings for the Government or contractors. However, contracting officers, contractors, offerors, and the SBA may save some time in submitting and/or processing these appeal requests due to the clear specification of information that OHA requires in a request for appeal of a HUBZone status protest decision. Contracting officers can reference the information in the FAR text to submit an appeal or advise a protester or protested concern what information should be included in the appeal request.

In addition, HUBZone small business concerns will no longer be required to represent their status in SAM since HUBZone concerns are required to be certified by the SBA. This representation was maintained to provide a mechanism for a HUBZone concern to represent that it will comply with the employment requirements at 13 CFR 126.200(e)(1); however, an alternative approach was identified, which precludes the need for a representation and reduces the burden on HUBZone concerns. Specifically, in lieu of a representation, HUBZone concerns will be able to agree to attempt to meet the employment requirements at 13 CFR 126.200(e)(1) by submission of an offer and execution of a contract.

V. Executive Orders 12866 and 13563

Executive Orders (E.O.s) 12866 and 13563 (as amended by E.O. 14094) direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated September 30, 1993.

VI. Regulatory Flexibility Act

DoD, GSA, and NASA do not expect this proposed rule, if finalized, to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612, because this proposed rule merely changes the office that decides HUBZone status protest appeals, specifies the information OHA requires in a request to appeal a HUBZone status protest determination, removes the requirement for a HUBZone concern to represent its status in SAM, and it does not impose any additional compliance burden on applicable small business entities. However, an Initial Regulatory Flexibility Analysis (IRFA) has been performed and is summarized as follows:

DoD, GSA, and NASA are proposing to amend the Federal Acquisition Regulation (FAR) to implement regulatory changes made by the Small Business Administration (SBA) in its final rule published on April 10, 2023, at 88 FR 21086, to implement section 864 of the National Defense Authorization Act for Fiscal Year 2022 (Pub. L. 117–81). This rule also proposes to remove the representation for HUBZone small business concerns, as it is unnecessary since HUBZone concerns must be certified by SBA.

The objective of this rule is to revise the procedures for appealing decisions of HUBZone status protest determinations to align with SBA's regulations. This rule also removes the representation for HUBZone small business concerns as it is unnecessary since HUBZone concerns are required to be certified by SBA. Promulgation of the FAR is authorized by 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113. The legal basis for this rule is as stated in the preceding paragraph.

This proposed rule will impact HUBZone small business concerns as they will no longer be required to represent their status in the System for Award Management (SAM). As indicated in SBA's final rule, the change to the HUBZone protest appeals process is procedural in nature and will not impact small entities.

According to the Dynamic Small Business Search, there are 4,465 HUBZone small business concerns certified by SBA; therefore, there are 4,465 HUBZone small business concerns that are currently required to represent their status in SAM. However, the number of concerns that will submit applications to the SBA for HUBZone certification is unknown; therefore, the number of small business entities impacted by this rule may be greater than or less than the 4,465 HUBZone concerns currently certified by SBA.

The proposed rule does not impose any new reporting, recordkeeping, or other compliance requirements for small entities.

The proposed rule does not duplicate, overlap, or conflict with any other Federal rules.

There are no known significant alternative approaches to the proposed rule that would accomplish the stated objectives of the applicable statute and that would minimize any significant economic impact of the proposed rule on small entities as the economic impact is not anticipated to be significant.

The Regulatory Secretariat Division has submitted a copy of the IRFA to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the IRFA may be obtained from the Regulatory Secretariat Division. DoD, GSA, and NASA invite comments from small business concerns and other interested parties on the expected impact of this proposed rule on small entities.

DoD, GSA, and NASA will also consider comments from small entities concerning the existing regulations in subparts affected by the proposed rule in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5

U.S.C. 610 (FAR Case 2023–013), in correspondence.

VII. Paperwork Reduction Act

This proposed rule does not contain any new information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501–3521). This proposed rule does remove one HUBZone representation from FAR provisions 52.212–3, Offeror Representations and Certifications—Commercial Products, and Commercial Services; and 52.219–1, Small Business Program Representations; and FAR clause 52.219–28, Post-Award Small Business Program Rerepresentation, which are covered under two existing information collections approved by OMB.

OMB Control number 9000–0189, Certain Federal Acquisition Regulation Part 4 Requirements, addresses the burden for FAR provision 52.212–3 and FAR provision 52.204–7, System for Award Management, both of which require offerors on Federal contracts to register in SAM. The representations in FAR provision 52.219–1 are implemented in SAM and either FAR provision 52.204–7 or 52.212–3 is included in all solicitations. Therefore, by registering in SAM, as required by either FAR provision 52.204–7 or 52.212–3, an offeror will make the representations included in FAR provision 52.219–1. As a part of SAM registration, offerors complete approximately 35 representations and certifications, including the HUBZone representation to be removed. The burden for FAR provisions 52.204–7 and 52.212–3 is based on an estimate of the time it would take a new offeror to fill in all of the information needed to register in SAM, or an average of 3 hours in total.

OMB Control number 9000–0163, Small Business Size Rerepresentation, addresses the burden for FAR clause 52.219–28, which requires contractors to rerepresent their size and socioeconomic status in the SAM at certain times. The clause contains eight representations that must be updated in SAM, including the HUBZone representation to be removed. The burden for this clause is based on an estimate of the time it will take a contractor to log into SAM, verify or update their responses to these 8 representations, and email the contracting officer when complete, or an average of 30 minutes in total.

Verifying or updating the HUBZone representation takes only minutes and accounts for a very small portion of the overall burden of the affected provisions and clause. It is reasonable to assume that, even after removing the HUBZone representation, the average estimated burden per SAM registration or rerepresentation is still accurate. For these reasons, OMB Control numbers 9000–0163 and 9000–0189 were not revised to account for the removal of the HUBZone representation.

List of Subjects in 48 CFR Parts 19 and 52

Government procurement.

William F. Clark,

Director, Office of Government-wide Acquisition Policy, Office of Acquisition Policy, Office of Government-wide Policy.

Therefore, DoD, GSA, and NASA propose amending 48 CFR parts 19 and 52 as set forth below:

■ 1. The authority citation for 48 CFR parts 19 and 52 continues to read as follows:

Authority: 40 U.S.C. 121(c); 10 U.S.C. chapter 4 and 10 U.S.C. chapter 137 legacy provisions (see 10 U.S.C. 3016); and 51 U.S.C. 20113.

PART 19—SMALL BUSINESS PROGRAMS

■ 2. Amend section 19.306 by—
■ a. Adding a heading to paragraph (b);
■ b. Revising paragraph (b)(2);
■ c. Adding a heading to paragraphs (c), (d), (f) and (g);
■ d. Revising paragraph (i) introductory text, (i)(1), (i)(2),(i)(3) introductory text, (i)(3)(iii), and (i)(4);
■ e. Redesignate paragraphs (i)(5) and (i)(6) as paragraphs (i)(6) and (i)(7);
■ f. Adding a new paragraph (i)(5);
■ g. Revising newly redesignated paragraphs (i)(6) introductory text, (i)(6)(ii), and (iii); and
■ h. Revising paragraphs (j), (k), (l), and (m).

The revisions and additions read as follows:

19.306 Protesting a firm's status as a HUBZone small business concern.

* * * * *

(b) *General.* * * *

(2) The Director of SBA's Office of HUBZone (D/HUB) will determine whether the concern has certified HUBZone status. If SBA upholds the protest, SBA will remove the concern's HUBZone status in the Dynamic Small Business Search (DSBS). SBA's protest regulations are found in subpart H ''Protests'' at 13 CFR 126.800 through 126.805 and at subpart M ''Rules of Practice for Appeals of Protest Determinations Regarding the Status of a Concern as a Certified HUBZone Small Business Concern'' at 13 CFR 134.1301 through 134.1316.

(c) *Size status protests.* * * *

(d) *Protest format.* * * *

* * * * *

(f) *Transmittal.* * * *

(g) *Notice.* * * *

* * * * *

(i) *After SBA decision.* The SBA will notify the contracting officer, the protester, and the protested concern of its determination. The determination is effective immediately and is final unless overturned on appeal by SBA's Office of Hearings and Appeals (OHA) pursuant to 13 CFR 134.1301 through 13 CFR 134.1316.

(1) If the contracting officer has withheld contract award and the D/HUB has determined that the protested concern is an eligible HUBZone or dismissed all protests against the protested concern, the contracting officer may award the contract to the protested concern. If OHA subsequently overturns the initial determination or dismissal, the contracting officer may apply the OHA decision to the procurement in question.

(2) If the contracting officer has withheld contract award and the (D/HUB) has sustained the protest and determined that the protested concern is ineligible, and a timely OHA appeal has not been filed, then the contracting officer shall not award the contract to the protested concern.

(3) If the contracting officer has made a written determination in accordance with paragraph (h)(1)(ii)(B) of this section, awarded the contract, and the D/HUB ruling sustaining the protest is received after award, and a timely OHA appeal has not been filed, then—

* * * * *

(iii) After SBA removes the concern's designation as a certified HUBZone small business concern in DSBS, the contracting officer shall update the Federal Procurement Data System (FPDS) to reflect the final decision of the D/HUB.

(4) If the contracting officer has made a written determination in accordance with paragraph (h)(1)(ii)(B) of this section, awarded the contract, the D/HUB has sustained the protest and determined that the concern is not a HUBZone small business, and a timely OHA appeal has been filed, then the contracting officer shall consider whether performance can be suspended until an OHA decision is rendered.

(5) If the contracting officer has withheld contract award, the D/HUB has sustained the protest and determined that the protested concern is ineligible, and a timely OHA appeal has been filed, the contracting officer shall either—

(i) Withhold award until an OHA decision is rendered; or

(ii) Award the contract, if the contracting officer determines in writing that there is an immediate need to award the contract and that waiting for the OHA decision will be disadvantageous to the Government.

(6) If OHA affirms the decision of the D/HUB, finding the protested concern is ineligible, and contract award has occurred—

* * * * *

(ii) SBA will remove the concern's designation as a certified HUBZone small business concern in DSBS. The concern is not permitted to submit an offer as a HUBZone small business concern until SBA issues a decision that the ineligibility is resolved or OHA finds the concern is eligible on appeal; and

(iii) After SBA removes the concern's designation as a certified HUBZone small business concern in DSBS, the contracting officer shall update FPDS to reflect the OHA decision.

* * * * *

(j) *Appeals of HUBZone status determinations.* The protested HUBZone small business concern, the protester, or the contracting officer may file appeals of protest determinations with OHA. OHA must receive the appeal no later than 10 business days after the date of receipt of the protest determination. OHA will dismiss any untimely appeal.

(k) *The appeal must be in writing.* The appeal must include the following information—

(1) A copy of the protest determination;

(2) The date the appellant received the protest determination;

(3) A statement that the petitioner is appealing a HUBZone status protest determination issued by the D/HUB;

(4) A full and specific statement that addresses why the HUBZone status protest determination is alleged to be based on a clear error of fact or law, together with information supporting such allegation;

(5) The solicitation number, the contract number (if applicable), and the name, address, and telephone number of the contracting officer;

(6) The name, address, telephone number, facsimile number (if applicable), and signature of the appellant or the appellant's attorney; and

(7) A signed certificate of service attached to the appeal in accordance with 13 CFR 134.204.

(l) *Notice.* (1) The party appealing the decision must provide notice of the appeal to—

(i) The contracting officer;

(ii) The protested HUBZone small business concern or the original protester, as appropriate;

(iii) The D/HUB at *hzappeals@sba.gov;* and

(iv) The SBA Office of General Counsel, Associate General Counsel for Procurement Law at *OPLservice@sba.gov.*

(2) OHA will dismiss an appeal that does not meet all the requirements of this section. OHA will not consider new evidence in appeals from HUBZone status protest determinations.

(m) *Decision.* OHA will issue a decision in accordance with the timelines specified at 13 CFR 134.1310 through 134.1314. OHA will provide a copy of the decision to the contracting officer, the protester, and the protested HUBZone small business concern. The SBA decision, if received before award, will apply to the pending acquisition. The OHA decision is the final decision.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

■ 3. Amend section 52.212–3 by revising the date of the provision and paragraph (c)(11) to read as follows:

52.212–3 Offeror Representations and Certifications—Commercial Products and Commercial Services.

* * * * *

Offeror Representations and Certifications—Commercial Products and Commercial Services (DATE)

(c) * * *

(11) *HUBZone small business concern.* [*Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.*] The offeror represents, as part of its offer, that it □ is, □ is not a HUBZone joint venture that complies with the requirements of 13 CFR 126.616(a) through (c). [*The offeror shall enter the name and unique entity identifier of each party to the joint venture:* _____.]

* * * * *

■ 4. Amend section 52.212–5 by revising the date of the clause and paragraphs (b)(15) and (b)(26) to read as follows:

52.212–5 Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services.

* * * * *

Contract Terms and Conditions Required To Implement Statutes or Executive Orders—Commercial Products and Commercial Services (DATE)

* * * * *

(b) * * *

__ (15) 52.219–3, Notice of HUBZone Set-Aside or Sole-Source Award (DATE) (15 U.S.C. 657a).

* * * * *

__ (26) (i) 52.219–28, Post-Award Small Business Program Rerepresentation (DATE) (15 U.S.C. 632(a)(2)).

* * * * *

■ 5. Amend section 52.219–1 by revising the date of the provision and paragraph (c)(9) to read as follows:

52.219–1 Small Business Program Representations.

* * * * *

Small Business Program Representations (DATE)

* * * * *

(c) * * *

(9) *HUBZone small business concern.* [*Complete only if the offeror represented itself as a small business concern in paragraph (c)(1) of this provision.*] The offeror represents, as part of its offer, that it □ is, □ is not a HUBZone joint venture that complies with the requirements of 13 CFR 126.616(a) through (c). [*The offeror shall enter the name and unique entity identifier of each party to the joint venture:* ____.]

* * * * *

■ 6. Amend section 52.219–3 by—

■ a. Revising the date of the clause and paragraph (a); and

■ b. Adding a new paragraph (f).

The revision and addition read as follows:

52.219–3 Notice of HUBZone Set-Aside or Sole-Source Award.

* * * * *

Notice of HUBZone Set-Aside or Sole-Source Award (DATE)

(a) *Definition.* ''HUBZone small business concern,'' as used in this clause, means a small business concern that meets the requirements described in 13 CFR 126.200, is certified by the Small Business Administration (SBA) and designated by the SBA as a HUBZone small business concern in the Dynamic Small Business Search (DSBS) (13 CFR 126.103). The SBA designation also appears in the System for Award Management.

* * * * *

(f) The Contractor agrees that it will attempt to maintain an employment rate

of HUBZone residents of 35 percent of its employees during performance of a HUBZone contract pursuant to 13 CFR 126.200(e)(1).

■ 7. Amend section 52.219–28 by revising the date of the clause and paragraph (h)(9) to read as follows:

52.219–28 Post-Award Small Business Program Rerepresentation.

* * * * *

Post-Award Small Business Program Rerepresentation (DATE)

* * * * *

(h) * * *

(9) [*Complete only if the Contractor represented itself as a small business concern in paragraph (h)(1) of this clause.*] The Contractor represents that it □ is, □ is not a HUBZone joint venture that complies with the requirements of 13 CFR part 126. [*The Contractor shall enter the names of each of the HUBZone small business concerns participating in the HUBZone joint venture:* _____.]

[*Contractor to sign and date and insert authorized signer's name and title.*]

* * * * *

[FR Doc. 2024–12570 Filed 6–6–24; 8:45 am]

BILLING CODE 6820–EP–P

Notices

Federal Register
Vol. 89, No. 111
Friday, June 7, 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

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Information Collection Generic Clearance Request for USAID Workforce and Organizational Surveys

AGENCY: Agency for International Development (USAID).

ACTION: Notice of Information Collection; request for comment.

SUMMARY: USAID proposes a generic clearance to collect feedback and conduct research, monitoring and evaluations of programs and policies through surveys, interviews, and focus groups to understand effectiveness of programs and policies and to discern how programs are affected by crises and other unexpected changes in context. This will help the Agency make better decisions to improve the effectiveness of programs and achieve development and foreign assistance objectives through activities pursuant to Foreign Assistance Act, including under rapidly changing conditions. This will also help safeguard U.S. National Security interests and ensure accountability to U.S. taxpayers. Information collected from USAID partners, stakeholders and program participants is a valuable resource to ensure the Agency programs and operations remain safe, relevant, efficient and effective.

DATES: All comments should be submitted within 60 calendar days from the date of this publication.

ADDRESSES: Comments submitted in response to this notice should be submitted to Email: *eroen@usaid.gov.*

FOR FURTHER INFORMATION CONTACT: Elizabeth Roen, USAID Bureau for Planning, Learning and Resource Management, telephone 202–712–1493, or via email at *eroen@usaid.gov.*

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)), USAID is providing the general public and Federal agencies with an opportunity to comment on the proposed collection of information. USAID is requesting a general clearance to collect feedback and conduct research, monitoring and evaluations of programs and policies through surveys, interviews, and focus groups to understand effectiveness of programs and policies and to discern how programs are affected by crises and other unexpected changes in context. USAID conducts programs outside of the United States and will collect data from approximately 450,000 respondents per year, made up primarily of foreign nationals participating in USAID programs, other stakeholders local to the programs, and federal contractors and grantees implementing the programs. The collection of personally identifiable information will be kept to the minimum. The total estimated number of annual burden hours is 225,000 hours.

OMB Control Number: TBD.

Elizabeth Roen,

Deputy Director, Office of Learning, Evaluation and Research.

[FR Doc. 2024–12478 Filed 6–6–24; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF AGRICULTURE

Forest Service

Proposed New Recreation Fee Sites

AGENCY: Forest Service, Agriculture (USDA).

ACTION: Notice.

SUMMARY: The National Forests in Alabama are proposing to establish several new recreation fee sites. Recreation fee revenues collected at the new recreation fee sites would be used for operation, maintenance, and improvement of the sites. An analysis of nearby recreation fee sites with similar amenities shows the recreation fees that would be charged at the new recreation fee sites are reasonable and typical of similar recreation fee sites in the area.

DATES: If approved, the new recreation fees would be implemented no earlier than six months following the publication of this notice in the **Federal Register**.

ADDRESSES: National Forests in Alabama, 2946 Chestnut Street, Montgomery, Alabama 36107.

FOR FURTHER INFORMATION CONTACT: Daks Kennedy, Recreation Staff Officer, at (344) 241–4470 or by email at *brian.kennedy@usda.gov*.

SUPPLEMENTARY INFORMATION: The Federal Lands Recreation Enhancement Act (16 U.S.C. 6803(b)) requires the Forest Service to publish a six-month advance notice in the **Federal Register** of establishment of new recreation fee sites. In accordance with Forest Service Handbook 2309.13, chapter 30, the Forest Service will publish the proposed new recreation fee sites in local newspapers and other local publications for public comment. Most of the new recreation fee revenues would be spent where they are collected to enhance the visitor experience at the new recreation fee sites.

A standard amenity recreation fee of $5 per day per vehicle would be charged at Natural Bridge Picnic Area developed recreation site. The America the Beautiful–the National Parks and Federal Recreational Lands Pass would be honored at these standard amenity recreation fee sites. A special recreation permit recreation fee of $5 per person per day is proposed at the Conecuh Westside Shooting Range.

Expenditures from recreation fee revenues collected at the new recreation fee sites would enhance recreation opportunities, improve customer service, and address maintenance needs. Once public involvement is complete, these new recreation fees will be reviewed by a Resource Advisory Committee prior to a final decision and implementation.

Dated: June 3, 2024.

Jacqueline Emanuel,

Associate Deputy Chief, National Forest System.

[FR Doc. 2024–12541 Filed 6–6–24; 8:45 am]

BILLING CODE 3411–15–P

DEPARTMENT OF AGRICULTURE

Rural Business Service

[Docket No. RBS–24–BUSINESS–0007]

Notice of Request for Revision of a Currently Approved Information Collection

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Rural Business-Cooperative Service's (RBCS or Agency), announces its intention to request Office of Management and Budget's (OMB) approval for a revision of a currently approved information collection in support of the Advanced Biofuel Payment Program.

DATES: Comments on this notice must be received by August 6, 2024.

ADDRESSES: Comments may be submitted electronically by the Federal eRulemaking Portal, *www.regulations.gov.* Additional information about Rural Development (RD) and its programs is available at *www.rd.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Pamela Bennett, Rural Development Innovation Center—Regulations Management Division, USDA, 1400 Independence Avenue SW, Stop 1522, South Building, Washington, DC 20250–1522. Telephone: (202) 720–9639. Email: *pamela.bennett@usda.gov.*

SUPPLEMENTARY INFORMATION: The OMB regulation (5 CFR part 1320) implementing provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) requires that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection that the Agency is submitting to OMB for a revision of an existing collection.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) The accuracy of the Agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) Ways to enhance the quality, utility and clarity of the information to be collected; and (d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments may be sent by the Federal eRulemaking Portal: Go to *www.regulations.gov* and, in the ''Search for dockets and documents on agency actions'' box, type in the Docket No. located at the beginning of this notice and click the ''Search'' button. From the search results, click on or locate the document title and select the ''Comment'' button. Before inputting comments, commenters may review the ''Commenter's Checklist'' (optional). Insert comments under the ''Comment'' title, click ''Browse'' to attach files (if available), input email address and select ''Submit Comment.'' Information on using *Regulations.gov*, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's ''FAQ'' link. All comments will be available for public inspection online at *www.regulations.gov.*

A Federal agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number. Data furnished by the applicants will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, failure to provide data could result in program benefits being withheld or denied.

Title: Advanced Biofuel Payment Program.

OMB Number: 0570–0063.

Type of Request: Revision of a currently approved information collection.

Abstract: The Advanced Biofuel Payment Program was authorized under section 9005 of title IX of the Food, Conservation, and Energy Act of 2008 (2008 Farm Bill). It authorizes the Agency to enter into contracts to make payments to eligible entities to support and ensure an expanding production of advanced biofuels. Entities eligible to receive payments under the Program are producers of advanced biofuels that meet all of the requirements of the Program.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.294 hours per response.

Respondents: The respondents are the advanced biofuel producers and Agency staff who process applications and quarterly payment requests.

Estimated Number of Respondents: 92 advanced biofuel producers.

Estimated Number of Responses per Respondent: 8.34.

Estimate Number of Responses: 767

Estimated Total Annual Burden on Respondents: 993 hours.

Copies of this information collection can be obtained from Pamela Bennett, RD Innovation Center—Regulations Management Division, at *pamela.bennett@usda.gov.*

All responses to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

Kathryn E. Dirksen Londrigan,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2024–12492 Filed 6–6–24; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[B–30–2024]

Foreign-Trade Zone (FTZ) 68, Notification of Proposed Production Activity; SNRA Commodities, Inc.; (Pecans); Fabens, Texas

SNRA Commodities, Inc. submitted a notification of proposed production activity to the FTZ Board (the Board) for its facility in Fabens, Texas, within FTZ 68. The notification conforming to the requirements of the Board's regulations (15 CFR 400.22) was received on May 31, 2024.

Pursuant to 15 CFR 400.14(b), FTZ production activity would be limited to the specific foreign-status material(s)/component(s) and specific finished product(s) described in the submitted notification (summarized below) and subsequently authorized by the Board. The benefits that may stem from conducting production activity under FTZ procedures are explained in the background section of the Board's website—accessible via *www.trade.gov/ftz.*

The proposed finished products include shelled pecans and oil roasted pecans (duty rate ranges from 9.9 cents/kg to 17.6 cents/kg).

The proposed foreign-status materials/components include shelled pecans and unshelled (in shell) pecans (duty rate ranges from 8.8 cents/kg to 17.6 cents/kg). The request indicates that certain materials/components are subject to duties under section 301 of the Trade Act of 1974 (section 301),

depending on the country of origin. The applicable section 301 decisions require subject merchandise to be admitted to FTZs in privileged foreign status (19 CFR 146.41).

Public comment is invited from interested parties. Submissions shall be addressed to the Board's Executive Secretary and sent to: *ftz@trade.gov.* The closing period for their receipt is July 17, 2024.

A copy of the notification will be available for public inspection in the ''Online FTZ Information System'' section of the Board's website.

For further information, contact Juanita Chen at *juanita.chen@trade.gov.*

Dated: June 3, 2024.

Elizabeth Whiteman,

Executive Secretary.

[FR Doc. 2024–12507 Filed 6–6–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Announcement of Approved International Trade Administration Trade Mission

AGENCY: International Trade Administration, Department of Commerce.

SUMMARY: The United States Department of Commerce, International Trade Administration (ITA), is announcing one upcoming trade mission that will be recruited, organized, and implemented by ITA. This mission is: Southeast Europe Energy-Transition and Energy Security Business Development Trade Mission to Bulgaria, Romania, and Serbia. A summary of the mission is found below. Application information and more detailed mission information, including the commercial setting and sector information, can be found at the trade mission website: *https://www.trade.gov/trade-missions.* For this mission, recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*https://www.trade.gov/trade-missions-schedule*) and other internet websites, press releases to general and trade media, direct mail, broadcast fax, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows.

FOR FURTHER INFORMATION CONTACT: Jeffrey Odum, Trade Events Task Force, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–6397 or email *Jeffrey.Odum@trade.gov.*

SUPPLEMENTARY INFORMATION:

The Following Conditions for Participation Will Be Used for the Mission:

Applicants must submit a completed and signed mission application and supplemental application materials, including adequate information on their products and/or services, primary market objectives, and goals for participation that is adequate to allow the Department of Commerce to evaluate their application. If the Department of Commerce receives an incomplete application, the Department may either: reject the application, request additional information/clarification, or take the lack of information into account when evaluating the application. If the requisite minimum number of participants is not selected for a particular mission by the recruitment deadline, the mission may be canceled.

Each applicant must also certify that the products and services it seeks to export through the mission are either produced in the United States, or, if not, are marketed under the name of a U.S. firm and have at least fifty-one percent U.S. content by value. In the case of a trade association or organization, the applicant must certify that, for each firm or service provider to be represented by the association/organization, the products and/or services the represented firm or service provider seeks to export are either produced in the United States or, if not, marketed under the name of a U.S. firm and have at least 51% U.S. content by value.

A trade association/organization applicant must certify to the above for all of the companies it seeks to represent on the mission.

In addition, each applicant must:

- Certify that the products and services that it wishes to market through the mission would be in compliance with U.S. export controls and regulations;
- Certify that it has identified any matter pending before any bureau or office in the Department of Commerce;
- Certify that it has identified any pending litigation (including any administrative proceedings) to which it is a party that involves the Department of Commerce; and
- Sign and submit an agreement that it and its affiliates (1) have not and will not engage in the bribery of foreign officials in connection with a company's/participant's involvement in this mission, and (2) maintain and enforce a policy that prohibits the bribery of foreign officials.

In the case of a trade association/organization, the applicant must certify that each firm or service provider to be represented by the association/organization can make the above certifications.

The Following Selection Criteria Will Be Used for the Mission

Targeted mission participants are U.S. firms, services providers, and trade associations/organizations providing or promoting U.S. products and services that have an interest in entering or expanding their business in the mission's destination country. The following criteria will be evaluated in selecting participants:

- Suitability of the applicant's (or in the case of a trade association/organization, represented firm's or service provider's) products or services to these markets;
- The applicant's (or in the case of a trade association/organization, represented firm's or service provider's) potential for business in the markets, including the likelihood of exports resulting from the mission; and
- Consistency of the applicant's (or in the case of a trade association/organization, represented firm's or service provider's) goals and objectives with the stated scope of the mission.

Balance of company size and location may also be considered during the review process. Referrals from a political party or partisan political group or any information, including on the application, containing references to political contributions or other partisan political activities will be excluded from the application and will not be considered during the selection process. The sender will be notified of these exclusions.

Definition of Small- and Medium-Sized Enterprise

For purposes of assessing participation fees, an applicant is a small or medium-sized enterprise (SME) if it qualifies as a ''small business'' under the Small Business Administration's (SBA) size standards (*https://www.sba.gov/document/support--table-size-standards*), which vary by North American Industry Classification System (NAICS) Code. The SBA Size Standards Tool (*https://www.sba.gov/size-standards*) can help you determine the qualifications that apply to your company.

Mission List: (additional information about trade missions can be found at *https://www.trade.gov/trade-missions*).

Southeast Europe Energy-Transition and Energy Security Business Development Trade Mission to Bulgaria,

Romania, and Serbia, March 17–21, 2025

Summary

The United States Department of Commerce, International Trade Administration (ITA), is organizing a Southeast Europe Energy-Transition and Energy Security Business Development Trade Mission to Bulgaria, Romania, and Serbia. This mission will introduce U.S. companies and organizations to potential partners in dynamic Southeastern Europe, where governments are investing in clean-energy technologies as a path toward climate neutrality and energy security and independence. Participating firms will have the opportunity to learn about market conditions and trends, establish industry contacts and solidify market-entry or expansion strategies, with the underlying goal of increasing U.S. exports of innovative, advanced and clean-tech goods and services to the region.

Every market will offer a targeted program of customized business appointments, meetings with industry leaders and government officials and networking. Delegates will benefit from the guidance and insights of ITA's Commercial Service teams working in these markets.

U.S. companies and organizations will participate in networking events with key government and private-sector stakeholders hosted by the U.S. Embassy. They will also participate in pre-arranged meetings with pre-screened business and government representatives to discuss upcoming market opportunities. They will have the opportunity to learn about the Bulgarian market from Commerce Department and other U.S. government agency experts during a country briefing.

PROPOSED TIMETABLE

[* **Note:** The final schedule and potential site visits will depend on the availability of host government and business officials, specific goals of mission participants, and ground transportation.]

Sunday, March 16, 2025; Sofia, Bulgaria	• Trade Mission Participants Arrive Sofia, Bulgaria. • Afternoon orientation by CS Bulgaria team.
Monday, March 17, 2025; Sofia, Bulgaria	• Welcome breakfast. • Country Briefing by U.S. Embassy Sofia team. • Customized business meetings with potential buyers/partners and government decision makers. • Closing reception with government and business contacts.
Tuesday, March 18, 2025; Sofia, Bulgaria to Bucharest, Romania..	• Morning flight to Bucharest, Romania. • Country Briefing by U.S. Embassy Bucharest team. • Welcome Reception.
Wednesday, March 19, 2025; Bucharest, Romania..	• Customized business meetings with potential buyers/partners and government decision makers. • Closing reception with government and business contacts.
Thursday, March 20, 2025; Bucharest, Romania to Belgrade, Serbia.	• Morning flight to Belgrade, Serbia. • Welcome Lunch.
Friday, March 21, 2025; Belgrade, Serbia	• Customized business meetings potential buyers/partners and government decision makers • Closing reception. • Departure.

Participation Requirements

All parties interested in participating in the trade mission must complete and submit an application package for consideration by the Department of Commerce. All applicants will be evaluated on their ability to meet certain conditions and best satisfy the selection criteria as outlined below. A minimum of 10 and a maximum of 15 firms and/or trade associations will be selected to participate in the mission from the applicant pool.

Fees and Expenses

After a firm or trade association has been selected to participate in the mission, a payment to the Department of Commerce in the form of a participation fee is required. The participation fee for the Business Development Mission will be $4,925.00 for small or medium-sized enterprises (SME)1; and $6,950.00 for large firms or trade associations. The fee for each additional firm representative (large firm or SME/trade organization) is $2,300.00. Expenses for travel, lodging, meals, and incidentals will be the responsibility of each mission participant. Interpreter and driver services can be arranged for additional cost. Delegation members will be able to take advantage of U.S. Embassy rates for hotel rooms.

If and when an applicant is selected to participate in a particular mission, a payment to the Department of Commerce in the amount of the designated participation fee below is required. Upon notification of acceptance to participate, those selected have 5 business days to submit payment or the acceptance may be revoked.

Participants selected for a trade mission will be expected to pay for the cost of personal expenses, including, but not limited to, international travel, lodging, meals, transportation, communication, and incidentals, unless otherwise noted. Participants will, however, be able to take advantage of U.S. Government rates for hotel rooms. In the event that a mission is canceled, no personal expenses paid in anticipation of a mission will be reimbursed. However, participation fees for a canceled mission will be reimbursed to the extent they have not already been expended in anticipation of the mission.

If a visa is required to travel on a particular mission, applying for and obtaining such a visa will be the responsibility of the mission participant. Government fees and processing expenses to obtain such a visa are not included in the participation fee. However, the Department of Commerce will provide instructions to each participant on the procedures required to obtain business visas.

Trade Mission members participate in trade missions and undertake mission-related travel at their own risk. The nature of the security situation in a given foreign market at a given time cannot be guaranteed. The U.S. Government does not make any representations or guarantees as to the safety or security of participants. The U.S. Department of State issues U.S. Government international travel alerts and warnings for U.S. citizens available at *https://travel.state.gov/content/passports/en/alertswarnings.html.* Any

question regarding insurance coverage must be resolved by the participant and its insurer of choice.

Travel and in-person activities are contingent upon the safety and health conditions in the United States and the mission countries. Should safety or health conditions not be appropriate for travel and/or in-person activities, the Department will consider postponing the event or offering a virtual program in lieu of an in-person agenda. In the event of a postponement, the Department will notify the public, and applicants previously selected to participate in this mission will need to confirm their availability but need not reapply. Should the decision be made to organize a virtual program, the Department will adjust fees, accordingly, prepare an agenda for virtual activities, and notify the previously selected applicants with the option to opt-in to the new virtual program.

Timeframe for Recruitment and Applications

Mission recruitment will be conducted in an open and public manner, including publication in the **Federal Register**, posting on the Commerce Department trade mission calendar (*http://export.gov/trademissions*) and other internet websites, press releases to general and trade media, direct mail, notices by industry trade associations and other multiplier groups, and publicity at industry meetings, symposia, conferences, and trade shows. Recruitment for the mission will begin immediately and conclude no later than February 10, 2025. The U.S. Department of Commerce will review applications and inform applicants of selection decisions on a rolling basis. Applications received after February 10, 2025, will be considered only if space and scheduling constraints permit.

Contacts

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Gemal Brangman,

Director, ITA Events Management Task Force.

[FR Doc. 2024–12508 Filed 6–6–24; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–076]

Certain Plastic Decorative Ribbon From the People's Republic of China: Final Results of Expedited First Sunset Reviews of the Countervailing Duty Order

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

SUMMARY: The U.S. Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) order on certain plastic decorative ribbon (plastic ribbon) from the People's Republic of China (China) would be likely to lead to continuation or recurrence of countervailable subsidies at the levels indicated in the ''Final Results of Sunset Review'' section of this notice.

DATES: Applicable June 7, 2024.

FOR FURTHER INFORMATION CONTACT: Mark Hoadley, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3148.

SUPPLEMENTARY INFORMATION:

Background

On March 22, 2019, Commerce published the CVD order on plastic ribbon from China.[1] On February 1, 2024, Commerce published the notice of initiation of the first five-year sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On February 14, 2024, Commerce received a timely notice of intent to participate from Berwick Offray LLC (domestic interested party) within the deadline specified in 19 CFR 351.218(d)(1)(i).[3] The domestic interested party claimed interested party status under section 771(9)(C) of the Act and 19 CFR 351.102(b)(29)(v), as domestic producers of plastic ribbon in the United States.

Commerce received a substantive response from the domestic interested party within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[4] We received no substantive response from the Government of China or any other interested party in this proceeding.[5] As a result, pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), we determined that the respondent interested parties did not provide an adequate response to the notice of initiation and, therefore, Commerce conducted an expedited (120-day) sunset review of the *Order.*

Scope of the Order

The product covered by the *Order* is plastic ribbon from China. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.[6]

Analysis of Comments Received

All issues raised in this sunset review are addressed in the Issues and Decision Memorandum. A list of topics discussed in the Issues and Decision Memorandum is included in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via the Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision

[1] *See Certain Plastic Decorative Ribbon from the People's Republic of China: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Order; and Countervailing Duty Order,* 84 FR 10786 (March 22, 2019) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 89 FR 6499 (February 1, 2024).

[3] *See* Domestic Interested Party's Letter, ''Plastic Decorative Ribbons from China: Notice of Intent to Participate in Sunset Review,'' dated February 14, 2024.

[4] *See* Domestic Interested Party's Letter, ''Plastic Decorative Ribbons from China: Substantive Response to Notice of Initiation of Sunset Review,'' dated March 1, 2024.

[5] *See* Commerce's Letter, ''Sunset Reviews for February 2024,'' dated March 22, 2024; *see also* 19 CFR 351.218(e)(1)(ii)(B)(2); and 19 CFR 351.218 (e)(1)(ii)(C)(2).

[6] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Expedited First Sunset Review of the Countervailing Duty Order on Certain Plastic Decorative Ribbon from the People's Republic of China,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Final Results of Sunset Reviews

Pursuant to sections 751(c)(1) and 752(b) of the Act, we determine that revocation of the *Order* would be likely to lead to continuation or recurrence of countervailable subsidies at the following net countervailable subsidy rates:

Company	Subsidy rate (percent)
Seng San Enterprises Co., Ltd	18.03
Joynice Gifts & Crafts Co., Ltd	14.27
Santa's Collection Shaoxing Co., Ltd	94.67
All Others	16.15

Administrative Protective Order (APO)

This notice serves as the only reminder to parties subject to an APO of their responsibility concerning the return or destruction of proprietary information disclosed under an APO in accordance with 19 CFR 351.305(a). Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing the final results and this notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act, and 19 CFR 351.218.

Dated: May 31, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2024–12518 Filed 6–6–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–557–824, A–583–871, A–549–846, A–552–835]

Boltless Steel Shelving Units Prepackaged for Sale From Malaysia, Taiwan, Thailand, and the Socialist Republic of Vietnam: Amended Final Affirmative Antidumping Duty Determination for Taiwan and Antidumping Duty Orders

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

SUMMARY: Based on affirmative final determinations by the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission (ITC), Commerce is issuing antidumping duty orders on boltless steel shelving units prepackaged for sale (boltless steel shelving) from India, Malaysia, Taiwan, Thailand, and the Socialist Republic of Vietnam (Vietnam). In addition, Commerce is amending its final determination with respect to boltless steel shelving from Taiwan to correct a ministerial error.

DATES: Applicable June 7, 2024.

FOR FURTHER INFORMATION CONTACT: Samuel Frost (Malaysia), Joy Zhang (Taiwan), Fred Baker (Thailand), and Eliza DeLong or Eric Hawkins (Vietnam), AD/CVD Operations, Offices III, V, and VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–8180, (202) 482–1168, (202) 482–2924, and (202) 482–3878 or (202) 482–1988, respectively.

SUPPLEMENTARY INFORMATION:

Background

In accordance with sections 735(d) and 777(i) of the Tariff Act of 1930, as amended (the Act), on April 19, 2024, Commerce published its affirmative final determinations in the less-than-fair-value (LTFV) investigations of boltless steel shelving from Malaysia, Taiwan, Thailand, and Vietnam.[1] In the investigation of boltless steel shelving from Taiwan, respondent Taiwan Shin Yeh Enterprise Co., Ltd. (Shin Yeh), submitted a timely allegation that Commerce made a ministerial error in the final determination.[2] We reviewed the allegation and determined that we had made a ministerial error in the final determination on boltless steel shelving from Taiwan. As a result, we are amending the final determination for Taiwan. *See* ''Amendment to the Final Determination for Taiwan'' section below for further discussion.

On June 3, 2024, the ITC notified Commerce of its final determinations, pursuant to section 735(d) of the Act, that an industry in the United States is materially injured within the meaning of section 735(b)(1)(A)(i) of the Act by reason of LTFV imports of boltless steel shelving from Malaysia, Taiwan, Thailand, and Vietnam.[3]

Scope of the Orders

The products covered by these orders are boltless steel shelving from Malaysia, Taiwan, Thailand, and Vietnam. For a complete description of the scope of these orders, *see* the appendix to this notice.

Amended Final Determination for Taiwan

On April 16, 2024, Shin Yeh timely alleged that Commerce had made a ministerial error in the *Taiwan Final Determination* with respect to the calculation of the dumping margin assigned to Shin Yeh.[4] Edsal Manufacturing Co., Ltd. (the petitioner) submitted rebuttal comments to Shin Yeh's allegation on April 22, 2024.[5] No other party made an allegation of ministerial errors. Commerce reviewed the record and, on May 9, 2024, agreed that the error alleged by Shin Yeh constituted a ministerial error within the meaning of section 735(e) of the Act and 19 CFR 351.224(f).[6] Specifically, Commerce found that it had failed to make a correction to the commission offset variable in the margin program that it had made in the comparison-

[1] *See Boltless Steel Shelving Units Prepackaged for Sale from Malaysia: Final Affirmative Determination of Sales at Less-Than-Fair Value,* 89 FR 28736 (April 19, 2024); *Boltless Steel Shelving Units Prepackaged for Sale from Taiwan: Final Affirmative Determination of Sales at Less Than Fair Value,* 89 FR 28741 (April 19, 2024) (*Taiwan Final Determination*); *Boltless Steel Shelving Units Prepackaged for Sale from Thailand: Final Affirmative Determination of Sales at Less Than Fair Value,* 89 FR 28738 (April 19, 2024); *Boltless Steel Shelving Units Prepackaged for Sale from the Socialist Republic of Vietnam: Final Affirmative Determination of Sales at Less-Than-Fair-Value,* 89 FR 28743 (April 19, 2024).

[2] *See* Shin Yeh's Letter, ''Shin Yeh Request for Correction of Ministerial Error,'' dated April 16, 2024 (Ministerial Error Allegation).

[3] *See* ITC's Letter, Investigation No. 731–TA–1608–1611 (Final), dated June 3, 2024.

[4] *See* Ministerial Error Allegation.

[5] *See* Petitioner's Letter, ''Response to Shin Yeh's Ministerial Error Allegation,'' dated April 22, 2024.

[6] *See* Memorandum, ''Less-Than-Fair-Value Investigation of Boltless Steel Shelving Units Prepackaged for Sale from Taiwan: Allegation of Ministerial Error in the Final Determination,'' dated May 9, 2024 (Ministerial Error Memorandum).

market program.[7] Pursuant to 19 CFR 351.224(e), Commerce is amending the *Taiwan Final Determination* to reflect the correction of the ministerial error, as described in the Ministerial Error Memorandum.[8] Based on the correction, Shin Yeh's final dumping margin changed from 8.09 to 7.03 percent. As a result, we are also revising the all-others rate for Taiwan from 8.09 to 7.03 percent. The amended estimated weighted-average dumping margins for Taiwan are listed in the ''Estimated Weighted-Average Dumping Margins'' section below.

Antidumping Duty Orders

On June 3, 2024, in accordance with section 735(d) of the Act, the ITC notified Commerce of its final determinations in these investigations, in which it found that an industry in the United States is materially injured by reason of imports of boltless steel shelving from Malaysia, Taiwan, Thailand, and Vietnam. Therefore, in accordance with section 735(c)(2) of the Act, Commerce is issuing these antidumping orders. Because the ITC determined that imports of boltless steel shelving from Malaysia, Taiwan, Thailand, and Vietnam are materially injuring a U.S. industry, unliquidated entries of such merchandise from Malaysia, Taiwan, Thailand, and Vietnam entered or withdrawn from warehouse for consumption, are subject to the assessment of antidumping duties.

Therefore, in accordance with section 736(a)(1) of the Act, Commerce will direct U.S. Customs and Border Protection (CBP) to assess, upon further instruction by Commerce, antidumping duty deposits equal to the amount by which the normal value of the merchandise exceeds the export price (or constructed export price) of the merchandise, for all relevant entries of boltless steel shelving from Malaysia, Taiwan, Thailand, and Vietnam. With the exception of entries occurring after the expiration of the provisional measures period and before publication of the ITC's final affirmative injury determinations, as further described below, antidumping duties will be assessed on unliquidated entries of boltless steel shelving from Malaysia, Taiwan, Thailand, and Vietnam, entered, or withdrawn from warehouse, for consumption, on or after November 29, 2023, the date of publication of the *Preliminary Determinations*.[9]

Continuation of Suspension of Liquidation and Cash Deposits

Except as noted in the ''Provisional Measures'' section of this notice, in accordance with section 735(c)(1)(B) of the Act, Commerce will instruct CBP to continue to suspend liquidation on all relevant entries of boltless steel shelving from Malaysia, Taiwan, Thailand, and Vietnam. These instructions suspending liquidation will remain in effect until further notice.

Commerce will also instruct CBP to require cash deposits equal to the estimated weighted-average dumping margins indicated in the tables below. Accordingly, effective on the date of publication in the **Federal Register** of the notice of the ITC's final affirmative injury determinations, CBP will require, at the same time as importers would normally deposit estimated duties on subject merchandise, a cash deposit equal to the rates listed in the table below. The all-others rate applies to all producers or exporters not specifically listed, as appropriate.

With respect to the order on Thailand, as indicated below, the estimated antidumping duty margin for Siam Metal Tech Co., Ltd. (Siam Metal) as the producer and exporter is zero. Therefore, entries of subject merchandise that are produced and exported by Siam Metal will not be subject to this order. Accordingly, Commerce will direct CBP not to suspend liquidation of, or to require cash deposits of estimated antidumping duties on, entries of subject merchandise produced and exported by Siam Metal. Therefore, in accordance with section 735(a)(4) of the Act and 19 CFR 351.204(e)(1), entries of subject merchandise from this producer/exporter combination will be excluded from the order. However, entries of subject merchandise from this company in any other producer/exporter combination, or by third parties that sourced subject merchandise from the excluded producer/exporter combination, will be subject to suspension of liquidation and cash deposits of estimated antidumping duties at the all-others rate.

Estimated Weighted-Average Dumping Margins

The estimated weighted-average dumping margins are as follows:

MALAYSIA

Exporter/producer	Dumping margins (percent)
Eonmetall Industries Sdn. Bhd	*81.12
Nanjing Chervon Industry Co., Ltd	*81.12
Wuxi Bote Electrical Apparatus Co., Ltd	*81.12
All Others	58.29

*Rate based on facts available with adverse inferences.

[7] *See* Memorandum, ''Amended Final Determination Analysis Memorandum for Shin Yeh,'' dated May 9, 2024.

[8] *Id.*

[9] *See Boltless Steel Shelving Units Prepackaged for Sale from Malaysia: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 88 FR 83386 (November 29, 2023); *Boltless Steel Shelving Units Prepackaged for Sale from Taiwan: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 88 FR 83382 (November 29, 2023); *Boltless Steel Shelving Units Prepackaged for Sale from Thailand: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 88 FR 83389 (November 29, 2023); *Boltless Steel Shelving Units Prepackaged for Sale from the Socialist Republic of Vietnam: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 88 FR 83392 (November 29, 2023) (collectively, *Preliminary Determinations*). *See also Boltless Steel Shelving Units Prepackaged for Sale from Thailand: Amended Preliminary Determination of Sales at Less-Than-Fair-Value,* 89 FR 62 (January 2, 2024) and *Boltless Steel Shelving Units Prepackaged for Sale from Thailand: Preliminary Affirmative Determination of Sales at Less Than Fair Value and Amended Preliminary Determination of Sales at Less Than Fair Value; Correction,* 89 FR 4591 (January 24, 2024).

TAIWAN

Exporter/producer	Dumping margins (percent)
Taiwan Shin Yeh Enterprise Co., Ltd	7.03
Jin Yi Sheng Industrial Co., Ltd	*78.12
All Others	7.03

*Rate based on facts available with adverse inferences.

THAILAND

Exporter/producer	Dumping margins (percent)
Bangkok Sheet Metal Public Co., Ltd	2.75
Siam Metal Tech Co., Ltd	0.00
All Others	2.75

VIETNAM

Exporter	Producer	Dumping margins (percent)
Xinguang (Vietnam) Logistic Equipment Co., Ltd	Xinguang (Vietnam) Logistic Equipment Co., Ltd	181.60
Vietnam-Wide Entity		*224.94

*Rate based on facts available with adverse inferences.

Provisional Measures

Section 733(d) of the Act states that suspension of liquidation pursuant to an affirmative preliminary determination may not remain in effect for more than four months, except where exporters representing a significant proportion of exports of the subject merchandise request that Commerce extend the four-month period to no more than six months. At the request of exporters that account for a significant proportion of boltless steel shelving from Malaysia, Taiwan, Thailand, and Vietnam, Commerce extended the four-month period to six months in each of these investigations. Commerce published the *Preliminary Determinations* on November 29, 2023.[10]

The extended provisional measures period, beginning on the date of publication of the *Preliminary Determinations,* ended on May 26, 2024. Therefore, in accordance with section 733(d) of the Act and our practice,[11] Commerce will instruct CBP to terminate the suspension of liquidation and to liquidate, without regard to antidumping duties, unliquidated entries of boltless steel shelving from Malaysia, Taiwan, Thailand, and Vietnam entered or withdrawn from warehouse, for consumption after May 26, 2024, the final day on which the provisional measures were in effect, until and through the day preceding the date of publication of the ITC's final affirmative injury determinations in the **Federal Register**. Suspension of liquidation and the collection of cash deposits will resume on the date of publication of the ITC's final determinations in the **Federal Register**.

Establishment of the Annual Inquiry Service Lists

On September 20, 2021, Commerce published the final rule titled ''*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*'' in the **Federal Register**.[12] On September 27, 2021, Commerce also published the notice titled ''*Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*'' in the **Federal Register**.[13] The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the persons on the annual inquiry service list for that order, as well as any companion order covering the same merchandise from the same country of origin.[14]

In accordance with the *Procedural Guidance,* for orders published in the **Federal Register** after November 4, 2021, Commerce will create an annual inquiry service list segment in Commerce's online e-filing and document management system, Antidumping and Countervailing Duty Electronic Service System (ACCESS), available *at https://access.trade.gov,* within five business days of publication of the notice of the order. Each annual inquiry service list will be saved in ACCESS, under each case number, and under a specific segment type called ''AISL-Annual Inquiry Service List.'' [15]

[10] *Id.*

[11] *See, e.g., Certain Corrosion-Resistant Steel Products from India, India, the People's Republic of China, the Republic of Korea and Taiwan: Amended Final Affirmative Antidumping Determination for India and Taiwan, and Antidumping Duty Orders,* 81 FR 48390, 48392 (July 25, 2016).

[12] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300 (September 20, 2021) (*Final Rule*).

[13] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

[14] *Id.*

[15] This segment will be combined with the ACCESS Segment Specific Information (SSI) field, which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register**, also known as the anniversary month. For example, for an order under case number A–000–000 that published in the **Federal Register** in January, the relevant segment and SSI combination will appear in ACCESS as ''AISL-January Anniversary.'' Note that there will be only one annual inquiry service list segment per case number, and the anniversary month will be pre-populated in ACCESS.

Interested parties who wish to be added to the annual inquiry service list for an order must submit an entry of appearance to the annual inquiry service list segment for the order in ACCESS within 30 days after the date of publication of the order. For ease of administration, Commerce requests that law firms with more than one attorney representing interested parties in an order designate a lead attorney to be included on the annual inquiry service list. Commerce will finalize the annual inquiry service list within five business days thereafter. As mentioned in the *Procedural Guidance,*[16] the new annual inquiry service list will be in place until the following year, when the *Opportunity Notice* for the anniversary month of the order is published.

Commerce may update an annual inquiry service list at any time as needed based on interested parties' amendments to their entries of appearance to remove or otherwise modify their list of members and representatives, or to update contact information. Changes or announcements pertaining to these procedures will be posted to the ACCESS website at *https://access.trade.gov.*

Special Instructions for Petitioners and Foreign Governments

In the *Final Rule,* Commerce stated that, ''after an initial request and placement on the annual inquiry service list, both petitioners and foreign governments will automatically be placed on the annual inquiry service list in the years that follow.'' [17] Accordingly, as stated above, the petitioners and foreign governments should submit their initial entry of appearance after publication of this notice in order to appear in the first annual inquiry service list. Pursuant to 19 CFR 351.225(n)(3), the petitioners and foreign governments will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioners and foreign governments are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

Notification to Interested Parties

This notice constitutes the antidumping duty orders with respect to boltless steel shelving from Malaysia, Taiwan, Thailand, and Vietnam pursuant to section 736(a) of the Act. Interested parties can find a list of antidumping duty orders currently in effect at *https://www.trade.gov/data-visualization/adcvd-proceedings.*

The amended Taiwan final determination and these antidumping duty orders are published in accordance with sections 735(e) and 736(a) of the Act and 19 CFR 351.224(e) and 19 CFR 351.211(b).

Dated: June 3, 2024.

Ryan Majerus,

Deputy Assistant Secretary for Policy and Negotiations performing the non-exclusive functions and duties of the Assistant Secretary for Enforcement and Compliance.

Appendix

Scope of the Orders

The scope of these orders covers boltless steel shelving units prepackaged for sale, with or without decks (boltless steel shelving). The term ''prepackaged for sale'' means that, at a minimum, the steel vertical supports (*i.e.,* uprights and posts) and steel horizontal supports (*i.e.,* beams, braces) necessary to assemble a completed shelving unit (with or without decks) are packaged together for ultimate purchase by the end-user. The scope also includes add-on kits. Add-on kits include, but are not limited to, kits that allow the end-user to add an extension shelving unit onto an existing boltless steel shelving unit such that the extension and the original unit will share common frame elements (*e.g.,* two posts). The term ''boltless'' refers to steel shelving in which the vertical and horizontal supports forming the frame are assembled primarily without the use of nuts and bolts, or screws. The vertical and horizontal support members for boltless steel shelving are assembled by methods such as, but not limited to, fitting a rivet, punched or cut tab, or other similar connector on one support into a hole, slot or similar receptacle on another support. The supports lock together to form the frame for the shelving unit, and provide the structural integrity of the shelving unit separate from the inclusion of any decking. The incidental use of nuts and bolts, or screws to add accessories, wall anchors, tie-bars or shelf supports does not remove the product from scope. Boltless steel shelving units may also come packaged as partially assembled, such as when two upright supports are welded together with front-to-back supports, or are otherwise connected, to form an end unit for the frame. The boltless steel shelving covered by these orders may be commonly described as rivet shelving, welded frame shelving, slot and tab shelving, and punched rivet (quasi-rivet) shelving as well as by other trade names. The term ''deck'' refers to the shelf that sits on or fits into the horizontal supports (beams or braces) to provide the horizontal storage surface of the shelving unit.

The scope includes all boltless steel shelving meeting the description above, regardless of: (1) vertical support or post type (including but not limited to open post, closed post and tubing); (2) horizontal support or beam/brace profile (including but not limited to Z-beam, C-beam, L-beam, step beam and cargo rack); (3) number of supports; (4) surface coating (including but not limited to paint, epoxy, powder coating, zinc and other metallic coating); (5) number of levels; (6) weight capacity; (7) shape (including but not limited to rectangular, square, and corner units); (8) decking material (including but not limited to wire decking, particle board, laminated board or no deck at all); or (9) the boltless method by which vertical and horizontal supports connect (including but not limited to keyhole and rivet, slot and tab, welded frame, punched rivet and clip).

Specifically excluded from the scope are:

- wall-mounted shelving, defined as shelving that is hung on the wall and does not stand on, or transfer load to, the floor. The addition of a wall bracket or other device to attach otherwise freestanding subject merchandise to a wall does not meet the terms of this exclusion;
- wire shelving units, which consist of shelves made from wire that incorporates both a wire deck and wire horizontal supports (taking the place of the horizontal beams and braces) into a single piece with tubular collars that slide over the posts and onto plastic sleeves snapped on the posts to create the finished shelving unit;
- bulk-packed parts or components of boltless steel shelving units; and
- made-to-order shelving systems.

Subject boltless steel shelving enters the United States through Harmonized Tariff Schedule of the United States (HTSUS) statistical subheading 9403.20.0075. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of these orders is dispositive.

[FR Doc. 2024–12566 Filed 6–6–24; 8:45 am]

BILLING CODE 3510–DS–P

[16] *See Procedural Guidance,* 86 FR at 53206.

[17] *See Final Rule,* 86 FR at 52335.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–077, A–533–881, A–122–863, A–484–803, A–580–897, A–489–833]

Large Diameter Welded Pipe From the People's Republic of China, India, Canada, Greece, the Republic of Korea, and the Republic of Türkiye: Final Results of the Expedited First Sunset Reviews of the Antidumping Duty Orders

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

SUMMARY: As a result of these expedited sunset reviews, the U.S. Department of Commerce (Commerce) finds that revocation of the antidumping duty (AD) orders on large diameter welded pipe (welded pipe) from the People's Republic of China (China), India, Canada, Greece, the Republic of Korea (Korea), and the Republic of Türkiye (Türkiye) would likely to lead to

continuation or recurrence of dumping at the levels indicated in the ''Final Results of Sunset Reviews'' section of this notice.

DATES: Applicable June 7, 2024.

FOR FURTHER INFORMATION CONTACT: Whitley Herndon, 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) 482–6274.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 2024, Commerce published the notice of initiation of the first sunset review of the AD orders on welded pipe from China, India, Canada, Greece, Korea, and Türkiye pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[1]

On February 16, 2024, the American Line Pipe Producers Association (ALPPA), a domestic interested party, notified Commerce of its intent to participate within the 15-day deadline specified in 19 CFR 351.218(d)(1)(i).[2] ALPPA claimed interested party status under section 771(9)(C) of the Act as producers of a domestic like product in the United States.

On March 4, 2024, Commerce received adequate substantive responses from ALPPA within the 30-day period specified in 19 CFR 351.218(d)(3)(i).[3] Commerce did not receive a substantive response from any government or respondent interested parties with respect to the orders covered by this sunset review. On February 21, 2024, Commerce notified the U.S. International Trade Commission that it did not receive substantive responses from any respondent interested parties.[4] As a result, pursuant to section 751(c)(3)(8) of the Act and 19 CFR 351.218(e)(1)(ii)(C)(2), Commerce conducted an expedited (120-day) sunset review of these orders.

Scope of the Orders

The products covered by these orders are welded pipe from China, India, Canada, Greece, Korea, and Türkiye. For all full description of the scope of each of the orders, *see* the Issues and Decision Memorandum.[5]

Analysis of Comments Received

A complete discussion of all issues raised in these sunset reviews is provided in the accompanying Issues and Decision Memorandum.[6] A list of the issues discussed in the Issues and Decision Memorandum is included as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Final Results of Sunset Reviews

Pursuant to sections 751(c)(1) and 752(c)(1) and (3) of the Act, Commerce determines that revocation of these orders would likely lead to the continuation or recurrence of dumping and that the magnitude of the dumping margins likely to prevail would be weighted-average margins up to: 132.63 percent for China; 50.55 percent for India; 12.32 percent for Canada; 10.26 percent for Greece; 20.39 percent for Korea; and 2.57 percent for Türkiye.[7]

Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return/destruction or conversion to judicial protective order of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

We are issuing and publishing the results in accordance with sections 751(c), 752(c), and 771(i)(1) of the Act and 19 CFR 351.218.

Dated: May 31, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2024–12514 Filed 6–6–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–570–980]

Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules From the People's Republic of China: Final Results of the Expedited Second Sunset Review of the Countervailing Duty Order

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

SUMMARY: The U.S. Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) order on crystalline silicon photovoltaic cells, whether or not assembled into modules (solar cells), from the People's Republic of China (China) would likely to lead to the

[1] *See Initiation of Five-Year (Sunset) Reviews,* 88 FR 6499 (February 1, 2024) (*Initiation Notice*).

[2] *See* APPLA's Letters, ''Large Diameter Welded Carbon and Alloy Steel Line and Structural Pipe from the People's Republic of China: Notice of Intent to Participate in Sunset Review;'' ''Large Diameter Welded Carbon and Alloy Steel Line and Structural Pipe from India: Notice of Intent to Participate in Sunset Review;'' ''Large Diameter Welded Carbon and Alloy Steel Line and Structural Pipe from Canada: Notice of Intent to Participate in Sunset Review;'' ''Large Diameter Welded Carbon and Alloy Steel Line and Structural Pipe from Greece: Notice of Intent to Participate in Sunset Review;'' ''Large Diameter Welded Carbon and Alloy Steel Line and Structural Pipe from Korea: Notice of Intent to Participate in Sunset Review;'' and ''Large Diameter Welded Carbon and Alloy Steel Line and Structural Pipe from Türkiye: Notice of Intent to Participate in Sunset Review,'' each dated February 16, 2024.

[3] *See* APPLA's Letters, ''Large Diameter Welded Carbon and Alloy Steel Line and Structural Pipe from the People's Republic of China: Substantive Response to Notice of Initiation;'' ''Large Diameter Welded Carbon and Alloy Steel Line and Structural Pipe from India: Substantive Response to Notice of Initiation;'' ''Large Diameter Welded Carbon and Alloy Steel Line and Structural Pipe from Canada: Substantive Response to Notice of Initiation;'' ''Large Diameter Welded Carbon and Alloy Steel Line and Structural Pipe from Greece: Substantive Response to Notice of Initiation;'' ''Large Diameter Welded Carbon and Alloy Steel Line and Structural Pipe from Korea: Substantive Response to Notice of Initiation;'' and ''Large Diameter Welded Carbon and Alloy Steel Line and Structural Pipe from Turkey: Substantive Response to Notice of Initiation,'' each dated March 4, 2024.

[4] *See* Commerce's Letter, ''Sunset Reviews Initiated on February 1, 2024,'' dated February 21, 2024.

[5] *See* Memorandum, ''Decision Memorandum for the Final Results of the Expedited First Sunset Review of the Antidumping Duty Order on Large Diameter Welded Pipe from the People's Republic of China, India, Canada, Greece, the Republic of Korea, and the Republic of Türkiye,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

[6] *Id.*

[7] *Id.*

continuation or recurrence of countervailable subsidies at the levels indicated in the ''Final Results of the Sunset Review'' section of this notice.

DATES: Applicable June 7, 2024.

FOR FURTHER INFORMATION CONTACT: Jose Rivera, AD/CVD Operations, Office VII, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–0842.

SUPPLEMENTARY INFORMATION:

Background

On December 7, 2012, Commerce published the CVD order on solar cells from China.[1] On February 1, 2024, Commerce published the *Initiation Notice* of the second five-year sunset review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] In accordance with 19 CFR 351.218(d)(1)(i) and (ii), on February 16, 2024, we received a timely notice of intent to participate in this sunset review from the American Alliance for Solar Manufacturing (the Alliance).[3] The Alliance claimed interested party status under section 771(9)(C) of the Act as a coalition of producers of domestic like product in the United States.

On March 4, 2024, Commerce received an adequate substantive response to the *Initiation Notice* from the Alliance within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[4] Commerce received no substantive responses from any other interested party, including the Government of China, with respect to the order covered by this sunset review.

On March 22, 2024, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from other interested parties.[5] As a result, Commerce conducted an expedited (120-day) sunset review of the *Order,* pursuant to section 751(c)(3)(B) of the Act and 19 CFR 351.218(e)(1)(ii)(B)(2) and (C)(2).

Scope of the Order

The merchandise covered by this *Order* are solar cells, whether or not partially or fully assembled into other products, including, but not limited to, modules, laminates, panels and building integrated materials. Merchandise covered by the *Order* is currently classified in the Harmonized Tariff System of the United States (HTSUS) under subheadings 8501.71.0000, 8501.72.1000, 8501.72.2000, 8501.72.3000, 8501.72.9000, 8501.80.1000, 8501.80.2000, 8501.80.3000, 8501.80.9000, 8507.20.8010, 8507.20.8031, 8507.20.8041, 8507.20.8061, 8507.20.8091, 8541.42.0010, and 8541.43.0010. These HTSUS subheadings are provided for convenience and customs purposes; the written description of the scope of the *Order* is dispositive. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.[6]

Analysis of Comments Received

All issues raised in this sunset review are addressed in the Issues and Decision Memorandum. A list of the topics discussed in the Issues and Decision Memorandum is attached as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), which is available to registered users at *https://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Final Results of Sunset Review

Pursuant to sections 751(c) and 752(b) of the Act, we determine that revocation of the *Order* would be likely to lead to continuation or recurrence of a countervailable subsidies at the following net countervailable subsidy rates:

Producer/exporter	Subsidy rate (percent *ad valorem*)
Wuxi Suntech Power Co., Ltd.[7]	25.56
Changzhou Trina Solar Energy Co., Ltd.[8]	26.75
All Others	26.15

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in these final results within five days of any public announcement or, if there is no public announcement, within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

Administrative Protective Order

This notice serves as the only reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely notification of the return or destruction of APO materials or conversion to judicial protective orders is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

Commerce is issuing and publishing these final results and this notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act and 19 CFR 351.218.

Dated: May 31, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[1] *See Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled into Modules, from the People's Republic of China: Countervailing Duty Order*, 77 FR 73017 (December 7, 2012) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 89 FR 6499 (February 1, 2024) (*Initiation Notice*).

[3] *See* The Alliance's Letter, ''Notice of Intent to Participate in Sunset Review,'' dated February 16, 2024.

[4] *See* The Alliance's Letter, ''Substantive Response to Notice of Initiation,'' dated March 4, 2024.

[5] *See* Commerce's Letter, ''Sunset Reviews for February 2024,'' dated March 22, 2024.

[6] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Expedited Second Sunset Review of the Countervailing Duty Order on Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, from the People's Republic of China,'' dated concurrently with and adopted by this notice (Issues and Decision Memorandum).

[7] Wuxi Suntech Power Co., Ltd. is cross-owned with: Suntech Power Co., Ltd.; Luoyang Suntech Power Co., Ltd.; Yangzhou Rietech Renewal Energy Co., Ltd.; Zhenjiang Huantai Silicon Science & Technology Co., Ltd.; Kuttler Automation Systems Co., Ltd.; Shenzhen Suntech Power Co., Ltd.; Wuxi Sunshine Power Co., Ltd.; Wuxi University Science Park International Incubator Co., Ltd.; Yangzhou Suntech Power Co., Ltd.; and Zhenjiang Rietech New Energy Science & Technology Co., Ltd.

[8] Changzhou Trina Solar Energy Co., Ltd. is cross-owned with Trina Solar (Changzhou) Science and Technology Co., Ltd.

VIII. Recommendation

[FR Doc. 2024–12531 Filed 6–6–24; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–834]

Large Diameter Welded Pipe From the Republic of Türkiye: Final Results of the Expedited First Sunset Review of the Countervailing Duty Order

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

SUMMARY: The U.S. Department of Commerce (Commerce) finds that revocation of the countervailing duty (CVD) order on large diameter welded pipe (welded pipe) from the Republic of Türkiye (Türkiye) would be likely to lead to continuation or recurrence of countervailable subsidies at the levels as indicated in the ''Final Results of Sunset Review'' section of this notice.

DATES: Applicable June 7, 2024.

FOR FURTHER INFORMATION CONTACT: Whitley Herndon, 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) 482–6274.

SUPPLEMENTARY INFORMATION:

Background

On May 2, 2019, Commerce published the *Order* on welded pipe from Türkiye in the **Federal Register**.[1] On February 1, 2024, Commerce published the notice of initiation of the first five-year (sunset) review of the *Order,* pursuant to section 751(c) of the Tariff Act of 1930, as amended (the Act).[2] On February 16, 2024, Commerce received a timely notice of intent to participate from the American Line Pipe Producers Association Trade Committee (ALPPA), the domestic interested party, within the 15-day deadline specified in 19 CFR 351.218(d)(1)(i).[3] ALPPA claimed interested party status under section 771(9)(F) of the Act as an association, a majority of whose members is composed of interested parties (*i.e.,* manufacturers or producers of the domestic like product).[4]

On March 4, 2024, Commerce received an adequate substantive response to the *Initiation Notice* from the domestic interested party within the 30-day deadline specified in 19 CFR 351.218(d)(3)(i).[5] Commerce did not receive a response from the Government of Türkiye (GOT) or from any other interested party. In accordance with section 751(c)(3)(B) of the Act, because Commerce did not receive a substantive response from the GOT or a respondent party, pursuant to 19 CFR 351.218(e)(1)(ii)(B) and (e)(1)(ii)(C), respectively, we determined that the respondent interested parties did not provide an adequate response to the *Initiation Notice.* Therefore, on March 22, 2024, Commerce notified the U.S. International Trade Commission that it did not receive an adequate substantive response from respondent interested parties, and that it would conduct an expedited (120-day) sunset review of the *Order.*[6]

Scope of the Order

The product covered by the *Order* is welded pipe from Türkiye. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.[7]

Analysis of Comments Received

A complete discussion of all issues raised in this sunset review, including the likelihood of continuation or recurrence of subsidization in the event of revocation of the *Order* and the countervailable subsidy rates likely to prevail if the *Order* were to be revoked, is provided in the accompanying Issues and Decision Memorandum. A list of the topics discussed in the Issues and Decision Memorandum is attached as an appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Final Results of Sunset Review

Pursuant to sections 751(c)(1) and 752(b) of the Act, Commerce determines that revocation of the *Order* would be likely to lead to continuation or recurrence of countervailable subsidies at the following net countervailing subsidy rates:

Manufacturer/producer/exporter	Net countervailable subsidy (percent)
HDM Celik Boru Sanayi ve Ticaret A.S	3.72
All Others	3.72

Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305, which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

Notification to Interested Parties

Commerce is issuing and publishing these final results and notice in accordance with sections 751(c), 752(b), and 777(i)(1) of the Act.

Dated: May 31, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2024–12521 Filed 6–6–24; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Large Diameter Welded Pipe From the Republic of Turkey: Amended Final Affirmative Antidumping Duty Determination and Antidumping Duty Order,* 84 FR 18799 (May 2, 2019) (*Order*).

[2] *See Initiation of Five-Year (Sunset) Reviews,* 89 FR 6499 (February 1, 2024) (*Initiation Notice*).

[3] *See* ALPPA's Letter, ''Notice of Intent to Participate in Sunset Review,'' dated February 16, 2024.

[4] *Id.*

[5] *See* ALPPA's Letter, ''Substantive Response to Notice of Initiation,'' dated March 4, 2024.

[6] *See* Commerce's Letter, ''Sunset Reviews for February 2024'' dated March 22, 2024.

[7] *See* Memorandum, ''Decision Memorandum for Final Results of the Expedited First Sunset Review of the Countervailing Duty Order on Large Diameter Welded Pipes from the Republic of Türkiye,'' dated May 31, 2024 (Issues and Decision Memorandum).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–834]

Certain Carbon and Alloy Steel Cut-To-Length Plate From Italy: Final Results of Antidumping Duty Administrative Review; 2022–2023

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that sales of certain carbon and alloy steel cut-to-length plate (CTL plate) from Italy were made at less than normal value during the period of review (POR), May 1, 2022, through April 30, 2023.

DATES: Applicable June 7, 2024.

FOR FURTHER INFORMATION CONTACT: Sean Grossnickle, AD/CVD Operations, Office II, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–3818.

SUPPLEMENTARY INFORMATION:

Background

On January 31, 2024, Commerce published in the **Federal Register** the *Preliminary Results* of the 2022–2023 administrative review [1] of the antidumping duty order on certain carbon and alloy steel cut-to-length plate from Italy.[2] The review covers two mandatory respondents, NLMK Verona S.p.A. (NVR) and Officine Tecnosider S.R.L. (OTS). We invited interested parties to comment on the *Preliminary Results*.[3] On March 8, 2024, the petitioner (*i.e.,* Nucor Corporation) submitted a case brief.[4] On March 14, 2024, NVR submitted a rebuttal brief.[5] For a complete description of the events that occurred since the *Preliminary Results, see* the Issues and Decision Memorandum.[6] Commerce conducted this administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Order

The merchandise subject to the *Order* is certain carbon and alloy steel cut-to-length plate from Italy. A complete description of the scope of the *Order* is contained in the Issues and Decision Memorandum.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs filed by parties in this administrative review are addressed in the Issues and Decision Memorandum and are listed in the appendix to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *http://access.trade.gov.* In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding the *Preliminary Results,* and for the reasons explained in the Issues and Decision Memorandum, Commerce made certain changes to the preliminary weighted-average dumping margin calculation for NVR for the final results of review.[7]

Final Results of Administrative Review

As a result of this review, we determine that the following estimated weighted-average dumping margin exists for the period May 1, 2022, through April 30, 2023:

Producer/exporter	Weighted-average dumping margin (percent)
NLMK Verona S.p.A	16.98
Officine Tecnosider S.R.L	0.00

Disclosure

Commerce intends to disclose the calculations performed in connection with these final results of review to interested parties within five days after public announcement of the final results or, if there is no public announcement, within five days of the date of publication of this notice in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rate

Pursuant to section 751(a)(2)(C) of the Act, and 19 CFR 351.212(b)(1), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries of subject merchandise in accordance with the final results of this review.

Pursuant to 19 CFR 351.212(b)(1), we calculated importer-specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for each importer's examined sales and the total entered value of those sales. Because OTS' weighted-average dumping margin or importer-specific assessment rate is zero or *de minimis* in the final results of review, we intend to instruct CBP to liquidate entries without regard to antidumping duties.[8] For NVR, where an importer-specific rate is zero or *de minimis,* we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties.

For entries of subject merchandise during the POR produced by NVR or OTS for which it did not know that its merchandise was destined for the United States, we will instruct CBP to liquidate unreviewed entries at the all-others rate established in the less-than-fair-value (LTFV) investigation (*i.e.,* 6.08 percent) if there is no rate for the intermediate company(ies) involved in the transaction.[9]

Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

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[1] *See Certain Carbon and Alloy Steel Cut-To-Length Plate from Italy: Preliminary Results of Antidumping Duty Administrative Review; 2022–2023,* 89 FR 6090 (January 31, 2024) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See Certain Carbon and Alloy Steel Cut-To-Length Plate from Austria, Belgium, France, the Federal Republic of Germany, Italy, Japan, the Republic of Korea, and Taiwan: Amended Final Affirmative Antidumping Determinations for France, the Federal Republic of Germany, the Republic of Korea and Taiwan, and Antidumping Duty Orders,* 82 FR 24096, 24098 (May 25, 2017) (*Order*).

[3] *See Preliminary Results.*

[4] *See* Petitioner's Letter, ''Nucor's Case Brief,'' dated March 8, 2024.

[5] *See* NVR's Letter, ''Rebuttal Brief,'' dated March 14, 2024.

[6] *See* Memorandum, ''Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Certain Carbon and Alloy Steel Cut-To-Length Plate from Italy; 2021–2022,'' dated concurrently with, and hereby adopted by, these results (Issues and Decision Memorandum).

[7] *See* Issues and Decision Memorandum; *see also* Memorandum, ''Cost Calculations for NLMK Verona S.p.A. (NVR) for the Final Results,'' dated concurrently with this notice.

[8] *See Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8102–03 (February 14, 2012); *see also* 19 CFR 351.106(c)(2).

[9] *See Order; see also Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication in the **Federal Register**, of the notice of final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the companies subject to this review will be equal to the weighted-average dumping margins established in the final results of this review; (2) for merchandise exported by producers or exporters not covered in this review but covered in a prior completed segment of the proceeding, the cash deposit rate will continue to be the company-specific rate published in the completed segment for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original LTFV investigation, but the producer has been covered in a prior completed segment of this proceeding, then the cash deposit rate will be the rate established in the completed segment for the most recent period for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be 6.08 percent *ad valorem,* the all-others rate established in the LTFV investigation.[10] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in Commerce's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation subject to sanction.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i) of the Act, and 19 CFR 351.221(b)(5).

Dated: May 31, 2024.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[FR Doc. 2024–12513 Filed 6–6–24; 8:45 am]

BILLING CODE 3510–DS–P

[10] *See Order.*

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE024]

Management Track Assessment Peer Review for Four Stocks of Atlantic Cod, Atlantic Surfclam, Black Sea Bass, Butterfish, and Golden Tilefish

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

ACTION: Notice of public meeting.

SUMMARY: NMFS and the Assessment Oversight Panel will convene the Management Track Assessment Peer Review Meeting for the purpose of reviewing four stocks of Atlantic cod (western Gulf of Maine; eastern Gulf of Maine; Georges Bank; southern New England), as well as Atlantic surfclam, black sea bass, butterfish, and golden tilefish. The Management Track Assessment Peer Review is a formal scientific peer-review process for evaluating and presenting stock assessment results to managers for fish stocks in the offshore U.S. waters of the northwest Atlantic. Assessments are prepared by the management track working groups and reviewed by an independent panel of stock assessment experts. The public is invited to attend the presentations and discussions between the review panel and the scientists who have participated in the stock assessment process.

DATES: The public portion of the Management Track Assessment Peer Review Meeting will be held June 18–25, 2024. The meeting will conclude on June 25, 2024, at 5:30 p.m. Eastern Standard Time. Please see **SUPPLEMENTARY INFORMATION** for the daily meeting agenda.

ADDRESSES: The meeting will be held via Google Meet:

- *Video call link: https://meet.google.com/cvj-xzxh-vuj.*
- *Dial-in number (US):* +1 505–596–1588; PIN: 594 430 759#.

FOR FURTHER INFORMATION CONTACT: Michele Traver, 508–495–2195, *michele.traver@noaa.gov.*

SUPPLEMENTARY INFORMATION: For an outline of the stock assessment process please visit the Northeast Fisheries Science Center (NEFSC) website at *https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/fishery-stock-assessments-new-england-and-mid-atlantic.* For specific information about the management track assessment peer review, please visit the NEFSC web page at *https://www.fisheries.noaa.gov/new-england-mid-atlantic/population-assessments/management-track-stock-assessments.*

The agenda is subject to change; all times are approximate and may be changed at the discretion of the Peer Review Chair.

Daily Meeting Agenda—Management Track Peer Review Meeting

TUESDAY, JUNE 18, 2024

Time	Subject	Presenter
9:30 a.m.–9:45 a.m	Welcome/Logistics/Conduct of Meeting	Michele Traver, Kristan Blackhart, John Wiedenmann, Chair.
9:45 a.m.–11:15 a.m	WGOM Cod	Charles Perretti.
11:15 a.m.–11:30 a.m	Break.	
11:30 a.m.–12:30 p.m	WGOM Cod cont. Discussion/Questions	Charles Perretti Panel.
12:30 p.m.–12:45 p.m	Public Comment	Public.
12:45 p.m.–1:45 p.m	Lunch.	
1:45 p.m.–3:30 p.m	EGOM Cod	Cameron Hodgdon.
3:30 p.m.–3:45 p.m	Break.	
3:45 p.m.–4:15 p.m	EGOM Cod cont. Discussion/Questions	Cameron Hodgdon Panel.
4:15 p.m.–4:30 p.m	Daily Wrap Up Summary/Discussion	Panel.
4:30 p.m.–4:45 p.m	Public Comment	Public.
4:45 p.m	Adjourn.	

THURSDAY, JUNE 20, 2024

Time	Subject	Presenter
9:30 a.m.–9:35 a.m	Welcome/Logistics	Michele Traver, John Wiedenmann, Chair.
9:35 a.m.–11 a.m	SNE Cod	Alex Hansell.
11 a.m.–11:15 a.m	Break.	
11:15 a.m.–12:15 p.m	SNE Cod cont. Discussion/Questions	Alex Hansell Panel.
12:15 p.m.–12:30 p.m	Public Comment	Public.
12:30 p.m.–1:30 p.m	Lunch.	
1:30 p.m.–3:30 p.m	GB Cod	Amanda Hart.
3:30 p.m.–3:45 p.m	Break.	
3:45 p.m.–4:45 p.m	GB Cod cont. Discussion/Questions	Amanda Hart Panel.
4:45 p.m.–5 p.m	Daily Wrap Up Summary/Discussion	Panel.
5 p.m.–5:15 p.m	Public Comment	Public.
5:15 p.m	Adjourn.	

FRIDAY, JUNE 21, 2024

Time	Subject	Presenter
9:30 a.m.–9:35 a.m	Welcome/Logistics	Michele Traver, John Wiedenmann, Chair.
9:35 a.m.–11 a.m	Meeting Wrap Up/Key Points	Panel.
11 a.m.–4 p.m	Report Writing	Panel.
4 p.m	Adjourn.	

MONDAY, JUNE 24, 2024

Time	Subject	Presenter
1 p.m.–1:15 p.m	Welcome/Logistics/Conduct of Meeting	Michele Traver, Kristan Blackhart, Paul Rago, Chair.
1:15 p.m.–3:15 p.m	Black Sea Bass	Emily Liljestrand.
3:15 p.m.–3:30 p.m	Break.	
3:30 p.m.–3:45 p.m	Daily Wrap Up Summary/Discussion	Panel.
3:45 p.m.–4 p.m	Public Comment	Public.
4 p.m	Adjourn.	

TUESDAY, JUNE 25, 2024

Time	Subject	Presenter
8:30 a.m.–8:35 a.m	Welcome/Logistics/Conduct of Meeting	Michele Traver, Paul Rago, Chair.
8:35 a.m.–10:30 a.m	Golden Tilefish	Paul Nitschke.
10:30 a.m.–10:45 a.m	Break.	
10:45 a.m.–11:45 a.m	Golden Tilefish cont. Discussion/Questions	Paul Nitschke Panel.
11:45 a.m.–12 p.m	Public Comment	Public.
12 p.m.–1 p.m	Lunch.	
1 p.m.–3 p.m	Butterfish Discussion/Questions	Charles Adams Panel.
3 p.m.–3:15 p.m	Break.	
3:15 p.m.–4:45 p.m	Atlantic Surf Clam Discussion/Questions	Dan Hennen Panel.
4:45 p.m.–5:15 p.m	Daily Wrap Up Summary/Discussion	Panel.
5:15 p.m.–5:30 p.m	Public Comment	Public.
5:30 p.m	Adjourn.	

The meeting is open to the public; however, during the ''Report Writing'' session on Friday, June 21, 2024, from 11 a.m. to 4 p.m., the public should not engage in discussion with the Peer Review Panel.

Special Accommodations

This meeting is physically accessible to people with disabilities. Special requests should be directed to Michele Traver, via email.

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

Dated: June 4, 2024.

Karen H. Abrams,

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

[FR Doc. 2024–12568 Filed 6–6–24; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Evaluation of California Coastal Management Program; Notice of Public Meeting; Request for Comments

AGENCY: Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of public meeting and opportunity to comment.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA), Office for Coastal Management, will hold a virtual public meeting to solicit input on the performance evaluation of the California Coastal Management Program. NOAA also invites the public to submit written comments.

DATES: NOAA will hold a virtual public meeting on Wednesday, August 28, 2024, at 12 p.m. Pacific Daylight Time (PDT). NOAA may close the meeting 15 minutes after the conclusion of public testimony and after responding to any clarifying questions from hearing participants. NOAA will consider all relevant written comments received by Friday, September 6, 2024.

ADDRESSES: Comments may be submitted by one of the following methods:

- *Virtual Public Meeting:* Register at *https://forms.gle/fzivtXuP1VLj5Fd16* to participate in the virtual public meeting on Wednesday, August 28, 2024, from 12 p.m. to 1 p.m. PDT. We request that all participants register by Tuesday, August 27, 2024 at 6 p.m. PDT. Please indicate on the registration form if you intend to provide oral comments. The speaker lineup is based on the date and time of this registration. Upon registration, NOAA will send a confirmation email. One hour prior to the start of the August 28, 2024 virtual meeting, NOAA will send an email to all registered speakers with a link to the public meeting and information about participating. While advance registration is requested, registration will remain open until the meeting closes, and any participant may provide oral comment after the registered speakers conclude. Meeting registrants may remain anonymous by typing ''Anonymous'' into the ''First Name'' and ''Last Name'' fields on the registration form.
- *Email:* Send written comments to Carrie Hall, evaluator, NOAA Office for Coastal Management, at *czma.evaluations@noaa.gov.* Include ''Comments on Performance Evaluation of the California Coastal Management Program'' in the subject line.

NOAA will accept anonymous comments; however, the written comments NOAA receives are considered part of the public record, and the entirety of the comment, including the name of the commenter, email address, attachments, and other supporting materials, will be publicly accessible. Sensitive personally identifiable information, such as account numbers and social security numbers, should not be included with the comment. Comments that are not related to the performance evaluation of the California Coastal Management Program, or that contain profanity, vulgarity, threats, or other inappropriate language will not be considered.

FOR FURTHER INFORMATION CONTACT: Carrie Hall, evaluator, NOAA Office for Coastal Management, by email at *Carrie.Hall@noaa.gov* or by phone at (240) 410–3422. Copies of the previous evaluation findings and assessment and strategies may be viewed and downloaded at *coast.noaa.gov/czm/evaluations.* A copy of the evaluation notification letter and most recent progress report may be obtained upon request by contacting Carrie Hall.

SUPPLEMENTARY INFORMATION: Section 312 of the Coastal Zone Management Act (CZMA), 16 U.S.C. 1458, requires NOAA to conduct periodic evaluations of federally approved coastal management programs. The evaluation process includes holding one or more public meetings, considering public comments, and consulting with interested Federal, State, and local agencies and members of the public. During the evaluation, and consistent with CZMA Section 312 and implementing regulations at 15 CFR 923, subpart L, NOAA will consider the extent to which the State of California has met the national objectives and addressed the coastal management needs identified in CZMA section 303(2), implemented and enforced the management program approved by the Secretary of Commerce, and adhered to the terms of financial assistance under the CZMA. When the evaluation is complete, NOAA's Office for Coastal Management will place a notice in the **Federal Register** announcing the availability of the final evaluation findings.

Authority: 16 U.S.C. 1458.

Keelin Kuipers,

Deputy Director, Office for Coastal Management, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 2024–12512 Filed 6–6–24; 8:45 am]

BILLING CODE 3510–08–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD999]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Terminal 4 Expansion and Redevelopment Project at the Port of Grays Harbor, Washington

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

ACTION: Notice; issuance of an incidental harassment authorization.

SUMMARY: In accordance with the regulations implementing the Marine Mammal Protection Act (MMPA) as amended, notification is hereby given that NMFS has issued an incidental harassment authorization (IHA) to Ag Processing Inc. (AGP) to incidentally harass marine mammals during construction activities associated with the Terminal 4 (T4) Expansion and Redevelopment Project (Project) at the Port of Grays Harbor (Port) in both the City of Aberdeen and City of Hoquiam, Grays Harbor County, Washington.

DATES: The authorization is effective from July 16, 2024 through July 15, 2025.

ADDRESSES: Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may be obtained online at: *https://www.fisheries.noaa.gov/action/incidental-take-*

authorization-ag-processing-incs-port-grays-harbor-terminal-4-expansion-and. In case of problems accessing these documents, please call the contact listed below.

FOR FURTHER INFORMATION CONTACT: Robert Pauline, Office of Protected Resources, NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the mitigation, monitoring and reporting of the takings are set forth. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

Summary of Request

On May 12, 2023, NMFS received a request from AGP for an IHA to take marine mammals incidental to construction activities in the City of Aberdeen and City of Hoquiam, Grays Harbor County, Washington. Following NMFS' review of the application, AGP submitted a revised version on August 4, 2023. The application was deemed adequate and complete on February 20, 2024. The notice of proposed IHA published for public comment on April 8, 2024 (89 FR 24436).

AGP's request is for take of harbor seal, California sea lion, Steller sea lion and harbor porpoise by Level B harassment and, for harbor seal and harbor porpoise, by Level A harassment. Neither AGP nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate. There are no changes from the proposed IHA to the final IHA.

Description of Activity

AGP plans to work in partnership with the Port to construct a new export terminal at T4. AGP and the Port will each undertake separate stages of the construction. The IHA is held by AGP as the responsible party, and authorizes take associated with the combined specified activity, with AGP acting on behalf of the Port for that portion. The activity would include removal of existing piles and the installation of both temporary and permanent piles of various sizes. The construction would occur for 105 days, which would occur intermittently over the in-water work window. Takes of marine mammals by Level A and Level B harassment would occur due to both impact and vibratory pile driving and vibratory removal.

The existing timber-piled fender system at the Terminal 4 Berth A (T4A) will be replaced with a modern pile-supported panel system and a modern suspended panel system at Berth B (T4B). Terminal 4's Berths A and B have distinctly different structural systems, necessitating piles to support the fender system at Berth A but not at Berth B. The new fender system will consist of a series of steel fender panels, each supported by one or more steel pipe piles at each fender location along T4A and supported by the existing deck only along T4B.

The planned Project consists of vibratory pile driving installation and removal and impact pile installation. Existing piles will be removed from the substrate using the direct pull method. If direct pulling is unsuccessful, vibratory extraction will be used. Vibratory extractors are commonly used to remove steel pile where sediments allow. Broken or damaged piles that cannot be removed by either the vibratory hammer or direct pull will be cut off at or below the mudline. However, for the purposes of estimating take it is assumed they would all be subject to vibratory removal. The Project will include the removal of up to:

- 50, 18-inch timber piles
- 6, 12-inch steel H-piles
- 27, 16.5-inch pre-stressed concrete octagonal sections

New and replacement piles will be installed with a vibratory hammer or combination of a vibratory hammer and impact hammer. Impact pile driving would be avoided to the extent feasible. Piles will be aligned with steel templates to ensure the correct position of the piles relative to each other. The planned Project will also include installation of up to:

- 50, 36-inch steel pipe piles
- 24, 24-inch steel pipe piles
- 6, 12-inch steel H-sections
- 15, 18-inch steel pipe piles
- 24, 24 to 30-inch steel pipe piles

Additionally, a total of up to 24 temporary 24-inch steel piles may be installed for temporary construction use or to address unforeseen conditions. The temporary piles will be placed and removed as necessary.

A further detailed description of the planned construction project is provided in the **Federal Register** notice for the proposed IHA (89 FR 24436, April 8, 2024). Since that time, no changes have been made to the planned activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specified activity. Mitigation, monitoring, and reporting measures are described in detail later in this document (please see Mitigation and Monitoring and Reporting).

Comments and Responses

A notice of NMFS' proposal to issue an IHA to AGP was published in the **Federal Register** on April 8, 2024 (89 FR 24436). That notice described, in detail, AGP's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. During that 30-day public comment period, no comments were received.

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 1 lists all species or stocks for which take is expected and has been

authorized for this activity and summarizes information related to the population or stock, including regulatory status under the MMPA and Endangered Species Act (ESA) and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' Alaska and Pacific SARs. All values presented in table 3 are the most recent available at the time of publication (including from the draft 2023 SARs) and are available online at: (*https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports*).

TABLE 1—SPECIES [1] LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; strategic (Y/N) [2]	Stock abundance (CV, N_{min}, most recent abundance survey) [3]	PBR	Annual M/SI [4]
Odontoceti (toothed whales, dolphins, and porpoises)						
Family Phocoenidae (porpoises):						
Harbor porpoise	*Phocoena phocoena*	Northern Oregon/, Washington Coast.	-,-; N	22,074 (0.391, 16,068, 2022)	161	3.2
Order Carnivora—Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California Sea Lion	*Zalophus californianus*	U.S	-,-; N	257,606 (N/A, 233,515, 2014)	14,011	>321
Steller Sea Lion	*Eumetopias jubatus*	Eastern	-,-; N	36,308 (N/A, 36,308, 2022)	2,178	93.2
Family Phocidae (earless seals):						
Harbor Seal	*Phoca vitulina*	Oregon/Washington Coastal Stock.	-, -, N	24,731 [5] (1999)	UNK	10.6

[1] Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (*https://www.marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies/*).

[2] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[3] NMFS marine mammal stock assessment reports online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable.

[4] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, vessel strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range.

[5] There is no current estimate of abundance available for this stock. Value presented is the most recent available and based on 1999 data.

As indicated above, all four species (with four managed stocks) in table 1 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. While killer whales (*Orcincus orca*), humpback whales (*Megaptera novaeangilae*), gray whales (*Eschrichtius robustus*), and minke whales (*Balaenoptera acutorostrada*) have been sighted in Grays Harbor, the temporal and/or spatial occurrence of these species is such that take is not expected to occur. Furthermore, if any of these species are sighted approaching Level B harassment zones, construction activities would be shut down in order to avoid harassment. Therefore, take is not expected for these species and they are not discussed further in this document.

A detailed description of the species likely to be affected by AGP's construction project, were provided in the **Federal Register** notice for the proposed IHA (89 FR 24436, April 8, 2024). Since that time, we are not aware of any changes in the status of these species and stocks; therefore, detailed descriptions are not provided here. Please refer to the **Federal Register** notice for these descriptions.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65 decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in table 2.

TABLE 2—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia,* river dolphins, Cephalorhynchid, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on ~65 dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth *et al.,* 2013).

For more detail concerning these groups and associated frequency ranges, please see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

The effects of underwater noise from AGP's pile driving activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the project area. The notice of proposed IHA (89 FR 24436, April 8, 2024) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of under noise from AGP's pile driving activities on marine mammals and their habitat. Please refer to the notice of proposed IHA (89 FR 24436, April 8, 2024) for that information and analysis, which is not repeated here.

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes authorized through the IHA, which will inform NMFS' consideration of ''small numbers,'' the negligible impact determinations, and impacts on subsistence uses.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as use of the acoustic stressors (*i.e.,* pile driving) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for high frequency species (harbor porpoise) and phocids (harbor seal). Auditory injury is unlikely to occur for other species due to permanent threshold shift (PTS) zone sizes. The required mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or authorized for this activity. Below we describe how the take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the authorized take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021; Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 μPa)) for continuous (*e.g.,* vibratory pile driving, drilling) and above RMS SPL 160 dB (re 1 μPa) for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the

potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

AGP's planned activity includes the use of continuous (vibratory driving and removal) and impulsive (impact pile driving) sources, and therefore the RMS SPL thresholds of 120 and 160 dB re 1 µPa are applicable.

Level A Harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0) (Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). AGP's planned activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving and removal) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 3—THRESHOLDS IDENTIFYING THE ONSET OF PERMANENT THRESHOLD SHIFT

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 µPa, and cumulative sound exposure level (L_E) has a reference value of 1µPa^{2}s. In this table, thresholds are abbreviated to reflect American National Standards Institute standards (ANSI, 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript "flat" is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the planned project. Marine mammals are expected to be affected via sound generated by the primary components of the project (*i.e.,* impact pile driving, vibratory pile driving and removal). Additionally, vessel traffic and other commercial and industrial activities in the project area may contribute to elevated background noise levels which may mask sounds produced by the project.

Transmission loss (*TL*) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. *TL* parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater *TL* is:

$$TL = B * \mathrm{Log}_{10}(R_1/R_2),$$

where

TL = transmission loss in dB
B = transmission loss coefficient
R_1 = the distance of the modeled SPL from the driven pile, and
R_2 = the distance from the driven pile of the initial measurement

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6–dB reduction in sound level for each doubling of distance from the source (20*log[range]). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source (10*log[range]). A practical spreading value of 15 is often used under conditions, such as the project site, where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Practical spreading loss is assumed here.

The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. In order to calculate the distances to the Level A harassment and the Level B harassment sound thresholds for the methods and piles being used in this project, NMFS used acoustic monitoring data from other locations to develop proxy source levels for the various pile types, sizes and methods. The project includes vibratory and impact pile installation of steel and vibratory removal of steel, timber piles, and concrete piles. Pile sizes range from 12-in to 36-in. Source levels for the various pile sizes and driving methods are presented in table 4. Bubble curtains would be employed during all impact driving, with an assumed 5 dB effective attenuation (Caltrans, 2020).

TABLE 4—PROXY SOUND SOURCE LEVELS FOR PILE SIZES AND DRIVING METHODS

Method and pile type	Sound level at 10 m (dB rms)		
Vibratory hammer			
36-inch steel piles (installation) [1]	170		
30-inch steel pipe piles (installation) [2]	159		
24-inch steel piles (installation and removal) [3]	154		
18-inch steel pipe piles (installation) [4]	158		
12-inch steel H-piles (installation and removal) [5]	150		
18-inch creosote timber piles (removal) [6]	162		
16.5-inch concrete octagonal sections (removal) [6]	163		
Impact hammer	dBrms	dBSEL	dBpeak
24-inch steel piles (single strike) [7]	190 (185)	177 (172)	203 (198)
36-inch steel piles (single strike) [8]	193 (188)	183 (178)	210 (205)

[1] Laughlin 2012 as cited in WSDOT 2020.
[2] 2023 NMFS Calculations based on data from Denes *et al.* 2016 (Auke Bay, Ketchikan, Kake), Edmonds Ferry Terminal (Laughlin 2011, 2017), Colman Dock—Seattle Ferry Terminal (Laughlin 2012), Kodiak Pier 3 (PND Engineers, 2015).
[3] 2023 NMFS Calculations based on data from Naval Base Kitsap Bangor Test Pile (Navy (2012)) and EHW–2 (Navy (2013)), Gustavus (Miner, 2020).
[4] Caltrans 2020.
[5] From generic value recommended in the Caltrans 2015 summary table, as it was representative of the data and provided a citable data point and included projects from San Rafael, CA; Norfolk Naval Station, VA; Chevron Long Wharf, CA; JEB Little Creek, Norfolk, VA.
[6] Data not available, anticipated noise levels are based on available noise levels for the vibratory removal of 20-inch diameter concrete piles (Naval Facilities Engineering Systems Command Southwest 2022). Noise levels were back-calculated to a 10 meter measurement distance assuming a 15 log transmission loss. Based on prior coordination with NMFS for the Johnson Pier Expansion and Dock Replacement Project IHA Request (M&N 2022) this data source is an acceptable surrogate for timber piles (Pers. comm. Cara Hotchkin 2023).
[7] From Caltrans 2015, pooled and averaged from 20 to 24″ piles from Stockton WWTP, CA; Bradshaw Bridge, CA; Rodeo Dock, CA; Tongue Point Pier,OR; Cleer Creek WWTP, CA; SR 520 Test Pile, WA; Portland Light Rail, OR; Port of Coeyman, NY; Pritchard Lake, CA; Amorco Wharf, CA; 5th Street Bridge, CA; Schuyler Heim Bridge, CA; Tanana River, AK, NBK EHW2, WA; Crescent City, CA; Avon Wharf, CA; Orwood Bridge Replacement, CA; Tesoro Amorco Wharf, CA; USCG Floating Dock, CA; Norfolk, VA; Plains Terminal, CA. A 5dB attenuation applied in parenthesis for the use of a bubble curtain.
[8] Caltrans 2020, unattenuated data used as reference. A 5dB attenuation applied in parenthesis for the use of a bubble curtain.
Note: It is assumed that noise levels during vibratory pile installation and vibratory pile removal are similar.

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources such as impact or vibratory pile driving and removal, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. Inputs used for impact driving in the optional User Spreadsheet tool, and the resulting estimated isopleths, are reported below in table 5 and table 6 below.

TABLE 5—USER SPREADSHEET INPUTS FOR IMPACT DRIVING

Inputs	36-inch impact	24-inch impact
Spreadsheet Tab Used	E.1) Impact Pile Driving (STATIONARY SOURCE: Impulsive, Intermittent)	
Source Level (Single Strike/shot SEL)	183	177
Weighting Factor Adjustment (kHz)	2	2
Strikes per pile	600	500
Piles Per day	4	4
Propagation (xLogR)	15	15
Distance of source level measurement (meters)	10	10

TABLE 6—CALCULATED LEVEL A HARASSMENT ZONES, IMPACT INSTALLATION (m)

Pile type	Level A threshold		
	High-frequency cetaceans 155 dB SELcum	Phocid pinnipeds 185 dB SELcum	Otariid pinnipeds 203 dB SELcum
36-inch steel piles (installation)	990	445	33

TABLE 6—CALCULATED LEVEL A HARASSMENT ZONES, IMPACT INSTALLATION (m)—Continued

Pile type	Level A threshold		
	High-frequency cetaceans 155 dB SELcum	Phocid pinnipeds 185 dB SELcum	Otariid pinnipeds 203 dB SELcum
24-inch steel piles, permanent (installation)	349	157	12

Table 7 shows the User Spreadsheet Inputs for vibratory driving and the resulting Level A harassment zones are shown in table 8. Calculated Level B harassment isopleths are found in table 9.

TABLE 7—USER SPREADSHEET INPUTS FOR VIBRATORY DRIVING

Inputs	36-in steel (install)	24-to-30-in steel (install)	24-in steel perm. (install)	24-in steel temp. (install and removal)	18-in steel (install)	12-inch steel H-piles (install and removal)	18-in timber (removal)	16.5-inch concrete (removal)
Tab Used	A.1) Vibratory Pile Driving (STATIONARY: Non-impulsive, Continuous)							
Source Level (RMS)	170	159	154	154	158	150	162	163
Weighting Factor Adjustment (kHz)	2.5							
Duration (minutes)	120	60	90	30	30	30	30	60
Piles per day	4	6	4	8	6	3	10	8
Propagation (xLogR)	15							
Distance of source level (m)	10							

TABLE 8—CALCULATED LEVEL A HARASSMENT ZONES, VIBRATORY INSTALLATION AND REMOVAL (m)

Pile type	Level A threshold		
	High-frequency cetaceans 173 dB SELcum	Phocid pinnipeds 201 dB SELcum	Otariid pinnipeds 219 dB SELcum
36-inch steel piles (installation)	161	67	5
24-to-30-inch steel pipe piles (installation)	25	10	1
24-inch steel piles, permanent (installation)	12	5	1
24-inch steel piles, temporary (installation and removal)	9	4	1
18-inch steel pipe piles (installation)	13	6	1
12-inch steel H-piles (installation and removal)	3	1	1
18-inch creosote timber piles (removal)	35	15	1
16.5-inch concrete octagonal sections (removal)	55	23	2

TABLE 9—LEVEL B HARASSMENT ZONES, VIBRATORY AND IMPACT DRIVING (m)

Pile type	Level B threshold all marine mammals 120 dBrms
120 dB threshold	
36-inch steel piles (installation)	21,545
24-to-30-inch steel pipe piles (installation)	3,981
24-inch steel piles, (installation and removal)	1,847
18-inch steel pipe piles (installation)	3,415
12-inch steel H-piles (installation and removal)	1,000
18-inch creosote timber piles (removal)	6,310
16.5-inch concrete octagonal sections (removal)	7,365
160 dB threshold	
36-inch steel piles (Installation)	736
24-inch steel piles, permanent (Installation)	465

Marine Mammal Occurrence and Take Estimation

In this section we provide information about the occurrence of marine mammals, including density or other relevant information which will inform the take calculations. The primary source for density estimates is from the Navy Marine Species Density Database (NMSDD) Phase III for the Northwest Training and Testing Study Area (Navy, 2019) although density calculated from other aerial surveys was used for harbor seal. These density estimates will be used to calculate take due to the lack of site-specific data that is available.

To quantitatively assess potential exposure of marine mammals to noise levels from pile driving over the NMFS threshold guidance, the following equation was first used to provide an estimate of potential exposures within estimated harassment zones:

Exposure estimate = N × Level B harassment zone (square kilometer (km^2)) × maximum days of pile driving

where

N = density estimate (animals per km^2) used for each species.

Harbor Seal

There are no harbor seal density estimates for Grays Harbor, but the NMSDD (NMSDD, 2020) estimates the density of harbor seals in the waters offshore of Grays Harbor as 0.3424 animals per square kilometer. However, harbor seals are anticipated to be more common within Grays Harbor than within offshore areas. Therefore, this density estimate may underestimate actual densities for the project site.

Two aerial surveys of Grays Harbor were conducted in June of 2014. The average count was multiplied by a regional correction factor of 1.43 (Huber *et al.,* 2001) to yield the estimated harbor seal abundance. A correction factor was used because aerial surveys of harbor seals on land only produce a minimum assessment of the population and animals in the water must be accounted for to estimate total abundance. The average survey count (7,495 seals/survey) was used to calculate density by dividing by the area of Grays Harbor (243 km^2) resulting in a calculated density of 30.85 animals per km^2). This value was used to calculate estimated take by both Level A harassment and Level B harassment during the driving of the various types of piles for the Project. Estimated takes by Level B harassment are shown in table 10 and takes by Level A harassment are shown in table 11.

The largest Level A harassment zone for phocid pinnipeds extends from 157 to 445 meters (m) from the source during impact driving. AGP and NMFS agreed on the implementation of a 100 m shutdown zone in order to shut down for those animals closest to the pile driving activity but allow for pile driving to continue for animals that are beyond 100 m (see Mitigation section). AGP is confident they can complete work in an efficient manner with the occurrence of harbor seals in the project area. AGP has requested authorization of 18,830 takes of harbor seals by Level B harassment as well as 73 harbor seal takes by Level A harassment. NMFS concurs with the requests and has authorized take of harbor seals at these levels.

TABLE 10—CALCULATED TAKE ESTIMATE OF HARBOR SEALS BY LEVEL B HARASSMENT

Pile type	Installation/removal method	Harbor seal density per km^2	Days of pile driving	Level B area (km^2)	Shutdown zone distance	Shutdown area (km^2)	Level B take estimate
36-inch steel piles (installation)	Vibratory	30.85	24	10.2	70	0.03	7,529.87
36-inch steel piles (installation)	Impact to proof	30.85	6	1.07	100	0.05	188.80
24-to-30-inch steel pipe piles (installation)	Vibratory	30.8	18	4.95	10	0.009	2,739.29
24-inch steel piles, permanent (installation)	Vibratory	30.85	10	2.72	10	0.004	804.37
24-inch steel piles, permanent (installation)	Impact to proof	30.85	2	0.46	100	0.05	30.36
24-inch steel piles, temporary (installation and removal).	Vibratory	30.85	12	2.72	10	0.004	1,005.46
18-inch steel pipe piles (installation)	Vibratory	30.85	6	4.3	10	0.009	794.26
12-inch steel H-piles (installation and removal)	Vibratory	30.85	6	1.7	10	0.004	313.93
18-inch creosote timber piles (removal)	Vibratory	30.85	12	7.4	15	0.014	2,734.30
16.5-inch concrete octagonal sections (removal)	Vibratory	30.85	9	7.97	25	0.011	2,209.82
Total							18,350

TABLE 11—CALCULATED TAKE ESTIMATE OF HARBOR SEALS BY LEVEL A HARASSMENT

Pile type	Installation/removal method	Harbor seal density per km^2	Days of pile driving	Level A area (km^2)	Shutdown zone distance	Shutdown area (km^2)	Level A take estimate
36-inch steel piles (installation)	Vibratory	30.85	24	0.03	70	0.03	0.00
36-inch steel piles (installation)	Impact to proof	30.85	6	0.43	100	0.05	70.34
24-to-30-inch steel pipe piles (installation)	Vibratory	30.8	18	0.009	10	0.009	0.00
24-inch steel piles, permanent (installation)	Vibratory	30.85	10	0.002	10	0.004	0.00
24-inch steel piles, permanent (installation)	Impact to proof	30.85	2	0.084	100	0.05	2.52
24-inch steel piles, temporary (installation and removal).	Vibratory	30.85	12	0.0018	10	0.004	0.00
18-inch steel pipe piles (installation)	Vibratory	30.85	6	0.005	10	0.009	0.00
12-inch steel H-piles (installation and removal)	Vibratory	30.85	6	0.0009	10	0.004	0.00
18-inch creosote timber piles (removal)	Vibratory	30.85	12	0.014	15	0.014	0.00
16.5-inch concrete octagonal sections (removal)	Vibratory	30.85	9	0.01	25	0.011	0.00
Total							73

California Sea Lion

The NMSDD estimates the density of California sea lions in the waters offshore of Grays Harbor as 0.0288, 0.5573 and 0.66493 animals per km^2 in summer, fall and winter, respectively (Navy, 2019). AGP conservatively utilized the higher winter density value to calculate estimated take. Based on this density estimate, the number of California sea lions that may be taken by

Level B harassment is presented in table 14. Take by Level A harassment is not anticipated since the nearest documented California sea lion haulout sites are at the Westport Docks, approximately 13 miles west of the Project site near the entrance to Grays Harbor (Jeffries *et al.,* 2015), and another haulout observed in 1997 referred to as the mid-harbor flats located approximately 5.65 miles west of the Project site (WDFW, 2022). Additionally, the largest Level A harassment zone is 33 m, with all the other zones for both impact and vibratory driving no more than 12 m.

AGP requested and NMFS has authorized 387 California sea lion takes by Level B harassment as shown in table 12.

TABLE 12—LEVEL B HARASSMENT TAKE ESTIMATES FOR CALIFORNIA SEA LIONS

Pile type	Installation/removal method	California sea lion density per km²	Days of pile driving	Level B area (km²)	Shutdown zone distance	Shutdown area (km²)	Level B take estimate
36-inch steel piles (installation)	Vibratory	0.6493	24	10.2	10	0.03	158.48
36-inch steel piles (installation)	Impact to proof	0.6493	6	1.07	35	0.016	4.11
24-to-30-inch steel pipe piles (installation)	Vibratory	0.6493	18	4.95	10	0.009	57.75
24-inch steel piles, permanent (installation)	Vibratory	0.6493	10	2.72	10	0.004	16.93
24-inch steel piles, permanent (installation)	Impact to proof	0.6493	2	0.46	15	0.006	0.71
24-inch steel piles, temporary (installation and removal).	Vibratory	0.6493	12	2.72	10	0.004	21.16
18-inch steel pipe piles (installation)	Vibratory	0.6493	6	4.3	10	0.009	16.72
12-inch steel H-piles (installation and removal)	Vibratory	0.6493	6	1.7	10	0.004	6.61
18-inch creosote timber piles (removal)	Vibratory	0.6493	12	7.4	10	0.009	57.59
16.5-inch concrete octagonal sections (removal)	Vibratory	0.6493	9	7.97	10	0.004	46.55
Total							387

Steller Sea Lion

The NMSDD estimates the density of Steller sea lions in the waters offshore of Grays Harbor as 0.1993 animals per km² in the summer, 0.1678 animals per km² in the winter/spring, and 0.1390 animals per km² in the fall (Navy, 2020). The summer density estimate of 0.1993 per km² has been used as a conservative surrogate for Steller sea lion density within Grays Harbor.

WDFW Priority Habitat and Species Data does not indicate any observances of Steller sea lions in Grays Harbor (WDFW, 2022). The nearest documented Steller sea lion haul-out sites to the Project site are at Split Rock, 35 miles north of the entrance to Grays Harbor, and at the mouth of the Columbia River, 46 miles south of the entrance to Grays Harbor (Jeffries *et al.,* 2000). A few Steller sea lions may haul out on buoys near the Westport marina, located 13 miles west of the Project site, or at Westport docks, similar to California sea lions. Given that the Level A harassment zone varies from 1 to 5 meters during vibratory pile installation and 12 to 33 meters during impact installation, in addition to their uncommon appearances in Grays Harbor, no take by Level A harassment is anticipated or authorized by NMFS.

AGP requested and NMFS has authorized 119 Steller sea lion takes by Level B harassment as shown in table 13.

TABLE 13—LEVEL B HARASSMENT TAKE ESTIMATES FOR STELLER SEA LIONS

Pile type	Installation/removal method	Stellar sea lion density per km²	Days of pile driving	Level B area (km²)	Shutdown zone distance	Shutdown area (km²)	Level B take estimate
36-inch steel piles (installation)	Vibratory	0.1993	24	10.2	10	0.03	48.65
36-inch steel piles (installation)	Impact to proof	0.1993	6	1.07	35	0.016	1.26
24-to-30-inch steel pipe piles (installation)	Vibratory	0.1993	18	4.95	10	0.009	17.73
24-inch steel piles, permanent (installation)	Vibratory	0.1993	10	2.72	10	0.004	5.20
24-inch steel piles, permanent (installation)	Impact to proof	0.1993	2	0.46	15	0.006	0.22
24-inch steel piles, temporary (installation and removal).	Vibratory	0.1993	12	2.72	10	0.004	6.50
18-inch steel pipe piles (installation)	Vibratory	0.1993	6	4.3	10	0.009	5.13
12-inch steel H-piles (installation and removal)	Vibratory	0.1993	6	1.7	10	0.004	2.03
18-inch creosote timber piles (removal)	Vibratory	0.1993	12	7.4	10	0.009	17.68
16.5-inch concrete octagonal sections (removal)	Vibratory	0.1993	9	7.97	10	0.004	14.29
Total							119

Harbor Porpoise

The Navy has estimated that density of harbor porpoises in the waters offshore of Grays Harbor is 0.467 animals per km² (Navy, 2019). AGP acknowledges that this value may be an overestimate since it is based on offshore observations. However, lacking additional survey or anecdotal evidence, this NMSDD value is used as a conservative estimate for the number of harbor porpoises that are expected to be within Grays Harbor. Estimated take by Level B harassment is shown in table 14.

During impact pile driving, the Level A harassment isopleths range from 349 to 990 m for high-frequency cetaceans and up to 161 m during vibratory driving. AGP will implement a maximum of 100-m shutdown zone. This leaves large areas where take of harbor porpoises by Level A harassment could occur. It would be challenging for protected species observers to effectively monitor out to the full extent of these zones given the cryptic nature of harbor porpoises. Therefore, take was estimated using porpoise density multiplied by the area of the Level A harassment zone beyond 100 m (in cases where the Level A harassment zone exceeded the shutdown zone)

multiplied by the number of driving days as shown in table 15.

AGP requested and NMFS has authorized 277 harbor porpoise takes by Level B harassment and 5 harbor porpoises by Level A harassment.

TABLE 14—CALCULATED TAKE ESTIMATE OF HARBOR PORPOISE BY LEVEL B HARASSMENT

Pile type	Installation/removal method	Harbor porpoise density per km^2	Days of pile driving	Level B area (km^2)	Shutdown zone distance	Shutdown area (km^2)	Level B take estimate
36-inch steel piles (installation)	Vibratory	0.467	24	10.2	100	0.05	113.76
36-inch steel piles (installation)	Impact to proof	0.467	6	1.07	100	0.05	2.86
24-to-30-inch steel pipe piles (installation)	Vibratory	0.467	18	4.95	25	0.023	41.42
24-inch steel piles, permanent (installation)	Vibratory	0.467	10	2.72	10	0.004	12.18
24-inch steel piles, permanent (installation)	Impact to proof	0.467	2	0.46	100	0.05	0.46
24-inch steel piles, temporary (installation and removal).	Vibratory	0.467	12	2.72	10	0.004	15.22
18-inch steel pipe piles (installation)	Vibratory	0.467	6	4.3	15	0.014	12.01
12-inch steel H-piles (installation and removal)	Vibratory	0.467	6	1.7	10	0.004	4.75
18-inch creosote timber piles (removal)	Vibratory	0.467	12	7.4	35	0.034	41.28
16.5-inch concrete octagonal sections (removal)	Vibratory	0.467	9	7.97	55	0.025	33.39
Total							277

TABLE 15—CALCULATED TAKE ESTIMATE OF HARBOR PORPOISE BY LEVEL A HARASSMENT

Pile type	Installation/removal method	Harbor porpoise density per km^2	Days of pile driving	Level A area (km^2)	Shutdown zone distance	Shutdown area (km^2)	Level A take estimate
36-inch steel piles (installation)	Vibratory	0.467	24	0.086	100	0.05	0.40
36-inch steel piles (installation)	Impact to proof	0.467	6	1.64	100	0.05	4.46
24-to-30-inch steel pipe piles (installation)	Vibratory	0.467	18	0.023	25	0.023	0.00
24-inch steel piles, permanent (installation)	Vibratory	0.467	10	0.005	10	0.004	0.00
24-inch steel piles, permanent (installation)	Impact to proof	0.467	2	0.28	100	0.05	0.26
24-inch steel piles, temporary (installation and removal).	Vibratory	0.467	12	0.004	10	0.004	0.00
18-inch steel pipe piles (installation)	Vibratory	0.467	6	0.012	15	0.014	0.00
12-inch steel H-piles (installation and removal)	Vibratory	0.467	6	0.001	10	0.004	0.00
18-inch creosote timber piles (removal)	Vibratory	0.467	12	0.034	35	0.034	0.00
16.5-inch concrete octagonal sections (removal)	Vibratory	0.467	9	0.025	55	0.025	0.00
Total							5

TABLE 16—ESTIMATED TAKE BY LEVEL A AND LEVEL B HARASSMENT, BY SPECIES AND STOCK

Common name	Stock	Stock abundance	Level A	Level B	Total authorized take	Authorized take as percentage of stock
Harbor porpoise	Northern Oregon/Washington Coast	22,074	5	277	282	1.3
Steller sea lion	Eastern U.S	36,308		119	119	0.3
California sea lion	U.S	257,606		387	387	0.2
Harbor seal	OR/WA coast stock	[a] 24,731	73	18,350	18,423	74.5

[a] There is no current estimate of abundance available for this stock. Value presented is the most recent available and based on 1999 data.

Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost and impact on operations.

Pre-Activity Monitoring§—Prior to the start of daily in-water construction activity, or whenever a break in pile

driving/removal of 30 minutes or longer occurs, protected species observers (PSOs) would observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone would be considered cleared when a marine mammal has not been observed within the zone for that 30-minute period. If a marine mammal is observed within the shutdown zone, a soft-start cannot proceed until the animal has left the zone or has not been observed for 15 minutes. If the monitoring zone has been observed for 30 minutes and marine mammals are not present within the zone, soft-start procedures can commence and work can continue. Pre-start clearance monitoring must be conducted during periods of visibility sufficient for the lead PSO to determine that the shutdown zones indicated in table 17 are clear of marine mammals. Pile driving may commence following 30 minutes of observation when the determination is made that the shutdown zones are clear of marine mammals. If work ceases for more than 30 minutes, the pre-activity monitoring of both the monitoring zone and shutdown zone would commence.

Implementation of Shutdown Zones for Level A Harassment—For all pile driving/removal activities, AGP would implement shutdowns within designated zones. The purpose of a shutdown zone is generally to define an area within which shutdown of activity would occur upon sighting of a marine mammal (or in anticipation of an animal entering the defined area). Implementation of shutdowns would be used to avoid or minimize takes by Level A harassment from vibratory and impact pile driving for all four species for which take may occur. Shutdown zones would be based upon the Level A harassment isopleth for each pile size/type and driving method where applicable. However, a maximum shutdown zone of 100 m was requested by AGP and has been accepted by NMFS. This is anticipated to reduce Level A harassment exposures without resulting in a substantial risk to the project schedule that could occur if marine mammals repeatedly enter into larger shutdown zones.

A minimum shutdown zone of 10 m would be required for all in-water construction activities to avoid physical interaction with marine mammals. Shutdown zones for each activity type are shown in table 17.

TABLE 17—SHUTDOWN ZONES DURING PILE INSTALLATION AND REMOVAL (m)

Pile type	Shutdown zone			Level B harassment zone
	High-frequency cetaceans	Phocid pinnipeds	Otariid pinnipeds	
Impact				
36-inch steel piles (installation)	100	100	35	740
24-inch steel piles, permanent (installation)	100	100	15	465
Vibratory				
36-inch steel piles (installation)	100	70	10	21,550
24-to-30-inch steel pipe piles (installation)	25	10	10	3,985
24-inch steel piles, permanent (installation)	15	10	10	1,850
24-inch steel piles, temporary (installation and removal)	10	10	10	1,850
18-inch steel pipe piles (installation)	15	10	10	3,415
12-inch steel H-piles (installation and removal)	10	10	10	1,000
18-inch creosote timber piles (removal)	35	15	10	6,310
16.5-inch concrete octagonal sections (removal)	55	25	10	7,365

All marine mammals would be monitored in the Level B harassment zones and throughout the area as far as visual monitoring can take place. If a marine mammal enters the Level B harassment zone, in-water activities would continue and PSOs would document the animal's presence within the estimated harassment zone.

If a species for which authorization has not been granted, or a species which has been granted but the authorized takes are met, is observed approaching or within the Level B harassment zone, pile driving activities will be shut down immediately.

Activities will not resume until the animal has been confirmed to have left the area or 15 minutes has elapsed with no sighting of the animal.

Soft Start—The use of soft-start procedures are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to leave the area prior to the hammer operating at full capacity. For impact pile driving, contractors would be required to provide an initial set of strikes from the hammer at reduced energy, with each strike followed by a 30-second waiting period. This procedure would be conducted a total of three times before impact pile driving begins. Soft start would be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer. Soft start is not required during vibratory pile driving and removal activities.

Bubble Curtain—A bubble curtain would be employed during impact installation or proofing of steel piles. A noise attenuation device would not be required during vibratory pile driving. If a bubble curtain or similar measure is used, it would distribute air bubbles around 100 percent of the piling perimeter for the full depth of the water column. Any other attenuation measure would be required to provide 100 percent coverage in the water column for the full depth of the pile. The lowest bubble ring would be in contact with the mudline for the full circumference of the ring. The weights attached to the bottom ring would ensure 100 percent mudline contact. No parts of the ring or other objects would prevent full mudline contact. Air flow to the bubblers must be balanced around the circumference of the pile.

Based on our evaluation of the applicant's measures, NMFS has determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Visual Monitoring

Monitoring must be conducted by NMFS-approved observers in accordance with sections 13.1 and 13.2 of the application. Trained observers must be placed from the best vantage point(s) practicable to monitor for marine mammals and implement shutdown or delay procedures when applicable through communication with the equipment operator. Observer training must be provided prior to project start, and shall include instruction on species identification (sufficient to distinguish the species in the project area), description and categorization of observed behaviors and interpretation of behaviors that may be construed as being reactions to the specified activity, proper completion of data forms, and other basic components of biological monitoring, including tracking of observed animals or groups of animals such that repeat sound exposures may be attributed to individuals (to the extent possible).

Monitoring would be conducted 30 minutes before, during, and 30 minutes after pile driving/removal activities. In addition, observers would record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving/removal activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

A minimum of three PSOs must be on duty during all in-water pile driving activities. One observer will be stationed on the existing dock or similar location to monitor the Level A harassment zones, and two other observers will be stationed throughout the Level B harassment zones where best line of sight views would provide most complete coverage of the zone. PSOs would monitor for marine mammals entering the harassment zones; the position(s) may vary based on construction activity and location of piles or equipment.

PSOs would scan the waters using binoculars and would use a handheld range-finder device to verify the distance to each sighting from the project site. All PSOs would be trained in marine mammal identification and behaviors and are required to have no other project-related tasks while conducting monitoring. In addition, monitoring would be conducted by qualified observers, who would be placed at the best vantage point(s) practicable to monitor for marine mammals and implement shutdown/delay procedures when applicable by calling for the shutdown to the hammer operator via a radio. AGP would adhere to the following observer qualifications:

(i) PSOs must be independent of the activity contractor (for example, employed by a subcontractor) and have no other assigned tasks during monitoring periods.

(ii) At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.

(iii) Other PSOs may substitute other relevant experience, education (degree in biological science or related field), or training for prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.

(iv) Where a team of three or more PSOs is required, a lead observer or monitoring coordinator must be designated. The lead observer must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization.

(v) PSOs must be approved by NMFS prior to beginning any activity subject to this IHA.

Additional standard observer qualifications include:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates and times when in-water construction activities were suspended to avoid potential incidental injury from construction sound of marine mammals observed within a defined shutdown zone; and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary.

Reporting

A draft marine mammal monitoring report will be submitted to NMFS within 90 days after the completion of pile driving and removal activities. It will include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:

• Dates and times (begin and end) of all marine mammal monitoring.

• Construction activities occurring during each daily observation period, including the number and type of piles driven or removed and by what method (*i.e.,* impact driving) and the total equipment duration for cutting for each pile or total number of strikes for each pile (impact driving).

• PSO locations during marine mammal monitoring.

• Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance.

• Upon observation of a marine mammal, the following information: Name of PSO who sighted the animal(s) and PSO location and activity at time of sighting; Time of sighting; Identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species; Distance and bearing of each marine mammal observed relative to the pile being driven for each sighting (if pile driving was occurring at time of sighting); Estimated number of animals (min/max/best estimate); Estimated number of animals by cohort (adults, juveniles, neonates, group composition, *etc.*); Animal's closest point of approach and estimated time spent within the harassment zone; and Description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching).

• Number of marine mammals detected within the harassment zones, by species.

• Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

If no comments are received from NMFS within 30 days, the draft report will constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the unanticipated event that the specified activity clearly causes the take of a marine mammal in a manner prohibited by the IHA (if issued), such as an injury, serious injury or mortality, AGP must immediately cease the specified activities and report the incident to the Office of Protected Resources, NMFS, and the West Coast Region regional stranding coordinator. The report must include the following information:

• Description of the incident;

• Environmental conditions (*e.g.,* Beaufort sea state, visibility);

• Description of all marine mammal observations in the 24 hours preceding the incident;

• Species identification or description of the animal(s) involved;

• Fate of the animal(s); and

• Photographs or video footage of the animal(s) (if equipment is available).

Activities must not resume until NMFS is able to review the circumstances of the prohibited take. NMFS will work with AGP to determine what is necessary to minimize the likelihood of further prohibited take and ensure MMPA compliance. AGP will not be able to resume their activities until notified by NMFS.

In the event that the AGP discovers an injured or dead marine mammal, and the lead PSO determines that the cause of the injury or death is unknown and the death is relatively recent (*e.g.,* in less than a moderate state of decomposition as described in the next paragraph), AGP must immediately report the incident to the Office of Protected Resources (*PR.ITP.MonitoringReports@noaa.gov*), NMFS and to the West Coast Region regional stranding coordinator as soon as feasible. The report would include the same information identified in the paragraph above. Activities would be able to continue while NMFS reviews the circumstances of the incident. NMFS would work with AGP to determine whether modifications in the activities are appropriate.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the majority of our analysis applies to all the species listed in table 18, given that many of the anticipated effects of this project on different marine mammal stocks are expected to be relatively similar in nature. Where there are meaningful differences between species or stocks, or groups of species, in anticipated individual responses to activities, impact of expected take on the population due to differences in population status, or impacts on habitat, they are described independently in the analysis below.

Pile driving and removal activities associated with the project as outlined previously, have the potential to disturb or displace marine mammals. Specifically, the specified activities may result in take, in the form of Level A harassment and Level B harassment from underwater sounds generated from pile driving and removal. Potential takes could occur if individuals of these species are present in zones ensonified above the thresholds for Level A or Level B harassment identified above when these activities are underway.

Take by Level A and Level B harassment would be due to potential behavioral disturbance, TTS, and PTS. No serious injury or mortality is anticipated or authorized given the nature of the activity and measures designed to minimize the possibility of injury to marine mammals. Take by Level A harassment is only anticipated

for harbor porpoise and harbor seal. The potential for harassment is minimized through the construction method and the implementation of the planned mitigation measures (see Mitigation section).

Based on reports in the literature as well as monitoring from other similar activities, behavioral disturbance (*i.e.,* Level B harassment) would likely be limited to reactions such as increased swimming speeds, increased surfacing time, or decreased foraging (if such activity were occurring) (*e.g.,* Thorson and Reyff, 2006; HDR, Inc., 2012; Lerma, 2014). Most likely for pile driving, individuals would simply move away from the sound source and be temporarily displaced from the areas of pile driving, although even this reaction has been observed primarily only in association with impact pile driving. The pile driving activities analyzed here are similar to, or less impactful than, numerous other construction activities conducted in Washington, which have taken place with no observed severe responses of any individuals or known long-term adverse consequences. Level B harassment would be reduced to the level of least practicable adverse impact through use of mitigation measures described herein and, if sound produced by project activities is sufficiently disturbing, animals are likely to simply avoid the area while the activity is occurring. While vibratory driving associated with the planned project may produce sound at distances of many kilometers from the project site, thus overlapping with some likely less-disturbed habitat, the project site itself is located in a busy harbor and the majority of sound fields produced by the specified activities are close to the harbor. Animals disturbed by project sound would be expected to avoid the area and use nearby higher-quality habitats.

In addition to the expected effects resulting from authorized Level B harassment, we anticipate that harbor porpoises and harbor seals may sustain some limited Level A harassment in the form of auditory injury. However, animals in these locations that experience PTS would likely only receive slight PTS, *i.e.* minor degradation of hearing capabilities within regions of hearing that align most completely with the energy produced by pile driving, *i.e.* the low-frequency region below 2 kHz, not severe hearing impairment or impairment in the regions of greatest hearing sensitivity. If hearing impairment occurs, it is most likely that the affected animal would lose a few decibels in its hearing sensitivity, which in most cases is not likely to meaningfully affect its ability to forage and communicate with conspecifics. As described above, we expect that marine mammals would be likely to move away from a sound source that represents an aversive stimulus, especially at levels that would be expected to result in PTS, given sufficient notice through use of soft start.

The project also is not expected to have significant adverse effects on affected marine mammals' habitat. The project activities would not modify existing marine mammal habitat for a significant amount of time. The activities may cause some fish or invertebrates to leave the area of disturbance, thus temporarily impacting marine mammals' foraging opportunities in a limited portion of the foraging range; but, because of the short duration of the activities, the relatively small area of the habitat that may be affected, and the availability of nearby habitat of similar or higher value, the impacts to marine mammal habitat are not expected to cause significant or long-term negative consequences. While there are haulouts for pinnipeds in the area, these locations are some distance from the actual project site. According to WDFW's atlas of seal and sea lion haulout sites (Jeffries *et al.,* 2000), all haul-outs in Grays Harbor are associated with tidal flats and at high tide it is assumed that these animals are foraging elsewhere in the estuary. The nearest documented harbor seal haul-out site to the Project site is a low-tide haul-out located 6 miles to the west of the project site. The nearest documented California sea lion haulout sites to the Project site are at the Westport Docks, approximately 13 miles west of the Project site near the entrance to Grays Harbor (Jeffries *et al.,* 2015), and another haulout observed in 1997 referred to as the mid-harbor flats located approximately 5.65 miles west of the Project site (WDFW, 2022). The nearest documented Steller sea lion haul-out sites to the Project site are at Split Rock, 35 miles north of the entrance to Grays Harbor, and at the mouth of the Columbia River, 46 miles south of the entrance to Grays Harbor (Jeffries *et al.,* 2000). A few Steller sea lions may haul out on buoys near the Westport marina, located 13 miles west of the Project site, or at Westport docks, similar to California sea lions. While repeated exposures of individuals to this pile driving activity could cause limited Level A harassment in harbor seals and Level B harassment in seals and sea lions, they are unlikely to considerably disrupt foraging behavior or result in significant decrease in fitness, reproduction, or survival for the affected individuals.

In summary and as described above, the following factors primarily support our determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- Any Level A harassment exposures (*i.e.,* to harbor porpoise and harbor seals, only) are anticipated to result in slight PTS (*i.e.,* of a few decibels), within the lower frequencies associated with pile driving;
- The anticipated incidents of Level B harassment would consist of, at worst, temporary modifications in behavior that would not result in fitness impacts to individuals;
- The ensonifed areas from the project is very small relative to the overall habitat ranges of all species and stocks;
- Repeated exposures of pinnipeds to this pile driving activity could cause slight Level A harassment in seals and Level B harassment in seals and sea lion species, but are unlikely to considerably disrupt foraging behavior or result in significant decrease in fitness, reproduction, or survival for the affected individuals. In all, there would be no adverse impacts to the stocks as a whole; and
- The required mitigation measures are expected to reduce the effects of the specified activity to the level of least practicable adverse impact.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the required monitoring and mitigation measures, NMFS finds that the total marine mammal take from the planned activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small

numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Table 16 demonstrates the number of instances in which individuals of a given species could be exposed to received noise levels that could cause take of marine mammals. Our analysis shows that less than 2 percent of all but one stock could be taken by harassment. While the percentage of stock taken from the Oregon/Washington coastal stock of harbor seal appears to be high (74.5 percent), in reality the number of individuals taken by harassment would be far less. Instead, it is more likely that there will be multiple takes of a smaller number of individuals over multiple days, lowering the number of individuals taken. The range of the Oregon/Washington coastal stock includes harbor seals from the California/Oregon border to Cape Flattery on the Olympic Peninsula of Washington, which is a distance of approximately 150 miles (240 km) (Carretta *et al.,* 2002). Additionally, there are over 150 Oregon/Washington coastal harbor seal stock haulouts along the outer Washington coast spanning from the Columbia River north to Tatoosh Island on the northwestern tip of the Olympic Peninsula (Scordino, 2010). This figure does not include many additional haulout sites found along the Oregon coast. Given the expansive range of the Oregon/Washington coastal stock along with the numerous haulouts that have been documented on the Washington coast, it is unlikely that the number of individuals taken, limited largely to the pool of seals present in Grays Harbor, would exceed ⅓ of the stock. In consideration of various factors described above, we have determined that numbers of individuals taken would comprise less than one-third of the best available population abundance estimate of the Oregon/Washington coastal stock of harbor seal.

Based on the analysis contained herein of the planned activity (including the required mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the ESA of 1973 (16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species has been authorized or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in Categorical Exclusion B4 (IHAs with no anticipated serious injury or mortality) of the Companion Manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of this IHA qualifies to be categorically excluded from further NEPA review.

Authorization

NMFS has issued an IHA to AGP for conducting pile driving activities at the Port of Grays Harbor from July 16, 2024 through July 15, 2025, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. The issued IHAs can be found at: *https://www.fisheries.noaa.gov/action/incidental-take-authorization-ag-processing-incs-port-grays-harbor-terminal-4-expansion-and.*

Dated: June 3, 2024.

Catherine Marzin,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

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BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD940]

Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to the Log Export Dock Project on the Columbia River Near Longview, WA

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

ACTION: Notice; proposed incidental harassment authorization; request for comments on proposed authorization and possible renewal.

SUMMARY: NMFS has received a request from Weyerhaeuser Company (Weyerhaeuser) for authorization to take marine mammals incidental to Log Export Dock Project on the Columbia River near Longview, Washington. Pursuant to the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to issue an incidental harassment authorization (IHA) to incidentally take marine mammals during the specified activities. NMFS is also requesting comments on a possible one-time, 1-year renewal that could be issued under certain circumstances and if all requirements are met, as described in the Request for Public Comments section at the end of this notice. NMFS will consider public comments prior to making any final decision on the issuance of the requested MMPA authorization and agency responses will be summarized in the final notice of our decision.

DATES: Comments and information must be received no later than July 8, 2024.

ADDRESSES: Comments should be addressed to Jolie Harrison, Chief, Permits and Conservation Division, Office of Protected Resources, National Marine Fisheries Service, and should be submitted via email to *ITP.wachtendonk@noaa.gov.* Electronic copies of the application and supporting documents, as well as a list of the references cited in this document, may

be obtained online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.* In case of problems accessing these documents, please call the contact listed below.

Instructions: NMFS is not responsible for comments sent by any other method, to any other address or individual, or received after the end of the comment period. Comments, including all attachments, must not exceed a 25-megabyte file size. All comments received are a part of the public record and will generally be posted online at *https://www.fisheries.noaa.gov/permit/incidental-take-authorizations-under-marine-mammal-protection-act* without change. All personal identifying information (*e.g.,* name, address) voluntarily submitted by the commenter may be publicly accessible. Do not submit confidential business information or otherwise sensitive or protected information.

FOR FURTHER INFORMATION CONTACT: Rachel Wachtendonk, Office of Protected Resources (OPR), NMFS, (301) 427–8401.

SUPPLEMENTARY INFORMATION:

Background

The MMPA prohibits the ''take'' of marine mammals, with certain exceptions. Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) direct the Secretary of Commerce (as delegated to NMFS) to allow, upon request, the incidental, but not intentional, taking of small numbers of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are proposed or, if the taking is limited to harassment, a notice of a proposed IHA is provided to the public for review.

Authorization for incidental takings shall be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s) and will not have an unmitigable adverse impact on the availability of the species or stock(s) for taking for subsistence uses (where relevant). Further, NMFS must prescribe the permissible methods of taking and other ''means of effecting the least practicable adverse impact'' on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stocks for taking for certain subsistence uses (referred to in shorthand as ''mitigation''); and requirements pertaining to the monitoring and reporting of the takings. The definitions of all applicable MMPA statutory terms cited above are included in the relevant sections below.

National Environmental Policy Act

To comply with the National Environmental Policy Act of 1969 (NEPA; 42 U.S.C. 4321 *et seq.*) and NOAA Administrative Order (NAO) 216–6A, NMFS must review our proposed action (*i.e.,* the issuance of an IHA) with respect to potential impacts on the human environment.

This action is consistent with categories of activities identified in categorical exclusion B4 (IHAs with no anticipated serious injury or mortality) of the companion manual for NAO 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has preliminarily determined that the issuance of the proposed IHA qualifies to be categorically excluded from further NEPA review. We will review all comments submitted in response to this notice prior to concluding our NEPA process or making a final decision on the IHA request.

Summary of Request

On October 29, 2023, NMFS received a request from Weyerhaeuser for an IHA to take marine mammals incidental to pile driving and removal activities associated with the Log Export Dock Project on the Columbia River near Longview, Washington. Following NMFS' review of the application, Weyerhaeuser submitted a revised version on March 14, 2024. The application was deemed adequate and complete on April 16, 2024. Weyerhaeuser's request is for take of harbor seal (*Phoca vitulina*), California sea lion (*Zalophus californiaus*), and Steller sea lion (*Eumatopius jubatus*) by Level B harassment and, for harbor seals by Level A harassment. Neither Weyerhaeuser nor NMFS expect serious injury or mortality to result from this activity and, therefore, an IHA is appropriate.

Description of Proposed Activity

Overview

Weyerhaeuser is proposing the partial demolition and replacement of the existing Log Export dock on the Columbia River, near Longview, Washington (figure 1). The existing dock is a timber structure that was constructed in the early 1970s and has exceeded its designated lifespan. Over the past decade, individual timber piles have been replaced with steel piles but continued deterioration has led Weyerhaeuser to pursue a reconstruction design that will replace all of the timber elements with steel and concrete. For the dock to remain in operation during construction, only half of the dock would be demolished and replaced under this authorization. The reconstruction work of the other half of the dock will be under a separate future authorization. The proposed project includes impact and vibratory pile installation and vibratory pile removal.

Sounds resulting from pile driving and removal may result in the incidental take of marine mammals by Levels A and B harassment in the form of auditory injury or behavioral harassment. Underwater sound would be constrained to the Columbia River and would be truncated by land masses in the river. Construction activities would start in September 2025 and last 5 months.

Dates and Duration

The proposed IHA would be effective from September 1, 2025, through August 31, 2026. Vibratory and impact pile driving and auger drilling are expected to start in September 2025 and take about 120 days of in-water work within the U.S. Army Corps of Engineers (USACE) and the U.S. Fish and Wildlife Service (USFWS)-designated in-water work window (September 1, 2025–January 3, 2026). All pile installation will occur during the work window, which would minimize potential exposure of Endangered Species Act (ESA) listed fish species from impact pile driving. An additional 30 days of vibratory pile removal may occur outside the window. All pile driving and removal would be completed during daylight hours.

Specific Geographic Region

The project is located at the Weyerhaeuser marine terminal, near Longview, Washington, at river mile (RM) 66 of the Columbia River. Project activities would occur within the existing dock's current footprint.

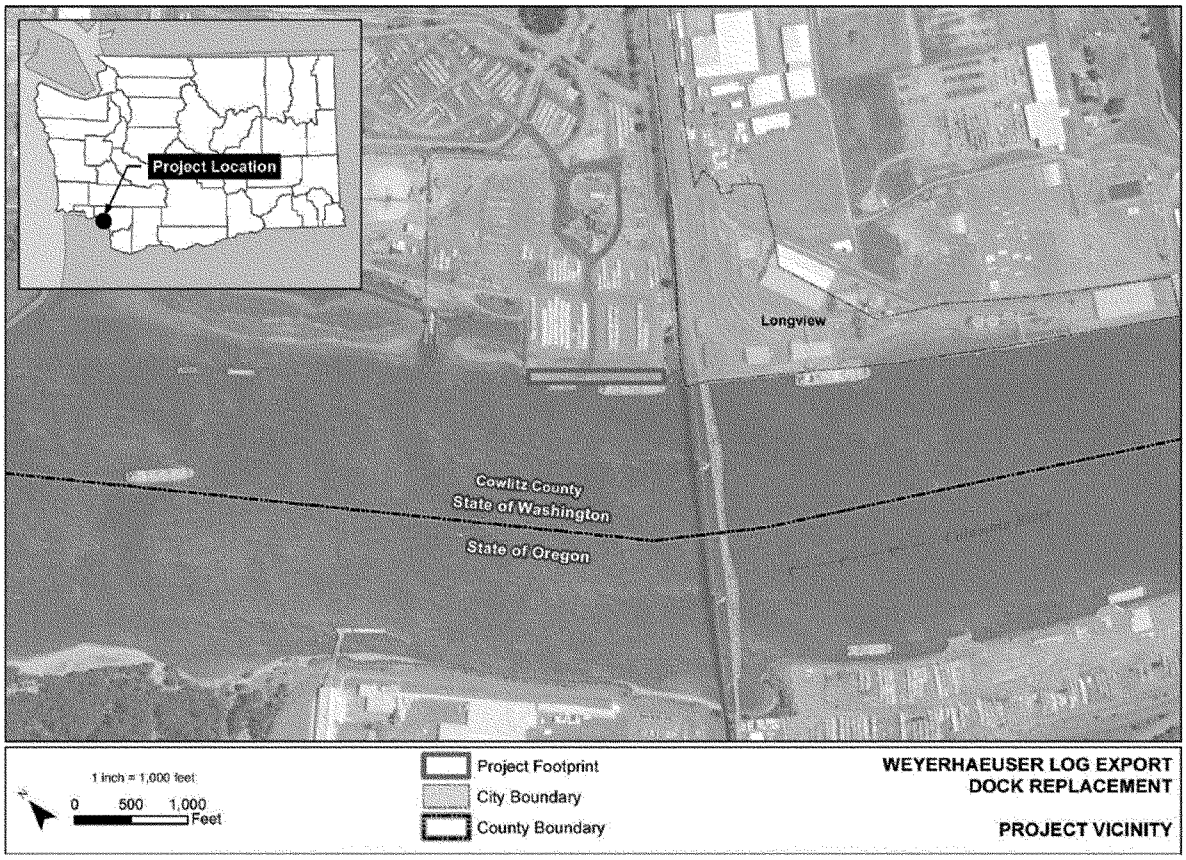

Figure 1 -- Map of Proposed Project Area near Longview, Washington

Detailed Description of the Specified Activity

The demolition and replacement of the 612-foot (ft), or 186.5-meter (m) berth A of the Log Export Dock would include the removal of 983 16-inch (in), or 0.41-m, timber piles, 36 16-in (0.41-m) steel pipe piles, 10 12-in (0.30-m) steel H-piles, 7 12-in (0.30-m) steel pipe piles, and 20 14- or 16-in (0.36- or 0.41-m) steel fender piles. Existing piles would be primarily removed by the deadpull method, with piles being removed with the vibratory hammer if the deadpull is unsuccessful. Broken or damaged piles would be cut at the mudline. It is anticipated that 75 percent of the existing 983 timber piles will be removed by the deadpull method, with the remaining 246 being removed with the vibratory hammer. The new structure will be supported by the installation of 325 30-in (0.76-m) steel pipe piles. In addition, up to 26 24-in (0.61 m) temporary steel pipe piles may be installed and removed to support permanent pile installation. Temporary and permanent piles would be initially installed with a vibratory hammer, with permanent piles being followed by an impact hammer to embed them to their final depth. To reduce underwater noise produced by impact pile driving, an unconfined bubble curtain will be used during impact pile installation. Table 1 provides a summary of the pile driving activities.

Concurrent Activities—In order to maintain project schedules, it is possible that multiple pieces of equipment would operate at the same time within the project area. Piles may be driven on the same day or, less commonly, at the same time, by two impact hammers, one impact hammer and one vibratory hammer, or two vibratory hammers. The method of installation, and whether concurrent pile driving scenarios will be implemented, will be determined by the construction crew once the project has begun. Therefore, the total take estimate reflects the worst-case scenario (both hammers installing 30-in steel pipe piles) for the proposed project. However, the most likely scenario is the vibratory removal of a 16-in timber pile at the same time as installing a 30-in steel pipe piles by vibratory or impact methods.

TABLE 1—NUMBER AND TYPE OF PILES TO BE INSTALLED AND REMOVED

Activity	Pile type and size	Number of piles	Method	Piles per day	Total days
Demolition	16-in timber pile	246	Vibratory	8	30
	12-in steel pipe pile	7		8	60
	12-in steel H-pile	10		8	60
	16-in steel pipe pile	36		8	60
	14- or 16-in steel fender pile	20		8	60
	24-in temporary steel pipe pile	26		8	120

TABLE 1—NUMBER AND TYPE OF PILES TO BE INSTALLED AND REMOVED—Continued

Activity	Pile type and size	Number of piles	Method	Piles per day	Total days
Installation	24-in temporary steel pipe pile	26	Vibratory	8	120
	30-in steel pipe pile	325	Vibratory	8	120
			Impact	8	120

Proposed mitigation, monitoring, and reporting measures are described in detail later in this document (see Proposed Mitigation and Proposed Monitoring and Reporting sections).

Description of Marine Mammals in the Area of Specified Activities

Sections 3 and 4 of the application summarize available information regarding status and trends, distribution and habitat preferences, and behavior and life history of the potentially affected species. NMFS fully considered all of this information, and we refer the reader to these descriptions, instead of reprinting the information. Additional information regarding population trends and threats may be found in NMFS' Stock Assessment Reports (SARs; *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments*) and more general information about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*).

Table 2 lists all species or stocks for which take is expected and proposed to be authorized for this activity and summarizes information related to the population or stock, including regulatory status under the MMPA and ESA and potential biological removal (PBR), where known. PBR is defined by the MMPA as the maximum number of animals, not including natural mortalities, that may be removed from a marine mammal stock while allowing that stock to reach or maintain its optimum sustainable population (as described in NMFS' SARs). While no serious injury or mortality is anticipated or proposed to be authorized here, PBR and annual serious injury and mortality from anthropogenic sources are included here as gross indicators of the status of the species or stocks and other threats.

Marine mammal abundance estimates presented in this document represent the total number of individuals that make up a given stock or the total number estimated within a particular study or survey area. NMFS' stock abundance estimates for most species represent the total estimate of individuals within the geographic area, if known, that comprises that stock. For some species, this geographic area may extend beyond U.S. waters. All managed stocks in this region are assessed in NMFS' U.S. 2022 SARs. All values presented in table 2 are the most recent available at the time of publication (including from the draft 2023 SARs) and are available online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessments.*

TABLE 2—MARINE MAMMAL SPECIES [1] LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

Common name	Scientific name	Stock	ESA/ MMPA status; Strategic (Y/N) [2]	Stock abundance (CV, N_{min}, most recent abundance survey) [3]	PBR	Annual M/SI [4]
Order Carnivora—Pinnipedia						
Family Otariidae (eared seals and sea lions):						
California Sea Lion	*Zalophus californianus*	U.S	-, -, N	257,606 (N/A, 233,515, 2014).	14,011	>321
Steller Sea Lion	*Eumetopias jubatus*	Eastern	-, -, N	36,308 (N/A, 36,308, 2022) [5].	2,178	93.2
Family Phocidae (earless seals):						
Harbor Seal	*Phoca vitulina*	OR/WA Coastal	-, -, N	UNK (UNK, UNK, 1999)	UND	10.6

[1] Information on the classification of marine mammal species can be found on the web page for The Society for Marine Mammalogy's Committee on Taxonomy (*https://marinemammalscience.org/science-and-publications/list-marine-mammal-species-subspecies;* Committee on Taxonomy, 2022).

[2] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[3] NMFS marine mammal SARs online at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-stock-assessment-reports-region.* CV is coefficient of variation; N_{min} is the minimum estimate of stock abundance. In some cases, CV is not applicable

[4] These values, found in NMFS's SARs, represent annual levels of human-caused mortality plus serious injury from all sources combined (*e.g.,* commercial fisheries, ship strike). Annual M/SI often cannot be determined precisely and is in some cases presented as a minimum value or range. A CV associated with estimated mortality due to commercial fisheries is presented in some cases.

[5] Nest is best estimate of counts, which have not been corrected for animals at sea during abundance surveys. Estimates provided are for the U.S. only.

As indicated above, all three species (with three managed stocks) in table 2 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur.

California Sea Lion

California sea lions are the most frequently sighted sea lion found in Washington waters and use haulout sites along the outer coast, the Strait of Juan de Fuca, and in the Puget Sound. California sea lions have been observed in increasing numbers farther and farther up the Columbia River since the 1980s, first to the Astoria area, and then to the Cowlitz River and Bonneville Dam (Washington Department of Fish and Wildlife (WDFW), 2020). However, the number of California sea lions observed at Bonneville Dam has been in decline, ranging from 149 individuals in 2016 to 24 individuals in 2021, including no observations of California sea lions during fall and winter of 2019 to 2020 (van der Leeuw and Tidwell, 2022).

In recent years, California sea lions have been reported below Bonneville Dam feeding on returning adult salmon. California sea lions have been observed hauling out on shoals and log booms in Carroll Slough near the confluence of the Cowlitz and Columbia rivers during winter and spring months, (Jeffries *et al.,* 2000) about 2.2 miles (mi), or 3.5 kilometers (km), upstream of the project site.

Steller Sea Lion

Steller sea lions that occur in the Lower Columbia River, including the project vicinity, are members of the eastern Distinct Population Segment (DPS), ranging from Southeast Alaska to central California, including Washington (Jeffries *et al.,* 2000; Scordino, 2006; NMFS, 2013). In Washington, Steller sea lions occur mainly along the outer coast from the Columbia River to Cape Flattery (Jeffries *et al.,* 2000). Smaller numbers use the Strait of Juan de Fuca, San Juan Islands, and Puget Sound south to about the Nisqually River mouth in Thurston and Pierce counties (Wiles, 2015). The eastern DPS of Steller sea lions has historically bred on rookeries located in Southeast Alaska, British Columbia, Oregon, and California. However, within the last several years, a new rookery has become established on the outer Washington coast at the Carroll Island and Sea Lion Rock complex (Muto *et al.,* 2019).

Similar to California sea lions, Steller sea lions have also been observed at the base of Bonneville Dam in recent years, feeding on white sturgeon (*Acipenser transmontanus*) and salmonids (WDFW, 2020). However, Steller sea lions were not observed entering the Columbia River in significant numbers until the 1980s and they were not observed at the dam until after 2003.

Harbor Seal

Harbor seals are the most common, widely distributed marine mammal found in Washington marine waters and are frequently observed in the nearshore marine environment. The Oregon/Washington Coastal Stock was most recently estimated at 24,732 harbor seals in 1999 and more recent abundance data is not available and no current estimate of abundance for this stock (Carretta *et al.,* 2022). Harbor seals use hundreds of sites to rest or haul out along coastal and inland waters, including intertidal sand bars and mudflats in estuaries; intertidal rocks and reefs; sandy, cobble, and rocky beaches; islands; and log booms, docks, and floats in all marine areas of the state (Jeffries *et al.,* 2003).

Harbor seals in this population are typically non-migratory and reside year-round in the Columbia River, and generally remain in the same area throughout the year for breeding and feeding. Pupping seasons in coastal estuaries vary geographically; in the Columbia River, Willapa Bay, and Grays Harbor, pups are born from mid-April through June (Jeffries *et al.,* 2003). Harbor seals in the Columbia River do exhibit some seasonal movement upriver, including into or through the project area of ensonification, to follow winter and spring runs of Pacific eulachon (*Thaleichthys pacificus*) and outmigrating juvenile salmon (*Oncorhynchus spp.*), and they are observed regularly in portions of the Columbia River including the action area. Within the lower Columbia River, they tend to congregate to feed at the mouths of tributary rivers, including the Cowlitz and Kalama rivers (RMs 68 and 73, respectively). WDFW's atlas of seal and sea lion haulout sites (Jeffries *et al.,* 2000) identifies shoals near the confluence of the Cowlitz and Columbia rivers located approximately 2.4 mi (3.9 km) upstream of the project site as a documented haulout for harbor seals.

Marine Mammal Hearing

Hearing is the most important sensory modality for marine mammals underwater, and exposure to anthropogenic sound can have deleterious effects. To appropriately assess the potential effects of exposure to sound, it is necessary to understand the frequency ranges marine mammals are able to hear. Not all marine mammal species have equal hearing capabilities (*e.g.,* Richardson *et al.,* 1995; Wartzok and Ketten, 1999; Au and Hastings, 2008). To reflect this, Southall *et al.* (2007, 2019) recommended that marine mammals be divided into hearing groups based on directly measured (behavioral or auditory evoked potential techniques) or estimated hearing ranges (behavioral response data, anatomical modeling, *etc.*). Note that no direct measurements of hearing ability have been successfully completed for mysticetes (*i.e.,* low-frequency cetaceans). Subsequently, NMFS (2018) described generalized hearing ranges for these marine mammal hearing groups. Generalized hearing ranges were chosen based on the approximately 65-decibel (dB) threshold from the normalized composite audiograms, with the exception for lower limits for low-frequency cetaceans where the lower bound was deemed to be biologically implausible and the lower bound from Southall *et al.* (2007) retained. Marine mammal hearing groups and their associated hearing ranges are provided in table 3.

TABLE 3—MARINE MAMMAL HEARING GROUPS

[NMFS, 2018]

Hearing group	Generalized hearing range in hertz (Hz) and kilohertz (kHz) *
Low-frequency (LF) cetaceans (baleen whales)	7 Hz to 35 kHz.
Mid-frequency (MF) cetaceans (dolphins, toothed whales, beaked whales, bottlenose whales)	150 Hz to 160 kHz.
High-frequency (HF) cetaceans (true porpoises, *Kogia* spp., river dolphins, Cephalorhynchids, *Lagenorhynchus cruciger* & *L. australis*).	275 Hz to 160 kHz.
Phocid pinnipeds (PW) (underwater) (true seals)	50 Hz to 86 kHz.
Otariid pinnipeds (OW) (underwater) (sea lions and fur seals)	60 Hz to 39 kHz.

* Represents the generalized hearing range for the entire group as a composite (*i.e.,* all species within the group), where individual species' hearing ranges are typically not as broad. Generalized hearing range chosen based on the ~65-dB threshold from normalized composite audiogram, with the exception for lower limits for LF cetaceans (Southall *et al.,* 2007) and PW pinniped (approximation).

The pinniped functional hearing group was modified from Southall *et al.* (2007) on the basis of data indicating that phocid species have consistently demonstrated an extended frequency range of hearing compared to otariids, especially in the higher frequency range (Hemilä *et al.,* 2006; Kastelein *et al.,* 2009; Reichmuth *et al.,* 2013). This

division between phocid and otariid pinnipeds is now reflected in the updated hearing groups proposed in Southall et al. (2019).

For more detail concerning these groups and associated frequency ranges, see NMFS (2018) for a review of available information.

Potential Effects of Specified Activities on Marine Mammals and Their Habitat

This section provides a discussion of the ways in which components of the specified activity may impact marine mammals and their habitat. The Estimated Take of Marine Mammals section later in this document includes a quantitative analysis of the number of individuals that are expected to be taken by this activity. The Negligible Impact Analysis and Determination section considers the content of this section, the Estimated Take of Marine Mammals section, and the Proposed Mitigation section, to draw conclusions regarding the likely impacts of these activities on the reproductive success or survivorship of individuals and whether those impacts are reasonably expected to, or reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival.

Description of Sound Sources

The marine soundscape is comprised of both ambient and anthropogenic sounds. Ambient sound is defined as the all-encompassing sound in a given place and is usually a composite of sound from many sources both near and far. The sound level of an area is defined by the total acoustical energy being generated by known and unknown sources. These sources may include physical (*e.g.,* waves, wind, precipitation, earthquakes, ice, atmospheric sound), biological (*e.g.,* sounds produced by marine mammals, fish, and invertebrates), and anthropogenic sound (*e.g.,* vessels, dredging, aircraft, construction).

The sum of the various natural and anthropogenic sound sources at any given location and time—which comprise ''ambient'' or ''background'' sound—depends not only on the source levels (as determined by current weather conditions and levels of biological and shipping activity) but also on the ability of sound to propagate through the environment. In turn, sound propagation is dependent on the spatially and temporally varying properties of the water column and sea floor, and is frequency-dependent. As a result of the dependence on a large number of varying factors, ambient sound levels can be expected to vary widely over both coarse and fine spatial and temporal scales. Sound levels at a given frequency and location can vary by 10 to 20 dB from day to day (Richardson *et al.,* 1995). The result is that, depending on the source type and its intensity, sound from the specified activity may be a negligible addition to the local environment or could form a distinctive signal that may affect marine mammals.

In-water construction activities associated with the project would include vibratory pile removal, and impact and vibratory pile driving. The sounds produced by these activities fall into one of two general sound types: impulsive and non-impulsive. Impulsive sounds (*e.g.,* explosions, gunshots, sonic booms, impact pile driving) are typically transient, brief (less than 1 second), broadband, and consist of high peak sound pressure with rapid rise time and rapid decay (American National Standards Institute (ANSI), 1986; National Institute for Occupational Safety and Health (NIOSH), 1998; ANSI, 2005; NMFS, 2018). Non-impulsive sounds (*e.g.,* aircraft, machinery operations such as drilling or dredging, vibratory pile driving, and active sonar systems) can be broadband, narrowband or tonal, brief or prolonged (continuous or intermittent), and typically do not have the high peak sound pressure with raid rise/decay time that impulsive sounds do (ANSI, 1995; NIOSH, 1998; NMFS, 2018). The distinction between these two sound types is important because they have differing potential to cause physical effects, particularly with regard to hearing (*e.g.,* Ward, 1997 in Southall *et al.,* 2007).

Impact hammers operate by repeatedly dropping a heavy piston onto a pile to drive the pile into the substrate. Sound generated by impact hammers is characterized by rapid rise times and high peak levels, a potentially injurious combination (Hastings and Popper, 2005). Vibratory hammers install piles by vibrating them and allowing the weight of the hammer to push them into the sediment. The vibrations produced also cause liquefaction of the substrate surrounding the pile, enabling the pile to be extracted or driven into the ground more easily. Vibratory hammers produce significantly less sound than impact hammers. Peak sound pressure levels (SPLs) may be 180 dB or greater, but are generally 10 to 20 dB lower than SPLs generated during impact pile driving of the same-sized pile (Oestman *et al.,* 2009). Rise time is slower, reducing the probability and severity of injury, and sound energy is distributed over a greater amount of time (Nedwell and Edwards, 2002; Carlson *et al.,* 2005).

The likely or possible impacts of Weyerhaeuser's proposed activity on marine mammals could involve both non-acoustic and acoustic stressors. Potential non-acoustic stressors could result from the physical presence of the equipment and personnel; however, any impacts to marine mammals are expected to be primarily acoustic in nature. Acoustic stressors include effects of heavy equipment operation during pile installation and removal, and sediment removal during auger drilling.

Acoustic Impacts

The introduction of anthropogenic noise into the aquatic environment from pile driving is the primary means by which marine mammals may be harassed from the proposed activity. In general, animals exposed to natural or anthropogenic sound may experience physical and psychological effects, ranging in magnitude from none to severe (Southall *et al.,* 2007). In general, exposure to pile driving noise has the potential to result in an auditory threshold shift (TS) and behavioral reactions (*e.g.,* avoidance, temporary cessation of foraging and vocalizing, changes in dive behavior). Exposure to anthropogenic noise can also lead to non-observable physiological responses, such as an increase in stress hormones. Additional noise in a marine mammal's habitat can mask acoustic cues used by marine mammals to carry out daily functions such as communication and predator and prey detection. The effects of pile driving noise on marine mammals are dependent on several factors, including, but not limited to, sound type (*e.g.,* impulsive vs. non-impulsive), the species, age and sex class (*e.g.,* adult male vs. mom with calf), duration of exposure, the distance between the pile and the animal, received levels, behavior at time of exposure, and previous history with exposure (Wartzok *et al.,* 2004; Southall *et al.,* 2007). Here we discuss physical auditory effects (threshold shifts) followed by behavioral effects and potential impacts on habitat.

NMFS defines a noise-induced TS as a change, usually an increase, in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). The amount of TS is customarily expressed in dB. A TS can be permanent or temporary. As described in NMFS (2018), there are numerous factors to consider when examining the consequence of TS, including, but not

limited to, the signal temporal pattern (*e.g.,* impulsive or non-impulsive), likelihood an individual would be exposed for a long enough duration or to a high enough level to induce a TS, the magnitude of the TS, time to recovery (seconds to minutes or hours to days), the frequency range of the exposure (*i.e.,* spectral content), the hearing frequency range of the exposed species relative to the signal's frequency spectrum (*i.e.,* how an animal uses sound within the frequency band of the signal; *e.g.,* Kastelein *et al.,* 2014), and the overlap between the animal and the source (*e.g.,* spatial, temporal, and spectral).

Permanent Threshold Shift (PTS)—NMFS defines PTS as a permanent, irreversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Available data from humans and other terrestrial mammals indicate that a 40-dB TS approximates PTS onset (see Ward *et al.,* 1958, 1959; Ward, 1960; Kryter *et al.,* 1966; Miller, 1974; Ahroon *et al.,* 1996; Henderson *et al.,* 2008). PTS levels for marine mammals are estimates, as with the exception of a single study unintentionally inducing PTS in a harbor seal (Kastak *et al.,* 2008), there are no empirical data measuring PTS in marine mammals largely due to the fact that, for various ethical reasons, experiments involving anthropogenic noise exposure at levels inducing PTS are not typically pursued or authorized (NMFS, 2018).

Temporary Threshold Shift (TTS)—TTS is a temporary, reversible increase in the threshold of audibility at a specified frequency or portion of an individual's hearing range above a previously established reference level (NMFS, 2018). Based on data from cetacean TTS measurements (Southall *et al.,* 2007, 2019), a TTS of 6 dB is considered the minimum TS clearly larger than any day-to-day or session-to-session variation in a subject's normal hearing ability (Schlundt *et al.,* 2000; Finneran *et al.,* 2000, 2002). As described in Finneran (2015), marine mammal studies have shown the amount of TTS increases with cumulative sound exposure level (SEL_{cum}) in an accelerating fashion: At low exposures with lower SEL_{cum}, the amount of TTS is typically small and the growth curves have shallow slopes. At exposures with higher SEL_{cum}, the growth curves become steeper and approach linear relationships with the noise SEL.

Depending on the degree (elevation of threshold in dB), duration (*i.e.,* recovery time), and frequency range of TTS, and the context in which it is experienced, TTS can have effects on marine mammals ranging from discountable to serious (similar to those discussed in auditory masking, below). For example, a marine mammal may be able to readily compensate for a brief, relatively small amount of TTS in a non-critical frequency range that takes place during a time when the animal is traveling through the open ocean, where ambient noise is lower and there are not as many competing sounds present. Alternatively, a larger amount and longer duration of TTS sustained during a time when communication is critical for successful mother/calf interactions could have more serious impacts. We note that reduced hearing sensitivity as a simple function of aging has been observed in marine mammals, as well as humans and other taxa (Southall *et al.,* 2007), so we can infer that strategies exist for coping with this condition to some degree, though likely not without cost.

Many studies have examined noise-induced hearing loss in marine mammals (see Finneran (2015) and Southall *et al.* (2019) for summaries). TTS is the mildest form of hearing impairment that can occur during exposure to sound (Kryter, 2013). While experiencing TTS, the hearing threshold rises, and a sound must be at a higher level in order to be heard. In terrestrial and marine mammals, TTS can last from minutes or hours to days (in cases of strong TTS). In many cases, hearing sensitivity recovers rapidly after exposure to the sound ends. For pinnipeds in water, measurements of TTS are limited to harbor seals, elephant seals (*Mirounga angustirostris*), bearded seals (*Erignathus barbatus*) and California sea lions (*Zalophus californianus*) (Kastak *et al.,* 1999, 2007; Kastelein *et al.,* 2019b, 2019c, 2021, 2022a, 2022b; Reichmuth *et al.,* 2019; Sills *et al.,* 2020). These studies examined hearing thresholds measured in marine mammals before and after exposure to intense or long-duration sound exposures. The difference between the pre-exposure and post-exposure thresholds can be used to determine the amount of TS at various post-exposure times.

The amount and onset of TTS depends on the exposure frequency. Sounds at low frequencies, well below the region of best sensitivity for a species or hearing group, are less hazardous than those at higher frequencies, near the region of best sensitivity (Finneran and Schlundt, 2013). At low frequencies, onset-TTS exposure levels are higher compared to those in the region of best sensitivity (*i.e.,* a low frequency noise would need to be louder to cause TTS onset when TTS exposure level is higher), as shown for harbor porpoises and harbor seals (Kastelein *et al.,* 2019a, 2019c). Note that in general, harbor seals have a lower TTS onset than other measured pinniped species (Finneran, 2015). In addition, TTS can accumulate across multiple exposures, but the resulting TTS will be less than the TTS from a single, continuous exposure with the same SEL (Mooney *et al.,* 2009; Finneran *et al.,* 2010; Kastelein *et al.,* 2014, 2015). This means that TTS predictions based on the total, SEL_{cum} will overestimate the amount of TTS from intermittent exposures, such as sonars and impulsive sources. Nachtigall *et al.* (2018) describe measurements of hearing sensitivity of multiple odontocete species (bottlenose dolphin, harbor porpoise, beluga, and false killer whale (*Pseudorca crassidens*)) when a relatively loud sound was preceded by a warning sound. These captive animals were shown to reduce hearing sensitivity when warned of an impending intense sound. Based on these experimental observations of captive animals, the authors suggest that wild animals may dampen their hearing during prolonged exposures or if conditioned to anticipate intense sounds. Additionally, the existing marine mammal TTS data come from a limited number of individuals within these species.

Relationships between TTS and PTS thresholds have not been studied in marine mammals, but such relationships are assumed to be similar to those in humans and other terrestrial mammals. PTS typically occurs at exposure levels at least several dBs above that inducing mild TTS (*e.g.,* a 40-dB TS approximates PTS onset (Kryter *et al.,* 1966; Miller, 1974), while a 6–dB TS approximates TTS onset (Southall *et al.,* 2007, 2019). Based on data from terrestrial mammals, a precautionary assumption is that the PTS thresholds for impulsive sounds (such as impact pile driving pulses as received close to the source) are at least 6 dB higher than the TTS threshold on a peak-pressure basis and PTS cumulative sound exposure level thresholds are 15 to 20 dB higher than TTS cumulative sound exposure level thresholds (Southall *et al.,* 2007, 2019). Given the higher level of sound or longer exposure duration necessary to cause PTS as compared with TTS, it is considerably less likely that PTS could occur.

Installing piles for this project requires either impact pile driving or

vibratory pile driving. For this project, these activities could occur at the same time, and there would be pauses in activities producing the sound during each day. Given these pauses, and that many marine mammals are likely moving through the ensonified area and not remaining for extended periods of time, the potential for TS declines.

Behavioral Harassment—Exposure to noise from pile driving and removal also has the potential to behaviorally disturb marine mammals. Available studies show wide variation in response to underwater sound; therefore, it is difficult to predict specifically how any given sound in a particular instance might affect marine mammals perceiving the signal. If a marine mammal does react briefly to an underwater sound by changing its behavior or moving a small distance, the impacts of the change are unlikely to be significant to the individual, let alone the stock or population. However, if a sound source displaces marine mammals from an important feeding or breeding area for a prolonged period, impacts on individuals and populations could be significant (*e.g.,* Lusseau and Bejder, 2007; Weilgart, 2007; National Research Council (NRC), 2005).

Disturbance may result in changing durations of surfacing and dives, number of blows per surfacing, or moving direction and/or speed; reduced/increased vocal activities; changing/cessation of certain behavioral activities (such as socializing or feeding); visible startle response or aggressive behavior (such as tail/fluke slapping or jaw clapping); or avoidance of areas where sound sources are located. Pinnipeds may increase their haul out time, possibly to avoid in-water disturbance (Thorson and Reyff, 2006). Behavioral responses to sound are highly variable and context-specific and any reactions depend on numerous intrinsic and extrinsic factors (*e.g.,* species, state of maturity, experience, current activity, reproductive state, auditory sensitivity, time of day), as well as the interplay between factors (*e.g.,* Richardson *et al.,* 1995; Wartzok *et al.,* 2003; Southall *et al.,* 2007; Weilgart, 2007; Archer *et al.,* 2010). Behavioral reactions can vary not only among individuals but also within an individual, depending on previous experience with a sound source, context, and numerous other factors (Ellison *et al.,* 2012), and can vary depending on characteristics associated with the sound source (*e.g.,* whether it is moving or stationary, number of sources, distance from the source). In general, pinnipeds seem more tolerant of, or at least habituate more quickly to, potentially disturbing underwater sound than do cetaceans, and generally seem to be less responsive to exposure to industrial sound than most cetaceans. Please see appendices B–C of Southall *et al.* (2007) for a review of studies involving marine mammal behavioral responses to sound.

Disruption of feeding behavior can be difficult to correlate with anthropogenic sound exposure, so it is usually inferred by observed displacement from known foraging areas, the appearance of secondary indicators (*e.g.,* bubble nets or sediment plumes), or changes in dive behavior. As for other types of behavioral response, the frequency, duration, and temporal pattern of signal presentation, as well as differences in species sensitivity, are likely contributing factors to differences in response in any given circumstance (*e.g.,* Croll *et al.,* 2001; Nowacek *et al.,* 2004; Madsen *et al.,* 2006; Yazvenko *et al.,* 2007). A determination of whether foraging disruptions incur fitness consequences would require information on or estimates of the energetic requirements of the affected individuals and the relationship between prey availability, foraging effort and success, and the life history stage of the animal.

Stress Responses—An animal's perception of a threat may be sufficient to trigger stress responses consisting of some combination of behavioral responses, autonomic nervous system responses, neuroendocrine responses, or immune responses (*e.g.,* Seyle, 1950; Moberg, 2000). In many cases, an animal's first and sometimes most economical (in terms of energetic costs) response is behavioral avoidance of the potential stressor. Autonomic nervous system responses to stress typically involve changes in heart rate, blood pressure, and gastrointestinal activity. These responses have a relatively short duration and may or may not have a significant long-term effect on an animal's fitness.

Neuroendocrine stress responses often involve the hypothalamus-pituitary-adrenal system. Virtually all neuroendocrine functions that are affected by stress—including immune competence, reproduction, metabolism, and behavior—are regulated by pituitary hormones. Stress-induced changes in the secretion of pituitary hormones have been implicated in failed reproduction, altered metabolism, reduced immune competence, and behavioral disturbance (*e.g.,* Moberg, 1987; Blecha, 2000). Increases in the circulation of glucocorticoids are also equated with stress (Romano *et al.,* 2004).

The primary distinction between stress (which is adaptive and does not normally place an animal at risk) and ''distress'' is the cost of the response. During a stress response, an animal uses glycogen stores that can be quickly replenished once the stress is alleviated. In such circumstances, the cost of the stress response would not pose serious fitness consequences. However, when an animal does not have sufficient energy reserves to satisfy the energetic costs of a stress response, energy resources must be diverted from other functions. This state of distress will last until the animal replenishes its energetic reserves sufficient to restore normal function.

Relationships between these physiological mechanisms, animal behavior, and the costs of stress responses are well studied through controlled experiments and for both laboratory and free-ranging animals (*e.g.,* Holberton *et al.,* 1996; Hood *et al.,* 1998; Jessop *et al.,* 2003; Krausman *et al.,* 2004; Lankford *et al.,* 2005). Stress responses due to exposure to anthropogenic sounds or other stressors and their effects on marine mammals have also been reviewed (Fair and Becker, 2000; Romano *et al.,* 2002b) and, more rarely, studied in wild populations (*e.g.,* Romano *et al.,* 2002a). For example, Rolland *et al.* (2012) found that noise reduction from reduced ship traffic in the Bay of Fundy was associated with decreased stress in North Atlantic right whales. These and other studies lead to a reasonable expectation that some marine mammals will experience physiological stress responses upon exposure to acoustic stressors and that it is possible that some of these would be classified as ''distress.'' In addition, any animal experiencing TTS would likely also experience stress responses (NRC, 2003), however distress is an unlikely result of this project based on observations of marine mammals during previous, similar projects in the area.

Masking—Sound can disrupt behavior through masking, or interfering with, an animal's ability to detect, recognize, or discriminate between acoustic signals of interest (*e.g.,* those used for intraspecific communication and social interactions, prey detection, predator avoidance, navigation) (Richardson *et al.,* 1995). Masking occurs when the receipt of a sound is interfered with by another coincident sound at similar frequencies and at similar or higher intensity, and may occur whether the sound is natural (*e.g.,* snapping shrimp, wind, waves, precipitation) or anthropogenic (*e.g.,* pile driving, shipping, sonar, seismic exploration) in origin. The ability of a

noise source to mask biologically important sounds depends on the characteristics of both the noise source and the signal of interest (*e.g.,* signal-to-noise ratio, temporal variability, direction), in relation to each other and to an animal's hearing abilities (*e.g.,* sensitivity, frequency range, critical ratios, frequency discrimination, directional discrimination, age or TTS hearing loss), and existing ambient noise and propagation conditions. Masking of natural sounds can result when human activities produce high levels of background sound at frequencies important to marine mammals. Conversely, if the background level of underwater sound is high (*e.g.,* on a day with strong wind and high waves), an anthropogenic sound source would not be detectable as far away as would be possible under quieter conditions and would itself be masked.

Airborne Acoustic Effects—Although pinnipeds are known to haul out regularly on manmade objects, we believe that incidents of take resulting solely from airborne sound are unlikely because there are no known haulouts within the project vicinity on the Columbia River. The closest haulout site for California sea lions and harbor seals is 2.2 mi upstream of the project site in Carroll Slough near the confluence of the Cowlitz and Columbia rivers. Steller sea lions do not have any known haulouts near the project area. There is a possibility that an animal could surface in-water, but with head out, within the area in which airborne sound exceeds relevant thresholds and thereby be exposed to levels of airborne sound that we associate with harassment, but any such occurrence would likely be accounted for in our estimation of incidental take from underwater sound. Therefore, authorization of incidental take resulting from airborne sound for pinnipeds is not warranted, and airborne sound is not discussed further here.

Marine Mammal Habitat Effects

Weyerhaeuser's construction activities could have localized, temporary impacts on marine mammal habitat by increasing in-water SPLs and slightly decreasing water quality. No net habitat loss is expected, as the dock will be reconstructed within its original footprint. Construction activities are localized and would likely have temporary impacts on marine mammal habitat through increases in underwater sounds. Increased noise levels may affect acoustic habitat (see masking discussion above) and adversely affect marine mammal prey in the vicinity of the project area (see discussion below). During pile driving activities, elevated levels of underwater noise would ensonify the project area where both fishes and marine mammals may occur and could affect foraging success. Additionally, marine mammals may avoid the area during construction; however, displacement due to noise is expected to be temporary and is not expected to result in long-term effects to the individuals or populations.

Temporary and localized reduction in water quality would occur because of in-water construction activities as well. Most of this effect would occur during the installation and removal of piles when bottom sediments are disturbed. The installation of piles would disturb bottom sediments and may cause a temporary increase in suspended sediment in the project area. In general, turbidity associated with pile installation is localized to about 25-ft (7.6-m) radius around the pile (Everitt *et al.,* 1980). Pinnipeds are not expected to be close enough to the pile driving areas to experience effects of turbidity, and could avoid localized areas of turbidity. Therefore, we expect the impact from increased turbidity levels to be discountable to marine mammals and do not discuss it further.

In-Water Construction Effects on Potential Foraging Habitat

The proposed activities would not result in permanent impacts to habitats used directly by marine mammals outside of the actual footprint of the reconstructed dock. The total riverbed area affected by pile installation and removal is a very small area compared to the vast foraging area available to marine mammals in the Columbia River and Washington's outer coast. Pile extraction and installation may have impacts on benthic invertebrate species primarily associated with disturbance of sediments that may cover or displace some invertebrates. The impacts would be temporary and highly localized, and no habitat would be permanently displaced by construction. Therefore, it is expected that impacts on foraging opportunities for marine mammals due to the demolition and reconstruction of the dock would be minimal.

It is possible that avoidance by potential prey (*i.e.,* fish) in the immediate area may occur due to temporary loss of this foraging habitat. The duration of fish avoidance of this area after pile driving stops is unknown, but we anticipate a rapid return to normal recruitment, distribution and behavior. Any behavioral avoidance by fish of the disturbed area would still leave large areas of fish and marine mammal foraging habitat in the nearby vicinity in the in the project area and Columbia River.

Effects on Potential Prey

Sound may affect marine mammals through impacts on the abundance, behavior, or distribution of prey species (*e.g.,* fish). Marine mammal prey varies by species, season, and location. Here, we describe studies regarding the effects of noise on known marine mammal prey.

Fish utilize the soundscape and components of sound in their environment to perform important functions such as foraging, predator avoidance, mating, and spawning (*e.g.,* Zelick *et al.,* 1999; Fay, 2009). Depending on their hearing anatomy and peripheral sensory structures, which vary among species, fishes hear sounds using pressure and particle motion sensitivity capabilities and detect the motion of surrounding water (Fay *et al.,* 2008). The potential effects of noise on fishes depends on the overlapping frequency range, distance from the sound source, water depth of exposure, and species-specific hearing sensitivity, anatomy, and physiology. Key impacts to fishes may include behavioral responses, hearing damage, barotrauma (pressure-related injuries), and mortality.

Fish react to sounds which are especially strong and/or intermittent low-frequency sounds, and behavioral responses, such as flight or avoidance are the most likely effects. Short duration, sharp sounds can cause overt or subtle changes in fish behavior and local distribution. The reaction of fish to noise depends on the physiological state of the fish, past exposures, motivation (*e.g.,* feeding, spawning, migration), and other environmental factors. Hastings and Popper (2005) identified several studies that suggest fish may relocate to avoid certain areas of sound energy. Additional studies have documented effects of pile driving on fish, although several are based on studies in support of large, multiyear bridge construction projects (*e.g.,* Scholik and Yan, 2001, 2002; Popper and Hastings, 2009). Several studies have demonstrated that impulse sounds might affect the distribution and behavior of some fishes, potentially impacting foraging opportunities or increasing energetic costs (*e.g.,* Fewtrell and McCauley, 2012; Pearson *et al.,* 1992; Skalski *et al.,* 1992; Santulli *et al.,* 1999; Paxton *et al.,* 2017). However, some studies have shown no or slight reaction to impulse sounds (*e.g.,* Pena *et al.,* 2013; Wardle *et al.,* 2001; Jorgenson and Gyselman, 2009; Cott *et al.,* 2012).

SPLs of sufficient strength have been known to cause injury to fishes and fish mortality (summarized in Popper *et al.,* 2014). However, in most fish species, hair cells in the ear continuously regenerate and loss of auditory function likely is restored when damaged cells are replaced with new cells. Halvorsen *et al.* (2012b) showed that a TTS of 4 to 6 dB was recoverable within 24 hours for one species. Impacts would be most severe when the individual fish is close to the source and when the duration of exposure is long. Injury caused by barotrauma can range from slight to severe and can cause death, and is most likely for fish with swim bladders. Barotrauma injuries have been documented during controlled exposure to impact pile driving (Halvorsen *et al.,* 2012a; Casper *et al.,* 2013, 2017).

Fish populations in the proposed project area that serve as marine mammal prey could be temporarily affected by noise from pile installation and removal. The frequency range in which fishes generally perceive underwater sounds is 50 to 2,000 Hz, with peak sensitivities below 800 Hz (Popper and Hastings, 2009). Fish behavior or distribution may change, especially with strong and/or intermittent sounds that could harm fishes. High underwater SPLs have been documented to alter behavior, cause hearing loss, and injure or kill individual fish by causing serious internal injury (Hastings and Popper, 2005).

The greatest potential impact to fishes during construction would occur during impact pile driving. However, the duration of impact pile driving would be limited to the final stage of installation (''proofing'') after the pile has been driven as close as practicable to the design depth with a vibratory driver. In-water construction activities would only occur during daylight hours, allowing fish to forage and transit the project area in the evening. Vibratory pile driving could elicit behavioral reactions from fishes such as temporary avoidance of the area but is unlikely to cause injuries to fishes or have persistent effects on local fish populations. Additionally, all pile installation would occur only during a USACE and USFWS-designated in-water work window to minimize potential exposure of ESA-listed fish species migrating through the project site to noise from impact pile driving. Vibratory and deadpull removal of piles could occur at any time during the authorization period. Construction also would have minimal permanent and temporary impacts on benthic invertebrate species, a marine mammal prey source.

The area impacted by the project is relatively small compared to the available habitat in the remainder of the Columbia River, and there are no areas of particular importance that would be impacted by this project. Any behavioral avoidance by fish of the disturbed area would still leave significantly large areas of fish and marine mammal foraging habitat in the nearby vicinity. As described in the preceding, the potential for Weyerhaeuser's construction to affect the availability of prey to marine mammals or to meaningfully impact the quality of physical or acoustic habitat is considered to be insignificant.

Estimated Take of Marine Mammals

This section provides an estimate of the number of incidental takes proposed for authorization through the IHA, which will inform NMFS' consideration of ''small numbers,'' the negligible impact determinations, and impacts on subsistence uses.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes would primarily be by Level B harassment, as use of the acoustic source (*i.e.,* pile driving) has the potential to result in disruption of behavioral patterns for individual marine mammals. There is also some potential for auditory injury (Level A harassment) to result, primarily for phocids because predicted auditory injury zones are larger than for otariids. Auditory injury is unlikely to occur for otariids. The proposed mitigation and monitoring measures are expected to minimize the severity of the taking to the extent practicable.

As described previously, no serious injury or mortality is anticipated or proposed to be authorized for this activity. Below we describe how the proposed take numbers are estimated.

For acoustic impacts, generally speaking, we estimate take by considering: (1) acoustic thresholds above which NMFS believes the best available science indicates marine mammals will be behaviorally harassed or incur some degree of permanent hearing impairment; (2) the area or volume of water that will be ensonified above these levels in a day; (3) the density or occurrence of marine mammals within these ensonified areas; and (4) the number of days of activities. We note that while these factors can contribute to a basic calculation to provide an initial prediction of potential takes, additional information that can qualitatively inform take estimates is also sometimes available (*e.g.,* previous monitoring results or average group size). Below, we describe the factors considered here in more detail and present the proposed take estimates.

Acoustic Thresholds

NMFS recommends the use of acoustic thresholds that identify the received level of underwater sound above which exposed marine mammals would be reasonably expected to be behaviorally harassed (equated to Level B harassment) or to incur PTS of some degree (equated to Level A harassment).

Level B Harassment—Though significantly driven by received level, the onset of behavioral disturbance from anthropogenic noise exposure is also informed to varying degrees by other factors related to the source or exposure context (*e.g.,* frequency, predictability, duty cycle, duration of the exposure, signal-to-noise ratio, distance to the source), the environment (*e.g.,* bathymetry, other noises in the area, predators in the area), and the receiving animals (hearing, motivation, experience, demography, life stage, depth) and can be difficult to predict (*e.g.,* Southall *et al.,* 2007, 2021; Ellison *et al.,* 2012). Based on what the available science indicates and the practical need to use a threshold based on a metric that is both predictable and measurable for most activities, NMFS typically uses a generalized acoustic threshold based on received level to estimate the onset of behavioral harassment. NMFS generally predicts that marine mammals are likely to be behaviorally harassed in a manner considered to be Level B harassment when exposed to underwater anthropogenic noise above root-mean-squared pressure received levels (RMS SPL) of 120 dB (referenced to 1 micropascal (re 1 µPa)) for continuous (*e.g.,* vibratory pile driving, drilling) and above RMS SPL 160 dB re 1 µPa for non-explosive impulsive (*e.g.,* seismic airguns) or intermittent (*e.g.,* scientific sonar) sources. Generally speaking, Level B harassment take estimates based on these behavioral harassment thresholds are expected to include any

likely takes by TTS as, in most cases, the likelihood of TTS occurs at distances from the source less than those at which behavioral harassment is likely. TTS of a sufficient degree can manifest as behavioral harassment, as reduced hearing sensitivity and the potential reduced opportunities to detect important signals (conspecific communication, predators, prey) may result in changes in behavior patterns that would not otherwise occur.

Weyerhaeuser's proposed activity includes the use of continuous (vibratory pile driving) and impulsive (impact pile driving) sources, and therefore the RMS SPL thresholds of 120 and 160 dB re 1 µPa are applicable.

Level A Harassment—NMFS' Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing (Version 2.0; Technical Guidance, 2018) identifies dual criteria to assess auditory injury (Level A harassment) to five different marine mammal groups (based on hearing sensitivity) as a result of exposure to noise from two different types of sources (impulsive or non-impulsive). Weyerhaeuser's proposed activity includes the use of impulsive (impact pile driving) and non-impulsive (vibratory pile driving) sources.

These thresholds are provided in the table below. The references, analysis, and methodology used in the development of the thresholds are described in NMFS' 2018 Technical Guidance, which may be accessed at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/marine-mammal-acoustic-technical-guidance.*

TABLE 4—THRESHOLDS IDENTIFYING THE ONSET OF PTS

Hearing group	PTS onset acoustic thresholds * (received level)	
	Impulsive	Non-impulsive
Low-Frequency (LF) Cetaceans	*Cell 1:* $L_{pk,flat}$: 219 dB; $L_{E,LF,24h}$: 183 dB	*Cell 2:* $L_{E,LF,24h}$: 199 dB.
Mid-Frequency (MF) Cetaceans	*Cell 3:* $L_{pk,flat}$: 230 dB; $L_{E,MF,24h}$: 185 dB	*Cell 4:* $L_{E,MF,24h}$: 198 dB.
High-Frequency (HF) Cetaceans	*Cell 5:* $L_{pk,flat}$: 202 dB; $L_{E,HF,24h}$: 155 dB	*Cell 6:* $L_{E,HF,24h}$: 173 dB.
Phocid Pinnipeds (PW) (Underwater)	*Cell 7:* $L_{pk,flat}$: 218 dB; $L_{E,PW,24h}$: 185 dB	*Cell 8:* $L_{E,PW,24h}$: 201 dB.
Otariid Pinnipeds (OW) (Underwater)	*Cell 9:* $L_{pk,flat}$: 232 dB; $L_{E,OW,24h}$: 203 dB	*Cell 10:* $L_{E,OW,24h}$: 219 dB.

* Dual metric acoustic thresholds for impulsive sounds: Use whichever results in the largest isopleth for calculating PTS onset. If a non-impulsive sound has the potential of exceeding the peak sound pressure level thresholds associated with impulsive sounds, these thresholds should also be considered.

Note: Peak sound pressure (L_{pk}) has a reference value of 1 µPa, and cumulative sound exposure level (L_E) has a reference value of 1µPa^{2}s. In this table, thresholds are abbreviated to reflect ANSI standards (ANSI, 2013). However, peak sound pressure is defined by ANSI as incorporating frequency weighting, which is not the intent for this Technical Guidance. Hence, the subscript ''flat'' is being included to indicate peak sound pressure should be flat weighted or unweighted within the generalized hearing range. The subscript associated with cumulative sound exposure level thresholds indicates the designated marine mammal auditory weighting function (LF, MF, and HF cetaceans, and PW and OW pinnipeds) and that the recommended accumulation period is 24 hours. The cumulative sound exposure level thresholds could be exceeded in a multitude of ways (*i.e.,* varying exposure levels and durations, duty cycle). When possible, it is valuable for action proponents to indicate the conditions under which these acoustic thresholds will be exceeded.

Ensonified Area

Here, we describe operational and environmental parameters of the activity that are used in estimating the area ensonified above the acoustic thresholds, including source levels and transmission loss coefficient.

The sound field in the project area is the existing background noise plus additional construction noise from the proposed project. Pile driving generates underwater noise that can potentially result in disturbance to marine mammals in the project area. The maximum (underwater) area ensonified is determined by the topography of the Columbia River, including intersecting land masses that will reduce the overall area of potential impact. Additionally, vessel traffic, including the other half of the dock (berth B) remaining operational during construction, in the project area may contribute to elevated background noise levels, which may mask sounds produced by the project.

Transmission loss (*TL*) is the decrease in acoustic intensity as an acoustic pressure wave propagates out from a source. *TL* parameters vary with frequency, temperature, sea conditions, current, source and receiver depth, water depth, water chemistry, and bottom composition and topography. The general formula for underwater *TL* is:

$$TL = B \times \mathrm{Log}_{10}(R_1/R_2),$$

where

TL = transmission loss in dB;
B = transmission loss coefficient; for practical spreading equals 15;
R_1 = the distance of the modeled SPL from the driven pile; and,
R_2 = the distance from the driven pile of the initial measurement.

This formula neglects loss due to scattering and absorption, which is assumed to be zero here. The degree to which underwater sound propagates away from a sound source is dependent on a variety of factors, most notably the water bathymetry and presence or absence of reflective or absorptive conditions including in-water structures and sediments. Spherical spreading occurs in a perfectly unobstructed (free-field) environment not limited by depth or water surface, resulting in a 6-dB reduction in sound level for each doubling of distance from the source ($20 \times \log_{10}$[range]). Cylindrical spreading occurs in an environment in which sound propagation is bounded by the water surface and sea bottom, resulting in a reduction of 3 dB in sound level for each doubling of distance from the source ($10 \times \log_{10}$[range]). A practical spreading value of 15 is often used under conditions, such as the project site, where water increases with depth as the receiver moves away from the shoreline, resulting in an expected propagation environment that would lie between spherical and cylindrical spreading loss conditions. Practical spreading loss is assumed here.

The intensity of pile driving sounds is greatly influenced by factors such as the type of piles, hammers, and the physical environment in which the activity takes place. In order to calculate the distances to the Level A harassment and the Level B harassment sound thresholds for the methods and piles being used in this project, NMFS used acoustic monitoring data from other locations to develop proxy source levels for the various pile types, sizes and methods (table 5). Generally, we choose source levels from similar pile types from locations (*e.g.,* geology, bathymetry) similar to the project.

TABLE 5—PROXY SOUND SOURCE LEVELS FOR PILE SIZES AND DRIVING METHODS

Pile type and size	Peak SPL (re 1 μPa)	RMS SPL (re 1 μPa)	SEL (re 1 μPa²-s)	Source
Vibratory pile installation and removal				
16-in timber pile	.....	162	.....	Caltrans, 2020.
12-in steel pipe	.....	158	.....	Laughlin, 2012.
12-in steel H-pile	.....	152	.....	Laughlin, 2019.
16-in steel pipe [1]	.....	161	.....	Navy, 2015.
24-in temporary steel pipe.	.....	161	.....	Navy, 2015.
30-in steel pipe	.....	163	.....	Anchor, QEA, 2021; Greenbush, 2019, as cited by NMFS in 87 FR 31985; Denes *et al.,* 2016, table 72.
Impact pile installation				
30-in steel pipe [2]	210	190	177	Caltrans, 2020; Cara Hotchkin, NMFS personal communication, 1/18/2024.

[1] For the purposes of this analysis, the underwater sound source level for removal of existing 16-in steel piles (*i.e.,* 161 dB RMS per Navy, 2015) has been used for the removal of approximately 36 16-in steel pipe piles and 20 fender piles (14- or 16-in steel pipe piles).
[2] Using an unconfined bubble curtain.

For this project, two hammers, including any combination of vibratory and impact hammers, may operate simultaneously. As noted earlier, the estimated ensonfied area reflects the worst-case scenario (both hammers installing 30-in steel pipe piles) for the proposed project. However, the most likely scenario is the removal of a 16-in timber pile at the same time as installing a 30-in steel pipe pile. The calculated proxy source levels for the different potential concurrent pile driving scenarios are shown in table 6.

Two Impact Hammers

For simultaneous impact driving of two 30-in steel pipe piles (the most conservative scenario), the number of strikes per pile was doubled to estimate total sound exposure during simultaneous installation. While the likelihood of impact pile driving strikes completely overlapping in time is rare due to the intermittent nature and short duration of strikes, NMFS conservatively estimates that up to 20 percent of strikes may overlap completely in time. Therefore, to calculate Level B isopleths for simultaneous impact pile driving, dB addition (if the difference between the two sound source levels is between 0 and 1 dB, 3 dB are added to the higher sound source level) was used to calculate the combined sound source level of 193 dB RMS that was used in this analysis.

One Impact Hammer, One Vibratory Hammer

To calculate Level B isopleths for one impact and one vibratory hammer operating simultaneously, sources were treated as though they were non-overlapping and the isopleth associated with the individual source which results in the largest Level B harassment isopleth was conservatively used for both sources to account for periods of overlapping activities.

Two Vibratory Hammers

To calculate Level B isopleths for two simultaneous vibratory hammers, the NMFS acoustic threshold calculator was used with modified inputs to account for accumulation, weighting, and source overlap in space and time. Using the rules of dB addition if the difference between the two sound source levels is between 0 and 1 dB, 3 dB are added to the higher sound source level), the combined sound source level for the simultaneous vibratory installation of two 30-in steel piles is 166 dB RMS.

The ensonified area associated with Level A harassment is more technically challenging to predict due to the need to account for a duration component. Therefore, NMFS developed an optional User Spreadsheet tool to accompany the Technical Guidance that can be used to relatively simply predict an isopleth distance for use in conjunction with marine mammal density or occurrence to help predict potential takes. We note that because of some of the assumptions included in the methods underlying this optional tool, we anticipate that the resulting isopleth estimates are typically going to be overestimates of some degree, which may result in an overestimate of potential take by Level A harassment. However, this optional tool offers the best way to estimate isopleth distances when more sophisticated modeling methods are not available or practical. For stationary sources, like pile driving, the optional User Spreadsheet tool predicts the distance at which, if a marine mammal remained at that distance for the duration of the activity, it would be expected to incur PTS. Inputs used in the optional User Spreadsheet tool, and the resulting estimated isopleths, are reported in table 7, below.

To calculate Level A isopleths for two impact hammers operating simultaneously, the NMFS User Spreadsheet calculator was used with modified inputs to account for the total estimated number of strikes for all piles. For simultaneous impact driving of two 30-in steel pipe piles (the most conservative scenario), the number of strikes per pile was doubled to estimate total sound exposure during simultaneous installation, and the number of piles per day was reduced to one. The source level for two simultaneous impact hammers was not adjusted because for identical sources the accumulation of energy depends only on the total number of strikes, whether or not they overlap fully in time. Therefore, the source level used for two simultaneous impact hammers was 177 dB SEL_{ss}.

To calculate Level A isopleths of one impact hammer and one vibratory hammer operating simultaneously, sources were treated as though they were non-overlapping and the isopleth associated with the individual source which resulted in the largest Level A isopleth was conservatively used for both sources to account for periods of overlapping activities.

To calculate Level A isopleths of two vibratory hammers operating simultaneously, the NMFS acoustic threshold calculator was used with modified inputs to account for accumulation, weighting, and source overlap in space and time. Using the rules of dB addition (NMFS, 2024; if the

difference between the two sound source levels is between 0 and 1 dB, 3 dB are added to the higher sound source level), the combined sound source level for the simultaneous vibratory installation of two 30-in steel piles is 166 dB RMS.

TABLE 6—CALCULATED PROXY SOUND SOURCE LEVELS FOR POTENTIAL CONCURRENT PILE DRIVING SCENARIOS

Scenario	Pile type and proxy	Calculated proxy sound source level
Two impact hammers	Impact install of 30-in steel pipe pile (177 dB SEL, 190 dB RMS) AND impact install of 30-in steel pipe pile (177 dB SEL, 190 dB RMS).	177 dB SEL for Level A; 193 dB RMS for Level B.
One impact hammer, one vibratory hammer.	Impact install of 30-in steel pipe pile (177 dB SEL, 190 dB RMS) AND vibratory install of 30-in steel pipe pile (163 dB RMS).	177 dB SEL for Level A; 163 dB RMS for Level B.
Two vibratory hammers	Vibratory install of 30-in steel pipe pile (163 dB RMS) AND vibratory install of 30-in steel pipe pile (163 dB RMS).	166 dB RMS.

TABLE 7—NMFS USER SPREADSHEET INPUTS

Pile size and type	Spreadsheet tab used	Weighting factor adjustment (kHz)	Number of piles per day	Duration to drive a single pile (min)	Number of strikes per pile
Vibratory pile driving and removal					
16-in timber pile	A.1. Vibratory pile driving	2.5	8	60	NA
12-in steel pipe	A.1. Vibratory pile driving	2.5	8	60	NA
12-in steel H-pile	A.1. Vibratory pile driving	2.5	8	60	NA
16-in steel pipe	A.1 Vibratory pile driving	2.5	8	60	NA
24-in temporary steel pipe	A.1 Vibratory pile driving	2.5	8	60	NA
30-in steel pipe	A.1. Vibratory pile driving	2.5	8	60	NA
Impact pile driving					
30-in steel pipe	E.1. Impact pile driving ...	2	8	NA	1,000
Concurrent pile driving					
Impact install of 30-in steel pipe pile AND impact install of 30-in steel pipe pile.	E.1. Impact pile driving ...	2	1	NA	8,000
Impact install of 30-in steel pipe pile AND vibratory install of 30-in steel pipe pile.	E.1. Impact pile driving ...	2	1	NA	8,000
Vibratory install of 30-in steel pipe pile AND vibratory install of 30-in steel pipe pile.	A.1. Vibratory pile driving	2.5	1	480	NA

TABLE 8—CALCULATED LEVELS A AND B HARASSMENT ISOPLETHS

Pile size and type	Level A harassment zone (m/km^2)		Level B harassment zone (m/km^2)
	Phocid	Otariid	
Vibratory pile driving and removal			
16-in timber pile	20/0.000693	2/0.000012	6,310/8.25
12-in steel pipe	11/0.000226	1/0.000003	3,415/5.14
12-in steel H-pile	5/0.000055	1/0.000003	1,585/2.46
16-in steel pipe	17/0.000509	2/0.000012	5,412/7.47
24-in temporary steel pipe.			
30-in steel pipe	23/0.000906	2/0.000012	7,356 [a] [b]/8.96
Impact pile driving			
30-in steel pipe	852/1.16	63 [c]/0.006352	1,001/1.46
Concurrent pile driving			
Impact install of 30-in steel pipe pile AND impact install of 30-in steel pipe pile	852/1.16	63[c]/0.006352	1,585/2.46
Impact install of 30-in steel pipe pile AND vibratory install of 30-in steel pipe pile			7,356 [a] [b]/8.96
Vibratory install of 30-in steel pipe pile AND vibratory install of 30-in steel pipe pile	36/2,153	3/0.000023	11,660 [b]/10.52

[a] The Level B harassment thresholds for the vibratory installation of a single 30-in steel pile are equivalent to the potential simultaneous installation of up to two 30-inch steel piles using one impact hammer and one vibratory hammer operating concurrently. As noted previously, Levels A and B harassment thresholds for simultaneous pile driving were analyzed based on interim guidance provided by NMFS (2024) and in coordination with NMFS biologists (Cara Hotchkin, NMFS, personal communication, 1/18/2024 and 2/21/2024).

[b] The Level B harassment thresholds reported above were calculated using the practical spreading loss model, although the extent of actual sound propagation will be limited to the areas identified in figure 6–3 due to the shape and configuration of the Columbia River in the vicinity.

Marine Mammal Occurrence and Take Estimation

In this section, we provide information about the occurrence of marine mammals that will inform the take calculations, and describe how the information provided is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and proposed for authorization. Daily occurrence data cones from USACE compiled weekly monitoring reports collected at the Bonneville Dam (RM 146) from 2020 through 2021 (van der Leeuw and Tidwell, 2022). As pinnipeds would need to swim past the proposed project site to reach the dam, the number of animals observed at Bonneville Dam may be slightly lower than what would be observed at the project site. The take calculations for this project are:

Incidental take estimate = (number of days during work window × estimated number of animals per day) + (number of days outside work window × estimated number of animals per day).

California Sea Lion

The numbers of California sea lions observed at Bonneville Dam have been in decline in recent years and ranged from 149 in 2016 to a total of 24 in 2021 (van der Leeuw and Tidwell, 2022). During the spring period from January 1 to May 6, 2020, daily counts averaged 0.9 animals ±3.3 standard deviation, with a high of seven individuals (Tidwell *et al.,* 2020). During spring 2021, California sea lions were present from late March through late May, but in relatively low numbers, with most days having five or fewer present (van der Leeuw and Tidwell, 2022). It is difficult to estimate the number of California sea lions that could potentially occur in the Level B harassment zone during the fall in-water work window from these data, because the numbers at Bonneville Dam reflect a strong seasonal presence in spring. A conservative estimate of three California sea lions per day during the in-water work window and five California sea lions per day outside the in-water work window was used. Therefore, using the equation given above, the estimated number of takes by Level B harassment for California sea lions would be 510.

The largest Level A harassment zone for California sea lions extends 63 m from the sound source (table 8) during impact pile driving. All construction work would be shut down prior to a California sea lion entering the Level A harassment zone specific to the in-water activity underway at the time. In consideration of the small Level A harassment isopleth and proposed shutdown requirements, no take by Level A harassment is anticipated or proposed for California sea lions.

Steller Sea Lion

Steller sea lions have been observed in varying numbers at Bonneville Dam throughout much of the year, with a peak in April and May (Tidwell *et al.,* 2020; van der Leeuw and Tidwell, 2022). Reports from a 2-year period observed daily counts of 12 to 20 Steller sea lions during the fall survey period (Tidwell *et al.,* 2020, Tidwell and van der Leeuw, 2021), and up to 27 Steller sea lions per day in the spring (van der Leeuw and Tidwell, 2022). A conservative estimate of 20 Steller sea lions per day during the in-water work window and 27 Steller sea lions per day outside the in-water work window was used. Therefore, using the equation given above, the estimated number of takes by Level B harassment for Steller sea lions would be 3,210.

The largest Level A harassment zone for Steller sea lions extends 63 m from the sound source (table 8) during impact pile driving. All construction work would be shut down prior to a Steller sea lion entering the Level A harassment zone specific to the in-water activity underway at the time. In consideration of the small Level A harassment isopleth and proposed shutdown requirements, no take by Level A harassment is anticipated or proposed for Steller sea lions.

Harbor Seal

Harbor seals are rarely observed at Bonneville Dam and have been recorded in low numbers over the past 10 years. A recent IHA issued for the Port of Kalama Manufacturing and Marine Export Facility (85 FR 76527), which is located near the proposed project site (RM 72), used a conservative estimate based on anecdotal information of harbor seals residing near the mouths of the Cowlitz and Kalama Rivers and estimated that there could be up to 10 present on any given day of pile driving (NMFS, 2017; 81 FR 15064, March 21, 2016). Therefore, using the equation given above, the calculated estimate take by Level B harassment for harbor seals would be 1,500.

The largest Level A harassment zone for harbor seals extends 852 m from the sound source (table 8) during impact pile driving. The Port of Kalama project estimated that one harbor seal per day could be present in the Level A harassment zone for each day of impact pile driving. Using the equation given above, the calculated estimated take by Level A harassment for harbor seals would be 120.

TABLE 9—ESTIMATED TAKE BY LEVELS A AND B HARASSMENT

Common name	Stock	Stock abundance	Level A harassment	Level B harassment	Total proposed take	Proposed take as a percentage of stock
California sea lion	U.S. Stock	257,606	0	510	510	0.2
Steller sea lion	Eastern DPS	36,308	0	3,210	3,210	8.8
Harbor seal	OR/WA coastal stock	24,732	120	1,500	1,620	6.6

Proposed Mitigation

In order to issue an IHA under section 101(a)(5)(D) of the MMPA, NMFS must set forth the permissible methods of taking pursuant to the activity, and other means of effecting the least practicable impact on the species or stock and its habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance, and on the availability of the species or stock for taking for certain subsistence uses (latter not applicable for this action). NMFS regulations require applicants for incidental take authorizations to include information about the availability and feasibility (economic and technological) of equipment, methods, and manner of conducting the activity or other means of effecting the least practicable adverse impact upon the affected species or stocks, and their habitat (50 CFR 216.104(a)(11)).

In evaluating how mitigation may or may not be appropriate to ensure the least practicable adverse impact on species or stocks and their habitat, as well as subsistence uses where applicable, NMFS considers two primary factors:

(1) The manner in which, and the degree to which, the successful

implementation of the measure(s) is expected to reduce impacts to marine mammals, marine mammal species or stocks, and their habitat. This considers the nature of the potential adverse impact being mitigated (likelihood, scope, range). It further considers the likelihood that the measure will be effective if implemented (probability of accomplishing the mitigating result if implemented as planned), the likelihood of effective implementation (probability implemented as planned); and

(2) The practicability of the measures for applicant implementation, which may consider such things as cost, and impact on operations.

The mitigation measures described in the following paragraphs would apply to the Weyerhaeuser in-water construction activities.

Proposed Shutdown and Monitoring Zones

Weyerhaeuser must establish shutdown zones and Level B harassment monitoring zones for all pile driving activities. The purpose of a shutdown zone is generally to define an area within which shutdown of the activity would occur upon sighting of a marine animal (or in anticipation of an animal entering the defined area). Shutdown zones are based on the largest Level A harassment zone for each pile size/type and driving method, and behavioral monitoring zones are meant to encompass Level B harassment zones for each pile size/type and driving method, as shown in table 10. A minimum shutdown zone of 10 m would be required for all in-water construction activities to avoid physical interaction with marine mammals. Proposed shutdown zones for each activity type are shown in table 10.

Prior to pile driving, Protected Species Observers (PSOs) would survey the shutdown zones and surrounding areas for at least 30 minutes before pile driving activities start. If marine mammals are found within the shutdown zone, pile driving would be delayed until the animal has moved out of the shutdown zone, either verified by an observer or by waiting until 15 minutes has elapsed without a sighting. If a marine mammal approaches or enters the shutdown zone during pile driving, the activity would be halted. Pile driving may resume after the animal has moved out of and is moving away from the shutdown zone or after at least 15 minutes has passed since the last observation of the animal.

All marine mammals would be monitored in the Level B harassment to the extent of visibility for the on-duty PSOs. If a marine mammal for which take is authorized enters the Level B harassment zone, in-water activities would continue and PSOs would document the animal's presence within the estimated harassment zone.

If a species for which authorization has not been granted, or for which the authorized takes are met, is observed approaching or within the Level B harassment zone, pile driving activities would be shut down immediately. Activities would not resume until the animal has been confirmed to have left the area or 15 minutes has elapsed with no sighting of the animal.

TABLE 10—PROPOSED SHUTDOWN AND LEVEL B MONITORING ZONES BY ACTIVITY

Method	Pile size and type	Minimum shutdown zone (m)		Harassment monitoring zone (m)
		Phocid	Otariid	
Vibratory	16-in timber pile removal	20	10	6,310
	12-in steel pipe pile removal	15	10	3,415
	12-in steel H-pile removal	10	10	1,585
	16-in steel pipe removal	20	10	5,412
	24-in steel pipe pile (temporary) installation and removal	20	10	5,412
	30-in steel pipe pile installation	25	10	7,356
Impact	30-in steel pipe pile installation	200	65	1,001
	Two impact hammers	200	65	1,585
Concurrent pile driving	One impact hammer and one vibratory hammer	200	65	7,356
	Two vibratory hammers	40	10	11,660

PSOs

The placement of PSOs during all pile driving and removal activities (described in detail in the Proposed Monitoring and Reporting section) will ensure that the ensonified area of the Columbia River is visible during pile installation.

Pre- and Post-Activity Monitoring

Monitoring must take place from 30 minutes prior to initiation of pile driving activities (*i.e.,* pre-clearance monitoring) through 30 minutes post-completion of pile driving. Prior to the start of daily in-water construction activity, or whenever a break in pile driving of 30 minutes or longer occurs, PSOs would observe the shutdown and monitoring zones for a period of 30 minutes. The shutdown zone would be considered cleared when a marine mammal has not been observed within the zone for a 30-minute period. If a marine mammal is observed within the shutdown zones, pile driving activity would be delayed or halted. If work ceases for more than 30 minutes, the pre-activity monitoring of the shutdown zones would commence. A determination that the shutdown zone is clear must be made during a period of good visibility (*i.e.,* the entire shutdown zone and surrounding waters must be visible to the naked eye).

Bubble Curtain

A bubble curtain must be employed during all impact pile driving activities to interrupt the acoustic pressure and reduce impact on marine mammals. The bubble curtain must distribute air bubbles around 100 percent of the piling circumference for the full depth of the water column. The lowest bubble ring must be in contact with the mudline for the full circumference of the ring. The weights attached to the bottom ring must ensure 100 percent substrate contact. No parts of the ring or other objects may prevent full substrate contact. Air flow to the bubblers must be balanced around the circumference of the pile. If simultaneous use of two impact hammers occurs, both piles must be mitigated with bubble curtains as described above.

Soft Start

Soft-start procedures are believed to provide additional protection to marine mammals by providing warning and/or giving marine mammals a chance to

leave the area prior to the impact hammer operating at full capacity. For impact driving, an initial set of three strikes will be made by the hammer at reduced energy, followed by a 30-second waiting period, then two subsequent three-strike sets before initiating continuous driving. Soft start will be implemented at the start of each day's impact pile driving and at any time following cessation of impact pile driving for a period of 30 minutes or longer.

Based on our evaluation of the applicant's proposed measures, NMFS has preliminarily determined that the proposed mitigation measures provide the means of effecting the least practicable impact on the affected species or stocks and their habitat, paying particular attention to rookeries, mating grounds, and areas of similar significance.

Proposed Monitoring and Reporting

In order to issue an IHA for an activity, section 101(a)(5)(D) of the MMPA states that NMFS must set forth requirements pertaining to the monitoring and reporting of such taking. The MMPA implementing regulations at 50 CFR 216.104(a)(13) indicate that requests for authorizations must include the suggested means of accomplishing the necessary monitoring and reporting that will result in increased knowledge of the species and of the level of taking or impacts on populations of marine mammals that are expected to be present while conducting the activities. Effective reporting is critical both to compliance as well as ensuring that the most value is obtained from the required monitoring.

Monitoring and reporting requirements prescribed by NMFS should contribute to improved understanding of one or more of the following:

- Occurrence of marine mammal species or stocks in the area in which take is anticipated (*e.g.,* presence, abundance, distribution, density);
- Nature, scope, or context of likely marine mammal exposure to potential stressors/impacts (individual or cumulative, acute or chronic), through better understanding of: (1) action or environment (*e.g.,* source characterization, propagation, ambient noise); (2) affected species (*e.g.,* life history, dive patterns); (3) co-occurrence of marine mammal species with the activity; or (4) biological or behavioral context of exposure (*e.g.,* age, calving or feeding areas);
- Individual marine mammal responses (behavioral or physiological) to acoustic stressors (acute, chronic, or cumulative), other stressors, or cumulative impacts from multiple stressors;
- How anticipated responses to stressors impact either: (1) long-term fitness and survival of individual marine mammals; or (2) populations, species, or stocks;
- Effects on marine mammal habitat (*e.g.,* marine mammal prey species, acoustic habitat, or other important physical components of marine mammal habitat); and
- Mitigation and monitoring effectiveness.

Visual Monitoring

Marine mammal monitoring must be conducted in accordance with the Marine Mammal Monitoring Plan and section 5 of the IHA. A Marine Mammal Monitoring Plan would be submitted to NMFS for approval prior to commencement of project activities. Marine mammal monitoring during pile driving and removal must be conducted by NMFS-approved PSOs in a manner consistent with the following:

- PSOs must be independent of the activity contractor (for example, employed by a subcontractor) and have no other assigned tasks during monitoring periods;
- At least one PSO must have prior experience performing the duties of a PSO during construction activity pursuant to a NMFS-issued incidental take authorization;
- Other PSOs may substitute education (degree in biological science or related field) or training for experience; and
- Weyerhaeuser must submit PSO Curriculum Vitae for approval by NMFS prior to the onset of pile driving.

PSOs must have the following additional qualifications:

- Ability to conduct field observations and collect data according to assigned protocols;
- Experience or training in the field identification of marine mammals, including the identification of behaviors;
- Sufficient training, orientation, or experience with the construction operation to provide for personal safety during observations;
- Writing skills sufficient to prepare a report of observations including but not limited to the number and species of marine mammals observed; dates and times when in-water construction activities were conducted; dates, times, and reason for implementation of mitigation (or why mitigation was not implemented when required); and marine mammal behavior; and
- Ability to communicate orally, by radio or in person, with project personnel to provide real-time information on marine mammals observed in the area as necessary. Weyerhaeuser will employ up to four PSOs. PSO locations will provide an unobstructed view of all water within the shutdown zone(s), and as much of the Level A harassment and Level B harassment zones as possible. PSOs would be stationed along the shore of the Columbia River.

Weyerhaeuser would ensure that construction supervisors and crews, the monitoring team, and relevant Weyerhaeuser staff are trained prior to the start of activities subject to the proposed IHA, so that responsibilities, communication procedures, monitoring protocols, and operational procedures are clearly understood. New personnel joining during the project would be trained prior to commencing work. Monitoring would occur for all pile driving activities during the pile installation work window (September 1, 2025 through January 31, 2026). For pile removal activities outside the work window, one PSO would be on site to monitor the ensonified area once every 7 calendar days, whether or not vibratory pile extraction occurs on that day. Monitoring would be conducted 30 minutes before, during, and 30 minutes after pile driving/removal activities. In addition, observers shall record all incidents of marine mammal occurrence, regardless of distance from activity, and shall document any behavioral reactions in concert with distance from piles being driven or removed. Pile driving/removal activities include the time to install or remove a single pile or series of piles, as long as the time elapsed between uses of the pile driving equipment is no more than 30 minutes.

Data Collection

PSOs would use approved data forms to record the following information:

- Dates and times (beginning and end) of all marine mammal monitoring.
- PSO locations during marine mammal monitoring.
- Construction activities occurring during each daily observation period, including how many and what type of piles were driven or removed and by what method (*i.e.,* vibratory, impact, or auger drilling).
- Weather parameters and water conditions.
- The number of marine mammals observed, by species, relative to the pile location and if pile driving or removal was occurring at time of sighting.

• Distance and bearings of each marine mammal observed to the pile being driven or removed.
• Description of marine mammal behavior patterns, including direction of travel.
• Age and sex class, if possible, of all marine mammals observed.
• Detailed information about implementation of any mitigation triggered (such as shutdowns and delays), a description of specific actions that ensued, and resulting behavior of the animal if any.

Reporting

A draft marine mammal monitoring report would be submitted to NMFS within 90 days after the completion of pile driving and removal activities. It would include an overall description of work completed, a narrative regarding marine mammal sightings, and associated PSO data sheets. Specifically, the report must include:
• Dates and times (begin and end) of all marine mammal monitoring.
• Construction activities occurring during each daily observation period, including the number and type of piles driven or removed and by what method (*i.e.,* vibratory driving) and the total equipment duration for cutting for each pile.
• PSO locations during marine mammal monitoring.
• Environmental conditions during monitoring periods (at beginning and end of PSO shift and whenever conditions change significantly), including Beaufort sea state and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon, and estimated observable distance.
• Upon observation of a marine mammal, the following information: (1) name of PSO who sighted the animal(s) and PSO location and activity at time of sighting; (2) time of sighting; (3) identification of the animal(s) (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified), PSO confidence in identification, and the composition of the group if there is a mix of species; (4) distance and bearing of each marine mammal observed relative to the pile being driven for each sighting (if pile driving was occurring at time of sighting); (5) estimated number of animals (min/max/best estimate); (6) estimated number of animals by cohort (adults, juveniles, neonates, group composition, *etc.*); (7) animal's closest point of approach and estimated time spent within the harassment zone; and (8) description of any marine mammal behavioral observations (*e.g.,* observed behaviors such as feeding or traveling), including an assessment of behavioral responses thought to have resulted from the activity (*e.g.,* no response or changes in behavioral state such as ceasing feeding, changing direction, flushing, or breaching).
• Number of marine mammals detected within the harassment zones, by species.
• Detailed information about any implementation of any mitigation triggered (*e.g.,* shutdowns and delays), a description of specific actions that ensued, and resulting changes in behavior of the animal(s), if any.

If no comments are received from NMFS within 30 days, the draft final report would constitute the final report. If comments are received, a final report addressing NMFS comments must be submitted within 30 days after receipt of comments.

Reporting Injured or Dead Marine Mammals

In the event that personnel involved in the construction activities discover an injured or dead marine mammal, Weyerhaeuser shall report the incident to the OPR, NMFS and to the west coast regional stranding network as soon as feasible. If the death or injury was clearly caused by the specified activity, Weyerhaeuser must immediately cease the specified activities until NMFS is able to review the circumstances of the incident and determine what, if any, additional measures are appropriate to ensure compliance with the terms of the IHA. The IHA-holder must not resume their activities until notified by NMFS. The report must include the following information:
• Time, date, and location (latitude/longitude) of the first discovery (and updated location information if known and applicable);
• Species identification (if known) or description of the animal(s) involved;
• Condition of the animal(s) (including carcass condition if the animal is dead);
• Observed behaviors of the animal(s), if alive;
• If available, photographs or video footage of the animal(s); and
• General circumstances under which the animal was discovered.

Negligible Impact Analysis and Determination

NMFS has defined negligible impact as an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival (50 CFR 216.103). A negligible impact finding is based on the lack of likely adverse effects on annual rates of recruitment or survival (*i.e.,* population-level effects). An estimate of the number of takes alone is not enough information on which to base an impact determination. In addition to considering estimates of the number of marine mammals that might be ''taken'' through harassment, NMFS considers other factors, such as the likely nature of any impacts or responses (*e.g.,* intensity, duration), the context of any impacts or responses (*e.g.,* critical reproductive time or location, foraging impacts affecting energetics), as well as effects on habitat, and the likely effectiveness of the mitigation. We also assess the number, intensity, and context of estimated takes by evaluating this information relative to population status. Consistent with the 1989 preamble for NMFS' implementing regulations (54 FR 40338, September 29, 1989), the impacts from other past and ongoing anthropogenic activities are incorporated into this analysis via their impacts on the baseline (*e.g.,* as reflected in the regulatory status of the species, population size and growth rate where known, ongoing sources of human-caused mortality, or ambient noise levels).

To avoid repetition, the discussion of our analysis applies to California sea lions, Steller sea lions, and harbor seals, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. There is little information about the nature or severity of the impacts, or the size, status, or structure of any of these species or stocks that would lead to a different analysis for this activity.

Pile driving activities have the potential to disturb or displace marine mammals. Specifically, the project activities may result in take, in the form of Level A harassment and Level B harassment from underwater sounds generated from pile driving and removal. Potential takes could occur if individuals are present in the ensonified zone when these activities are underway.

The takes from Level B harassment would be due to potential behavioral disturbance, and TTS. Level A harassment takes would be due to PTS. No mortality or serious injury is anticipated given the nature of the activity, even in the absence of the required mitigation. The potential for harassment is minimized through the construction method and the implementation of the proposed mitigation measures (see Proposed Mitigation section).

Take would occur within a limited, confined area (the Columbia River) of the stocks' ranges. Level A harassment and Level B harassment would be reduced to the level of least practicable adverse impact through use of mitigation measures described herein. Further, the amount of take proposed to be authorized is extremely small when compared to stock abundance, and the project is not anticipated to impact any known important habitat areas for any marine mammal species.

Take by Level A harassment is authorized to account for the potential that an animal could enter and remain within the area between a Level A harassment zone and the shutdown zone for a duration long enough to be taken by Level A harassment. Any take by Level A harassment is expected to arise from, at most, a small degree of PTS because animals would need to be exposed to higher levels and/or longer duration than are expected to occur here in order to incur any more than a small degree of PTS. Additionally, and as noted previously, some subset of the individuals that are behaviorally harassed could also simultaneously incur some small degree of TTS for a short duration of time. Because of the small degree anticipated, though, any PTS or TTS potentially incurred here would not be expected to adversely impact individual fitness, let alone annual rates of recruitment or survival.

Behavioral responses of marine mammals to pile driving at the project site, if any, are expected to be mild and temporary. Marine mammals within the Level B harassment zone may not show any visual cues they are disturbed by activities or could become alert, avoid the area, leave the area, or display other mild responses that are not observable such as changes in vocalization patterns. Given the limited number of piles to be installed or extracted per day and that pile driving and removal would occur across a maximum of 150 days within the 12-month authorization period, any harassment would be temporary.

Any impacts on marine mammal prey that would occur during Weyerhaeuser's proposed activity would have, at most, short-term effects on foraging of individual marine mammals, and likely no effect on the populations of marine mammals as a whole. Indirect effects on marine mammal prey during the construction are expected to be minor, and these effects are unlikely to cause substantial effects on marine mammals at the individual level, with no expected effect on annual rates of recruitment or survival.

In addition, it is unlikely that minor noise effects in a small, localized area of habitat would have any effect on the stocks' annual rates of recruitment or survival. In combination, we believe that these factors, as well as the available body of evidence from other similar activities, demonstrate that the potential effects of the specified activities will have only minor, short-term effects on individuals. The specified activities are not expected to impact rates of recruitment or survival and will therefore not result in population-level impacts.

In summary and as described above, the following factors primarily support our preliminary determination that the impacts resulting from this activity are not expected to adversely affect any of the species or stocks through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- The intensity of anticipated takes by Level B harassment is relatively low for all stocks and would not be of a duration or intensity expected to result in impacts on reproduction or survival;
- No important habitat areas have been identified within the project area;
- For all species, the Columbia River is a very small and peripheral part of their range and anticipated habitat impacts are minor; and
- Weyerhaeuser would implement mitigation measures, such as soft-starts for impact pile driving and shut downs to minimize the numbers of marine mammals exposed to injurious levels of sound, and to ensure that take by Level A harassment, is at most, a small degree of PTS.

Based on the analysis contained herein of the likely effects of the specified activity on marine mammals and their habitat, and taking into consideration the implementation of the proposed monitoring and mitigation measures, NMFS preliminarily finds that the total marine mammal take from the proposed activity will have a negligible impact on all affected marine mammal species or stocks.

Small Numbers

As noted previously, only take of small numbers of marine mammals may be authorized under sections 101(a)(5)(A) and (D) of the MMPA for specified activities other than military readiness activities. The MMPA does not define small numbers and so, in practice, where estimated numbers are available, NMFS compares the number of individuals taken to the most appropriate estimation of abundance of the relevant species or stock in our determination of whether an authorization is limited to small numbers of marine mammals. When the predicted number of individuals to be taken is fewer than one-third of the species or stock abundance, the take is considered to be of small numbers. Additionally, other qualitative factors may be considered in the analysis, such as the temporal or spatial scale of the activities.

Table 9 demonstrates the number of animals that could be exposed to received noise levels that could cause Level B harassment for the proposed work. Our analysis shows that less than 10 percent of each affected stock could be taken by harassment. The numbers of animals proposed to be taken for these stocks would be considered small relative to the relevant stock's abundances, even if each estimated taking occurred to a new individual—an extremely unlikely scenario.

Based on the analysis contained herein of the proposed activity (including the proposed mitigation and monitoring measures) and the anticipated take of marine mammals, NMFS preliminarily finds that small numbers of marine mammals would be taken relative to the population size of the affected species or stocks.

Unmitigable Adverse Impact Analysis and Determination

There are no relevant subsistence uses of the affected marine mammal stocks or species implicated by this action. Therefore, NMFS has determined that the total taking of affected species or stocks would not have an unmitigable adverse impact on the availability of such species or stocks for taking for subsistence purposes.

Endangered Species Act

Section 7(a)(2) of the Endangered Species Act of 1973 (ESA; 16 U.S.C. 1531 *et seq.*) requires that each Federal agency insure that any action it authorizes, funds, or carries out is not likely to jeopardize the continued existence of any endangered or threatened species or result in the destruction or adverse modification of designated critical habitat. To ensure ESA compliance for the issuance of IHAs, NMFS consults internally whenever we propose to authorize take for endangered or threatened species.

No incidental take of ESA-listed species is proposed for authorization or expected to result from this activity. Therefore, NMFS has determined that formal consultation under section 7 of the ESA is not required for this action.

Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to Weyerhaeuser for conducting Log Export Dock Project, on the Columbia River near Longview, Washington, from September 1, 2025, through August 31, 2026, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. A draft of the proposed IHA can be found at: *https://www.fisheries.noaa.gov/national/marine-mammal-protection/incidental-take-authorizations-construction-activities.*

Request for Public Comments

We request comment on our analyses, the proposed authorization, and any other aspect of this notice of proposed IHA for the proposed Log Export Dock Project. We also request comment on the potential renewal of this proposed IHA as described in the paragraph below. Please include with your comments any supporting data or literature citations to help inform decisions on the request for this IHA or a subsequent renewal IHA.

On a case-by-case basis, NMFS may issue a one-time, 1-year renewal IHA following notice to the public providing an additional 15 days for public comments when (1) up to another year of identical or nearly identical activities as described in the Description of Proposed Activity section is planned, or (2) the activities as described in the Description of Proposed Activity section would not be completed by the time the IHA expires and a renewal would allow for completion of the activities beyond that described in the *Dates and Duration* section, provided all of the following conditions are met:

- A request for renewal is received no later than 60 days prior to the needed renewal IHA effective date (recognizing that the renewal IHA expiration date cannot extend beyond 1 year from expiration of the initial IHA).
- The request for renewal must include the following:

(1) An explanation that the activities to be conducted under the requested renewal IHA are identical to the activities analyzed under the initial IHA, are a subset of the activities, or include changes so minor (*e.g.,* reduction in pile size) that the changes do not affect the previous analyses, mitigation and monitoring requirements, or take estimates (with the exception of reducing the type or amount of take).

(2) A preliminary monitoring report showing the results of the required monitoring to date and an explanation showing that the monitoring results do not indicate impacts of a scale or nature not previously analyzed or authorized.

- Upon review of the request for renewal, the status of the affected species or stocks, and any other pertinent information, NMFS determines that there are no more than minor changes in the activities, the mitigation and monitoring measures will remain the same and appropriate, and the findings in the initial IHA remain valid.

Dated: June 3, 2024.

Catherine Marzin,

Deputy Director, Office of Protected Resources, National Marine Fisheries Service.

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BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XE019]

Schedules for Atlantic Shark Identification Workshops and Protected Species Safe Handling, Release, and Identification Workshops

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

ACTION: Notice of public workshops.

SUMMARY: Free Atlantic Shark Identification Workshops and Safe Handling, Release, and Identification Workshops will be held in July, August, and September of 2024. Certain fishermen and shark dealers are required to attend a workshop to meet regulatory requirements and to maintain valid permits. Specifically, the Atlantic Shark Identification Workshop is mandatory for all federally permitted Atlantic shark dealers. The Safe Handling, Release, and Identification Workshop is mandatory for vessel owners and operators who use bottom longline, pelagic longline, or gillnet gear, and who have also been issued shark or swordfish limited access permits. Additional free workshops will be conducted in 2024 and will be announced in a future notice. In addition, NMFS has implemented online recertification workshops for persons who have already taken an in-person training.

DATES: The Atlantic Shark Identification Workshops will be held on August 22, 2024, and September 12, 2024. The Safe Handling, Release, and Identification Workshops will be held on July 10, 2024, August 2, 2024, and September 9, 2024.

ADDRESSES: The Atlantic Shark Identification Workshops will be held in Wilmington, NC, and Virginia Beach, VA. The Safe Handling, Release, and Identification Workshops will be held in Ocean City, MD, Port St. Lucie, FL, and Kenner, LA.

FOR FURTHER INFORMATION CONTACT: Elsa Gutierrez by email at *elsa.gutierrez@noaa.gov* or by phone at 301–427–8503.

SUPPLEMENTARY INFORMATION: Atlantic highly migratory species (HMS) fisheries are managed under the 2006 Consolidated HMS Fishery Management Plan (FMP) and its amendments pursuant to the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) and consistent with the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*). HMS implementing regulations are at 50 CFR part 635. Section 635.8 describes the requirements for the Atlantic Shark Identification Workshops and Safe Handling, Release, and Identification Workshops. The workshop schedules, registration information, and a list of frequently asked questions regarding the Atlantic Shark Identification and Safe Handling, Release, and Identification workshops are available online at: *https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/atlantic-shark-identification-workshops* and *https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/safe-handling-release-and-identification-workshops.*

Atlantic Shark Identification Workshops

Since January 1, 2008, Atlantic shark dealers have been prohibited from receiving, purchasing, trading, or bartering for Atlantic sharks unless a valid Atlantic Shark Identification Workshop certificate is on the premises of each business listed under the shark dealer permit that first receives Atlantic sharks (71 FR 58057, October 2, 2006). Dealers who attend and successfully complete a workshop are issued a certificate for each place of business that is permitted to receive sharks. These certificate(s) are valid for 3 years. Thus, certificates that were initially issued in 2021 will expire in 2024.

Currently, permitted dealers may send a proxy to an Atlantic Shark Identification Workshop. However, if a dealer opts to send a proxy, the dealer must designate a proxy for each place of business covered by the dealer's permit that first receives Atlantic sharks. Only one certificate will be issued to each proxy. A proxy must be a person who is currently employed by a place of

business covered by the dealer's permit; is a primary participant in the identification, weighing, and/or first receipt of fish as they are offloaded from a vessel; and who fills out dealer reports. Atlantic shark dealers are prohibited from renewing a Federal shark dealer permit unless a valid Atlantic Shark Identification Workshop certificate for each business location that first receives Atlantic sharks has been submitted with the permit renewal application. Additionally, a copy of a valid dealer or proxy Atlantic Shark Identification Workshop certificate must be in any trucks or other conveyances that are extensions of a dealer's place of business.

Workshop Dates, Times, and Locations

- August 22, 2024, 12 p.m.–4 p.m. (local time), Wingate by Wyndham, 5126 Market Street/Bus 17, Wilmington, NC 28405.
- September 12, 2024, 12 p.m.–4 p.m. (local time), Courtyard by Marriott Virginia Beach Norfolk, 5700 Greenwich Road, Virginia Beach, VA 23462.

Registration

To register for a scheduled Atlantic Shark Identification Workshop, please contact Eric Sander at *ericssharkguide@yahoo.com* or at 386–852–8588. Pre-registration is highly recommended, but not required.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following specific items to the workshop:

- Atlantic shark dealer permit holders must bring proof that the attendee is an owner or agent of the business (such as articles of incorporation), a copy of the applicable permit, and proof of identification.
- Atlantic shark dealer proxies must bring documentation from the permitted dealer acknowledging that the proxy is attending the workshop on behalf of the permitted Atlantic shark dealer for a specific business location, a copy of the appropriate valid permit, and proof of identification.

Workshop Objectives

The Atlantic Shark Identification Workshops are designed to reduce the number of unknown and improperly identified sharks reported in the dealer reporting form and increase the accuracy of species-specific dealer-reported information. Reducing the number of unknown and improperly identified sharks will improve quota monitoring and the data used in stock assessments. These workshops will train shark dealer permit holders or their proxies to properly identify Atlantic shark carcasses.

Safe Handling, Release, and Identification Workshops

Since January 1, 2007, shark limited access and swordfish limited access permit holders who fish with longline or gillnet gear have been required to submit a copy of their Safe Handling, Release, and Identification Workshop certificate in order to renew either permit (71 FR 58057, October 2, 2006). These certificate(s) are valid for 3 years. Certificates issued in 2021 will expire in 2024. As such, vessel owners who have not already attended a workshop and received a NMFS certificate, or vessel owners whose certificate(s) will expire prior to the next permit renewal, must attend a workshop to fish with, or renew, their swordfish and shark limited access permits. Additionally, new shark and swordfish limited access permit applicants who intend to fish with longline or gillnet gear must attend a Safe Handling, Release, and Identification Workshop and submit a copy of their workshop certificate before either of the permits will be issued.

In addition to vessel owners, at least one operator on board vessels issued a limited access swordfish or shark permit that uses longline or gillnet gear is required to attend a Safe Handling, Release, and Identification Workshop and receive a certificate. Vessels that have been issued a limited access swordfish or shark permit and that use longline or gillnet gear may not fish unless both the vessel owner and operator have valid workshop certificates on board at all times. Vessel operators who have not already attended a workshop and received a NMFS certificate, or vessel operators whose certificate(s) will expire prior to their next fishing trip, must attend a workshop to operate a vessel with swordfish and shark limited access permits on which longline or gillnet gear is used.

Workshop Dates, Times, and Locations

- July 10, 2024, 9 a.m.–2 p.m. (local time), Residence Inn by Marriott, Ocean City, 300 Seabay Lane, Ocean City, MD 21842.
- August 2, 2024, 9 a.m.–2 p.m. (local time), Ocean Breeze Inn, Vero Beach, 3384 Ocean Drive, Vero Beach, FL 32963.
- September 9, 2024, 9 a.m.–2 p.m. (local time), Hilton New Orleans Airport, 901 Airline Drive, Kenner, LA 70062.

Registration

To register for a scheduled Safe Handling, Release, and Identification Workshop, please contact Angler Conservation Education at 386–682–0158. Pre-registration is highly recommended, but not required.

Registration Materials

To ensure that workshop certificates are linked to the correct permits, participants will need to bring the following specific items with them to the workshop:

- Individual vessel owners must bring a copy of the appropriate swordfish and/or shark permit(s), a copy of the vessel registration or documentation, and proof of identification;
- Representatives of a business-owned or co-owned vessel must bring proof that the individual is an agent of the business (such as articles of incorporation), a copy of the applicable swordfish and/or shark permit(s), and proof of identification; and
- Vessel operators must bring proof of identification.

Workshop Objectives

The Safe Handling, Release, and Identification Workshops are designed to teach the owner and operator of a vessel that fishes with longline or gillnet gear the required techniques for the safe handling and release of entangled and/or hooked protected species, such as sea turtles, marine mammals, smalltooth sawfish, Atlantic sturgeon, and prohibited sharks. In an effort to improve reporting, the proper identification of protected species and prohibited sharks will also be taught at these workshops. Additionally, individuals attending these workshops will gain a better understanding of the requirements for participating in these fisheries. The overall goal of these workshops is to provide participants with the skills needed to reduce the mortality of protected species and prohibited sharks, which may prevent additional regulations on these fisheries in the future.

Online Recertification Workshops

NMFS implemented an online option for shark dealers and owners and operators of vessels that fish with longline and gillnet gear to renew their certificates in December 2021. To be eligible for online recertification workshops, dealers and vessel owners and operators need to have previously attended an in-person workshop. Information about the courses is available online at *https://www.fisheries.noaa.gov/atlantic-highly-*

migratory-species/atlantic-shark-identification-workshops and *https://www.fisheries.noaa.gov/atlantic-highly-migratory-species/safe-handling-release-and-identification-workshops.* To access the course please visit: *https://hmsworkshop.fisheries.noaa.gov/start.*

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

Dated: June 4, 2024.

Karen H. Abrams,

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

[FR Doc. 2024–12571 Filed 6–6–24; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from the Procurement List.

SUMMARY: The Committee is proposing to add service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and delete service(s) previously furnished by such agencies.

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

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the proposed actions.

Additions

In accordance with 41 CFR 51–5.3(b), the Committee intends to add the service(s) requirement listed below to the Procurement List as a mandatory purchase only for the contracting activity and location with the proposed qualified nonprofit agency as the authorized source of supply. Prior to adding the service to the Procurement List, the Committee will consider other pertinent information, including information from Government personnel and relevant comments from interested parties regarding the Committee's intent to geographically limit this services requirement.

The following service(s) are proposed for addition to the Procurement List for production by the nonprofit agencies listed:

Service(s)

Service Type: Custodial and Food Service
Mandatory for: Federal Aviation Administration, Atlanta ARTCC, Hampton, GA and Atlanta TRACON, Peachtree City, GA
Authorized Source of Supply: Bobby Dodd Institute, Inc., Atlanta, GA
Contracting Activity: FEDERAL AVIATION ADMINISTRATION, 697DCK REGIONAL ACQUISITIONS SVCS

Deletions

The following service(s) are proposed for deletion from the Procurement List:

Service(s)

Service Type: Custodial service
Mandatory for: NOAA, National Weather Service, Johnson City, NY; 32 Dawes Drive; Johnson City, NY
Mandatory Source of Supply: Human Technologies Corporation, Utica, NY
Contracting Activity: NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION, DEPT OF COMMERCE NOAA

Service Type: Mailroom Operation
Mandatory for: U.S. Geological Survey: Denver Federal Center; Denver, CO
Mandatory Source of Supply: Bayaud Enterprises, Inc., Denver, CO
Contracting Activity: GEOLOGICAL SURVEY, OFFICE OF ACQUISITION AND GRANTS—DENVER

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2024–12479 Filed 6–6–24; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List.

SUMMARY: This action adds service(s) to the Procurement List that will be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes product(s) from the Procurement List previously furnished by such agencies.

DATES: *Date added to and deleted from the Procurement List:* July 7, 2024.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, 355 E Street SW, Suite 325, Washington, DC 20024.

FOR FURTHER INFORMATION CONTACT: For further information or to submit comments contact: Michael R. Jurkowski, Telephone: (703) 785–6404, or email *CMTEFedReg@AbilityOne.gov.*

SUPPLEMENTARY INFORMATION:

Additions

On 4/26/2024 (89 FR 32404) and 4/1/2024 (89 FR 28752), the Committee for Purchase From People Who Are Blind or Severely Disabled (operating as the U.S. AbilityOne Commission) published an initial notice of proposed additions to the Procurement List. The Committee determined that the service(s) listed below are suitable for procurement by the Federal Government and has added services to the Procurement List as a mandatory purchase for contracting activities listed. In accordance with 41 CFR 51–5.3(b), the mandatory purchase requirement is limited to the contracting activity at the locations, and in accordance with 41 CFR 51–5.2, the Committee has authorized NPAs listed as the mandatory source(s) of supply.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the service(s) and impact of the additions on the current or most recent contractors, the Committee has determined that the service(s) listed below are suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the service(s) to the Government.

2. The action will result in authorizing small entities to furnish the service(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the service(s) proposed for addition to the Procurement List.

End of Certification

Accordingly, the following service(s) are added to the Procurement List:

Service(s)

Service Type: Verbatim Transcription Service
Mandatory for: COMPACFLT, Commander, U.S. Pacific Fleet, Pearl Harbor, HI
Authorized Source of Supply: Lighthouse for the Blind of Houston, Houston, TX
Contracting Activity: DEPT OF THE NAVY, NAVSUP FLT LOG CTR PEARL HARBOR

Service Type: Custodial
Mandatory for: US Geological Survey, Earth Resources Observation Science (EROS) Center, Sioux Falls, SD
Authorized Source of Supply: Northwest Center, Seattle, WA
Contracting Activity: US GEOLOGICAL SURVEY, US GEOLOGICAL SURVEY

Service Type: Base Information Transfer Center & Postal Service, Mail Distribution Service
Mandatory for: US Army, Central Mail Facility, Redstone Arsenal, Huntsville, AL
Authorized Source of Supply: Huntsville Rehabilitation Foundation, Inc., Huntsville, AL
Contracting Activity: DEPT OF THE ARMY, W6QK ACC-RSA

Deletions

On 5/3/2024 (89 FR 3677), the Committee for Purchase From People Who Are Blind or Severely Disabled published notice of proposed deletions from the Procurement List. This notice is published pursuant to 41 U.S.C. 8503 (a)(2) and 41 CFR 51–2.3.

After consideration of the relevant matter presented, the Committee has determined that the product(s) and service(s) listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 8501–8506 and 41 CFR 51–2.4.

Regulatory Flexibility Act Certification

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action may result in authorizing small entities to furnish the product(s) to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 8501–8506) in connection with the product(s) deleted from the Procurement List.

End of Certification

Accordingly, the following product(s) are deleted from the Procurement List:

Product(s)

NSN(s)—Product Name(s):

8415–00–NIB–0810—Glove, Vinyl, Industrial/Non-Medical Grade, Small
8415–00–NIB–0811—Glove, Vinyl, Industrial/Non-Medical Grade, Medium
8415–00–NIB–0812—Glove, Vinyl, Industrial/Non-Medical Grade, Large
8415–00–NIB–0813—Glove, Vinyl, Industrial/Non-Medical Grade, XLarge
Mandatory Source of Supply: BOSMA Enterprises, Indianapolis, IN
Contracting Activity: STRATEGIC ACQUISITION CENTER, FREDERICKSBURG, VA

NSN(s)—Product Name(s):

6508–01–694–1827—Refill, PURELL–SKILCRAFT, Healthcare Advanced Hand Sanitizer, Ultra Nourishing Foam, ES8 System
Mandatory Source of Supply: Travis Association for the Blind, Austin, TX
Contracting Activity: DLA TROOP SUPPORT, PHILADELPHIA, PA

Michael R. Jurkowski,

Director, Business Operations.

[FR Doc. 2024–12480 Filed 6–6–24; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Draft Environmental Impact Statement for Army Training Land Retention at Kahuku Training Area, Kawailoa-Poamoho Training Area, and Makua Military Reservation, Island of O'ahu, Hawai'i

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of the Army (Army) announces the availability of a Draft Environmental Impact Statement (Draft EIS) regarding its proposed action: to retain up to approximately 6,322 acres of land the Army currently leases from the State of Hawai'i. These lands are located on the island of O'ahu and comprise approximately 1,150 acres at Kahuku Training Area (KTA), approximately 4,390 acres at Kawailoa-Poamoho Training Area (Poamoho), and approximately 782 acres at Makua Military Reservation (MMR). The purpose of the proposed action is to retain these three areas for military training beyond the end of the current leases. The need for the proposed action is to maintain facilities for training by the Army and other Department of Defense organizations, as such training facilities are not available elsewhere in Hawai'i. In accordance with the National Environmental Policy Act (NEPA) and the Hawai'i Environmental Policy Act (HEPA), the Draft EIS analyzes the potential direct, indirect, and cumulative impacts of a range of reasonable alternatives that meet the purpose of and need for the proposed action. The Draft EIS also analyzes the potential impacts of the No-Action Alternative, under which Army use of these lands would cease when the leases expire in 2029. Because the proposed retention involves state-owned lands, the EIS is a joint NEPA–HEPA document. The two public review processes run concurrently.

DATES: The Army invites public comments on the Draft EIS during the 60-day public comment period. To be considered in the Final EIS, all comments must be postmarked or received by 11:59 p.m. Hawai'i Standard Time on August 7, 2024. Public meetings will be held at Wai'anae District Park Multi-Purpose Room on July 9, 2024, Kahuku High and Intermediate School on July 10, 2024, and at Leilehua High School on July 11, 2024, to provide information on the Draft EIS and to enhance the opportunity for public comment. Information on how to participate in the Draft EIS public meetings and on how to submit comments is available on the EIS website: *https://home.army.mil/hawaii/index.php/OahuEIS/project-home.*

ADDRESSES: Written comments should be: submitted through the EIS website (*https://home.army.mil/hawaii/index.php/OahuEIS/project-home*); emailed to *atlr-oahu-eis@g70.design*; mailed to O'ahu ATLR EIS Comments, P.O. Box 3444, Honolulu, HI 96801–3444; or provided during public meetings. Comments must be postmarked or received by August 7, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Donnelly, U.S. Army Garrison-Hawai'i Public Affairs Office, by telephone at (808) 787–2140 or by email at *usarmy.hawaii.nepa@army.mil.*

SUPPLEMENTARY INFORMATION: U.S. Army Garrison-Hawai'i is home to the 25th Infantry Division (25th ID) and other commands, the mission of which is to deploy and conduct decisive actions in support of unified land operations. 25th ID is based at Schofield Barracks on the island of O'ahu. 25th ID trains on a rotational basis at various training areas, including KTA, Poamoho, and MMR.

Located in northeast O'ahu, KTA has been the site of military training since the mid-1950s. Current training activities on state-owned land at KTA include high-density, company-level helicopter training in a tactical environment, large-scale ground maneuver training, and air support training.

Located in the Ko'olau Mountains in north-central O'ahu, Poamoho has been

the site of military training since 1964. It provides airspace with ravines and deep vegetation for realistic helicopter training.

Located in northwest O'ahu, MMR has been a military training site for nearly 100 years. Tactical training at MMR began in 1941 after the attack on Pearl Harbor and military training continues to this day. Current activities on state-owned land at MMR include maneuver training, the use of restricted airspace for unmanned aerial vehicle training, as well as wildland fire suppression and security activities.

The Draft EIS evaluates the potential impacts of a range of alternatives:

For KTA—(1) Full Retention (of approximately 1,150 acres); (2) Modified Retention (of approximately 450 acres);

For Poamoho—(1) Full Retention (of approximately 4,390 acres); (2) Modified Retention (of approximately 3,170 acres);

For MMR—(1) Full Retention (of approximately 782 acres); (2) Modified Retention (of approximately 572 acres); (3) Minimum Retention and Access (of approximately 162 acres and 2.4 miles of select range and firebreak roads).

Under the No-Action Alternative for each of these training areas, the leases would lapse in 2029 and the Army would lose access to these training areas. The Army has identified the preferred alternative as Alternative 2 at each of the training areas.

The Draft EIS analyzes the impacts of both a new lease of the areas and full federal ownership (*i.e.,* fee simple title). The Draft EIS analyzes land use, biological resources, cultural resources/practices, hazardous substances and hazardous wastes, air quality, greenhouse gases, noise, geology, topography, soils, water resources, socioeconomics, environmental justice, transportation, traffic, human health, and safety. The Draft EIS indicates that significant adverse impacts on land use (land tenure) and environmental justice would occur with a lease or fee simple title at: KTA and Poamoho under Alternatives 1 and 2; and MMR under Alternatives 1, 2, and 3. Significant adverse impacts on cultural practices would occur with a lease or fee simple title at MMR under Alternatives 1, 2, and 3. Some of the significant impacts for land use (land tenure) could be reduced to less than significant. The modified or minimum retention alternatives would have significant beneficial impacts on land use (land tenure) for land not retained at KTA, Poamoho, and MMR. Impacts of the action alternatives on other resources are less than significant. The No-Action Alternative would have a significant beneficial impact on land use (land tenure) and environmental justice at all sites, and on cultural practices at MMR. The No-Action Alternative would have less than significant impacts on all other resources at the three sites.

To mitigate adverse impacts on land use (land tenure), the Army would consider adding non-barbed-wire fencing and signage to minimize accidental or intentional trespass from adjacent non-U.S. Government-controlled land. This applies to Alternative 2 for KTA and to Alternatives 2 and 3 for MMR. As mitigation for impacts to cultural practices and environmental justice at MMR, the Army would, for alternatives 1, 2, and 3: review and update its public engagement efforts; work with cultural practitioners and Native Hawaiian Organizations to update and/or develop a mutually beneficial cultural access plan; and promote long-term stewardship of the āina (*i.e.,* the land of Hawai'i) with regard to military use of state-owned land. The Army distributed the Draft EIS to Native Hawaiian Organizations, to federal, state, and local agencies/officials, and to other stakeholders. The Draft EIS and related information are available on the EIS website at: *https://home.army.mil/hawaii/index.php/OahuEIS/project-home.* The public may also review the Draft EIS and select materials at the following libraries:

1. Hawai'i State Library, Hawai'i Documents Center, 478 S King Street, Honolulu, HI 96813
2. Kahuku Public and School Library, 56–490 Kamehameha Highway, Kahuku, HI 96731
3. Wahiawā Public Library, 820 California Ave., Wahiawā, HI 96786
4. Wai'anae Public Library, 85–625 Farrington Highway, Wai'anae, HI 96792

Native Hawaiian Organizations, federal, state, and local agencies/officials, and other interested entities/individuals are encouraged to comment on the Draft EIS during the 60-day public comment period. All comments postmarked or received by August 7, 2024 will be considered in the development of the Final EIS.

James W. Satterwhite, Jr.,

U.S. Army Federal Register Liaison Officer.

[FR Doc. 2024–12573 Filed 6–6–24; 8:45 am]

BILLING CODE 3711–02–P

DEPARTMENT OF DEFENSE

Office of the Secretary

[Docket ID: DoD–2024–OS–0065]

U.S. Court of Appeals for the Armed Forces Proposed Rules Changes

AGENCY: Office of the Secretary, Department of Defense (DoD).

ACTION: Notice of proposed redraft of the Rules of Practice and Procedure of the United States Court of Appeals for the Armed Forces.

SUMMARY: This notice announces proposed redrafting of the Rules of Practice and Procedure, United States Court of Appeals for the Armed Forces. Although these rules of practice and procedure fall within the Administrative Procedure Act's exemptions for notice and comment, the Department, as a matter of policy, has decided to make these changes available for public review and comment before they are implemented.

DATES: Comments on the proposed changes must be received by July 8, 2024.

ADDRESSES: You may submit comments, identified by docket number and title by any of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.*
- *Mail:* Department of Defense, Office of the Assistant to the Secretary of Defense for Privacy, Civil Liberties, and Transparency, Regulatory Directorate, 4800 Mark Center Drive, Attn: Mailbox 24, Suite 08D09, Alexandria, VA 22350–1700.

Instructions: All submissions received must include the agency name and docket number for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the internet at *http://www.regulations.gov* as they are received without change, including personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Malcolm H. Squires, Jr., Clerk of the Court, telephone (202) 761–1448.

SUPPLEMENTARY INFORMATION: This notice announces a new draft of the Rules of Practice and Procedure of the United States Court of Appeals for the Armed Forces. The Court, with the help of its Rules Committee, has sought to rework nearly every existing rule to bring them in line with the changes to the Uniform Code of Military Justice and various technological advances.

Due to the length of the proposed changes, they are being made available on the internet rather than being printed in the **Federal Register**. The following items are available at *http://www.regulations.gov,* Docket ID: DoD–2024–OS–0065. After searching for DoD–2024–OS–0065, please see the Supporting & Related Material tab.

Dated: May 31, 2024.

Aaron T. Siegel,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 2024–12388 Filed 6–6–24; 8:45 am]

BILLING CODE 6001–FR–P

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Intent To Prepare an Environmental Impact Statement (EIS) for a Letter Report for the Wilmington Harbor, North Carolina Project, New Hanover and Brunswick Counties, North Carolina

AGENCY: Corps of Engineers, Department of the Army, DoD.

ACTION: Notice of intent (NOI) to Prepare an Environmental Impact Statement (EIS) for the Wilmington Harbor, North Carolina Project.

SUMMARY: The North Carolina State Ports Authority (NCSPA) prepared a feasibility study pursuant to section 203 of the Water Resources Development Act of 1986, as amended, and in [February 2020] submitted that study to the Assistant Secretary of the Army for Civil Works (ASA(CW)) for review for the purpose of determining whether the study, and the process under which the study was developed, comply with Federal laws and regulations applicable to feasibility studies of water resources development project. This notice advises the public that the U.S. Army Corps of Engineers (Corps), at the direction of the ASA(CW), intends to prepare an Environmental Impact Statement (EIS) to address conditions for implementation of section 203 studies authorized for construction pursuant to section 403 of Water Resources Development Act of 2020. The ASA(CW)'s review of the NCSPA's study identified that National Environmental Policy Act and environmental compliance activities must be completed prior to implementation of the project. The NCSPA described the purpose of the project to be evaluated in the EIS as deepening and widening of the Wilmington Harbor Navigation Project. The USACE, as the lead federal agency, has determined the proposed action may significantly affect the quality of the human environment and seeks comments regarding the identification of potential alternatives, information, and analyses relevant to the report to improve navigation, beneficial use of dredge material, and to assess the potential social, economic, and environmental impacts of the proposed action.

DATES: Written comments must be submitted by July 22, 2024.

ADDRESSES: Written comments regarding the proposed EIS scope should be submitted to: U.S. Army Corps of Engineers, Wilmington District; ATTN: Wilmington Harbor 403, 69 Darlington Avenue, Wilmington, North Carolina 28403. Individuals who would like to provide comments electronically should submit comments by email to: *WilmingtonHarbor403@usace.army.mil.* Comments may also be submitted online using the public comment tool found on the project website: *https://www.saw.usace.army.mil/Missions/Navigation/Dredging/Wilmington-Harbor-403-Letter-Report-and-EIS/.*

FOR FURTHER INFORMATION CONTACT: Andrea Stolba at (910) 882–4936 or email at *andrea.m.stolba@usace.army.mil.*

SUPPLEMENTARY INFORMATION:

1. Background. An Integrated section 203 Study and Environmental Report for potential navigation improvements to the Wilmington Harbor Federal navigation channel serving the Port of Wilmington, North Carolina was prepared in 2020 by the NCSPA under the authority of section 203 of the WRDA of 1986, as amended. The study area was the existing Wilmington Harbor federal navigation channel that originates offshore and extends approximately 38 miles from entrance channel in the Atlantic Ocean and up the Cape Fear River to the City of Wilmington, North Carolina where it serves the Port of Wilmington. The navigation improvements proposed in the 2020 report were conditionally authorized by Section 403 of the WRDA of 2020: *Authorization of Projects Based on Feasibility Studies Prepared by Non-Federal Interests.* The section 203 authorization for the navigation improvements project, Wilmington Harbor, North Carolina, is conditioned upon the resolution of comments set forth in the ASA(CW)'s review assessment, dated May 17, 2020. An EIS evaluation of the proposed project effects on the human environment is required to address several comments from the ASA(CW)'s review assessment.

2. Purpose and Need for the Proposed Action. The purpose of the proposed action is to contribute to national economic development (NED) by addressing transportation inefficiencies for the forecasted vessel fleet, consistent with protecting the Nation's environment. The need for the proposed action is to address the constraints that contribute to inefficiencies in the existing navigation system's ability to safely serve forecasted vessel fleet and cargo types and volumes.

3. Preliminary Action Alternatives. The USACE has identified two preliminary action alternatives for inclusion in the EIS: 47-foot and 46-foot deepening alternatives. The 47- foot alternative was conditionally authorized in section 403 of WRDA 2020 and would result in the channel deepening to −47 feet MLLW from the Anchorage Basin through the Lower Swash Reach (Mid-River) and to −49 feet MLLW in the ocean bar reaches and an extended and realigned entrance channel; and channel widening in some reaches. The 46-foot alternative would result in the channel deepening to −46 feet MLLW from the Anchorage Basin through the Lower Swash Reach (Mid-River) and to −48 feet MLLW in the ocean bar reaches and an extended and realigned entrance channel; and channel widening in some Reaches.

Dredged material management for the preliminary action alternatives was proposed to be placed in the Wilmington Ocean Dredged Material Disposal Site; however, the USACE will also evaluate beneficial use of dredged material.

Construction of any action alternative may be accomplished through mechanical (*e.g.,* clamshell) and hydraulic (*e.g.,* cutterhead and hooper) dredge equipment, and may require blasting in reaches where hard rock is encountered.

A no action alternative will also be evaluated in the EIS, which provides for the existing authorization channel depth of −38 feet MLLW at the Anchorage Basin, −42 feet MLLW in the Mid-River reaches, and −44 feet MLLW through the ocean bar reaches and entrance channel.

4. Summary of Expected Impacts. The USACE conducted an early scoping comment period for the proposed federal action in June 2023 and received public comments on anticipated effects to resources resulting from the proposed action. Additionally, the USACE has been coordinating on potential resources to be evaluated through outreach to stakeholders since the June 2023 public comment period. The USACE will evaluate potential effects to

hydrology and hydraulics, groundwater, water quality (dissolved oxygen, temperature, and salinity), air quality, cultural and historical resources, wetlands, endangered species and habitat, and aquatic resources. Additionally, the USACE will evaluate the potential social effects of the proposed action, including environmental justice issues.

5. Anticipated Permits and Other Authorizations. The USACE is anticipating that the proposed action would require a permit pursuant to section 401 of the Clean Water Act (CWA). While the USACE does not process and issue permits for its own activities, pursuant to 33 CFR 336.1, the USACE does provide an analysis of the discharge of dredged or fill material under all applicable substantive legal requirements, including application of the section 404(b)(1) guidelines of the CWA. Other environmental review and consultation requirements include, but are not limited to, the National Historic Preservation Act, Clean Air Act, Endangered Species Act, Fish and Wildlife Coordination Act, Coastal Zone Management Act, Magnuson-Steven Fisheries Conservation Management Act, Marine Protection Research and Sanctuaries Act, and, if applicable, the Marine Mammal Protection Act.

6. Schedule. The USACE will use input provided by Federal, state, and local government agencies, Tribal Nations, other interested parties, and the general public in the preparation of the Draft EIS. The USACE has developed a preliminary schedule for the publication of the Draft EIS. The Draft EIS is anticipated to be made available for review in Fall 2025. The Draft EIS will be filed with the U.S. Environmental Protection Agency (EPA) and will be available for public comment for 45 days from the date the EPA publishes its **Federal Register** notice. The USACE will provide public notification of the availability of the Draft EIS. If a Record of Decision is approved and signed, it will be no earlier than 30 days after the published Final EIS.

7. Scoping Process. The USACE will be soliciting public comments on the scope of the EIS through July 12, 2024. During the scoping period, the USACE invites federal, state, and local agencies, Tribal Nations, other interested parties, and the general public to participate in the scoping process to present comments regarding the range of actions, alternatives, and potential impacts to be considered in the EIS, including comments regarding opportunities for beneficial use of dredged material. The purpose of the scoping process is to provide information to the public, to serve as a mechanism to solicit full and open agency and public input on alternatives and identification of significant issues to be analyzed in the EIS.

The USACE will host public meetings to provide information and provide opportunity for submission of comments. Four virtual public meetings will be held in June 2024 each focusing on a different topic. All virtual meeting links will be advertised on the USACE's project website at *https://www.saw.usace.army.mil/Missions/Navigation/Dredging/Wilmington-Harbor-403-Letter-Report-and-EIS/.* Virtual meeting information posted on the project website will include meeting times, agendas, and instructions for joining the meeting. An in-person public open house will be held at Sunset Park Elementary School, 613 Alabama Avenue, Wilmington, NC 28401 on June 13, 2024, from 3:00 to 7:00 p.m.

Written comments regarding the proposed EIS scope may be submitted by mail to: U.S. Army Corps of Engineers, Wilmington District; ATTN: Wilmington Harbor 403, 69 Darlington Avenue, Wilmington, North Carolina 28403, or by email to: *WilmingtonHarbor403@usace.army.mil.* Comments may also be submitted online using the public comment tool found on the project website: *https://www.saw.usace.army.mil/Missions/Navigation/Dredging/Wilmington-Harbor-403-Letter-Report-and-EIS/.*

All comments received will become part of the administrative record and are subject to public release under the Freedom of Information Act.

Daniel H. Hibner,

Brigadier General, USA, Commanding.

[FR Doc. 2024–12577 Filed 6–6–24; 8:45 am]

BILLING CODE 3720–58–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0052]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; International Resource Information System (IRIS)

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

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act (PRA) of 1995, the Department is proposing an extension without change of a currently approved information collection request (ICR).

DATES: Interested persons are invited to submit comments on or before July 8, 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 Sara Starke, 202–987–0391.

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: International Resource Information System (IRIS).

OMB Control Number: 1840–0759.

Type of Review: An extension without change of a currently approved ICR.

Respondents/Affected Public: Private Sector; Individuals and Households.

Total Estimated Number of Annual Responses: 6,596.

Total Estimated Number of Annual Burden Hours: 35,712.

Abstract: Information Resource Information System (IRIS) is an online performance reporting system for grantees of International and Foreign Language Education (IFLE) programs. The site also allows for IFLE program officers to process overseas language requests, travel authorization requests,

and grant activation requests. IRIS keeps a record of these requests and also of Foreign Language and Area Studies (FLAS) Fellowship recipients and grantee performance reports.

This is a request for an extension of IRIS, which will permit the continued collection of project and program performance data for IFLE programs: (1) American Overseas Research Centers (AORC), (2) Business and International Education (BIE), (3) Centers for International Business Education (CIBE), (4) Foreign Language and Area Studies (FLAS) Fellowships, (5) Institute for International Public Policy (IIPP), (6) International Research and Studies (IRS), (7) Language Resource Centers (LRC), (8) National Resource Centers (NRC), (9) Technological Innovation and Cooperation for Foreign Information Access (TICFIA), (10) Undergraduate International Studies and Foreign Language (UISFL), (11) Fulbright-Hays Doctoral Dissertation Research Abroad Program (DDRA), (12) Fulbright-Hays Faculty Research Abroad (FRA), (13) Fulbright-Hays Group Projects Abroad (GPA), and (14) Fulbright-Hays Seminars Abroad (SA).

Dated: June 4, 2024.

Kun Mullan,

PRA Coordinator, Strategic Collections and Clearance Governance and Strategy Division, Office of Chief Data Officer, Office of Planning, Evaluation and Policy Development.

[FR Doc. 2024–12483 Filed 6–6–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[Docket No.: ED–2024–SCC–0079]

Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; National Assessment of Educational Progress (NAEP) 2025 Long-Term Trend (LTT) Revision

AGENCY: National Center for Education Statistics (NCES), Department of Education (ED).

ACTION: Notice.

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

DATES: Interested persons are invited to submit comments on or before July 8, 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 Carrie Clarady, 202–245–6347.

SUPPLEMENTARY INFORMATION: The Department is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology. Please note that written comments received in response to this notice will be considered public records.

Title of Collection: National Assessment of Educational Progress (NAEP) 2025 Long-Term Trend (LTT) Revision.

OMB Control Number: 1850–0928.

Type of Review: A revision of a currently approved ICR.

Respondents/Affected Public: Individuals and Households *Total Estimated Number of Annual Responses:* 61,360.

Total Estimated Number of Annual Burden Hours: 21,536.

Abstract: The National Assessment of Educational Progress (NAEP), conducted by the National Center for Education Statistics (NCES), is a federally authorized survey of student achievement at grades 4, 8, and 12 in various subject areas, such as mathematics, reading, writing, science, U.S. history, civics, geography, economics, technology, and engineering literacy (TEL), and the arts. The National Assessment of Educational Progress Authorization Act (Public Law 107–279 Title III, section 303) requires the assessment to collect data on specified student groups and characteristics, including information organized by race/ethnicity, gender, socio-economic status, disability, and limited English proficiency. It requires fair and accurate presentation of achievement data and permits the collection of background, noncognitive, or descriptive information that is related to academic achievement and aids in fair reporting of results. The intent of the law is to provide representative sample data on student achievement for the nation, the states, and subpopulations of students and to monitor progress over time. NAEP consists of two assessment programs: the NAEP long-term trend (LTT) assessment and the main NAEP assessment. The LTT assessments are given at the national level only and are administered to students at ages 9, 13, and 17 in a manner that is very different from that used for the main NAEP assessments. LTT reports mathematics and reading results that present trend data since the 1970s. In addition to the operational assessments, NAEP uses two other kinds of assessment activities: pilot assessments and special studies. Pilot assessments test items and procedures for future administrations of NAEP, while special studies (including the National Indian Education Study (NIES), the Middle School Transcript Study (MSTS), and the High School Transcript Study (HSTS)) are opportunities for NAEP to investigate particular aspects of the assessment without impacting the reporting of the NAEP results.

This Amendment to the NAEP 2025 Long-Term Trend Clearance package updates several documents since the approval of the primary package for NAEP 2025 LTT (OMB# 1850–0928 v.32) in April 2024: (1) updated committee members in Appendix A, (2) updated sampling design memo in Appendix C, (3) final communication materials in Appendix D, (4) updated Assessment Management Screens (AMS) in Appendix F1, and (5) small updates to Parts A and B. These changes required no changes to approved respondent burden but does require a small increase in the cost to the Federal Government.

Dated: June 3, 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. 2024–12534 Filed 6–6–24; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Fusion Energy Public-Private Consortium Framework

AGENCY: Fusion Energy Sciences, Office of Science, Department of Energy.

ACTION: Request for information (RFI).

SUMMARY: The Office of Science (SC) in the Department of Energy (DOE) invites interested parties to provide input on a proposed fusion energy public-private consortium framework (PPCF). The proposed PPCF would aim to amplify Federal funding, by catalyzing and bringing together State/local government, private, philanthropic funding, and partnerships to accelerate fusion energy research, development, demonstration, and deployment (RDD&D). Through a phased approach, the PPCF would deliver and operate small-to-medium scale test stands and conduct research and development (R&D) with these tools. The proposed PPCF will help resolve significant, remaining Science & Technology (S&T) gaps to a commercially relevant fusion pilot plant (FPP). A PPCF is needed at this time to achieve the pace of R&D and project delivery with the required funding within the United States (U.S.) Bold Decadal Vision (BDV) timeframe. The proposed PPCF is envisioned to be executed by a network of regional teams that would stimulate economic development and domestic fusion supply chains anchored in fusion S&T translation and innovation.

DATES: Responses to this RFI must be received by July 22, 2024.

Webinar: DOE will hold a public webinar on Thursday, July 11, 2024, from 3–4 p.m. ET. Connection information can be found here: *https://science-doe.zoomgov.com/webinar/register/WN_8eAg3pUVSZC3vKiF7pycFw.*

ADDRESSES: DOE is using the *www.regulations.gov* system for the submission and posting of public comments in this proceeding. All comments in response to this RFI are therefore to be submitted electronically through *www.regulations.gov,* via the web form accessed by following the ''Submit a Formal Comment'' link.

FOR FURTHER INFORMATION CONTACT: Questions may be submitted to *ppcf@science.doe.gov* or to Colleen Nehl at (301) 903–4920.

SUPPLEMENTARY INFORMATION: To support development of a competitive fusion power industry in the U.S., the Fusion Energy Sciences (FES) program is exploring the near-term feasibility of a fusion energy public-private consortium framework (PPCF). This PPCF, inspired by the successful 1980s public-private partnership (PPP) between the Department of Defense and Sematech,[1] [2] would support the U.S. BDV.[3]

The proposed PPCF would aim to accelerate fusion energy RDD&D and amplify Federal funding by bringing together State/local government, private, and philanthropic funding, with an initial focus on delivering and operating small-to-medium scale test stands and conducting R&D with these tools to help resolve significant, remaining S&T gaps (aligned with FPP technology roadmaps of private-sector fusion developers and critical supply-chain providers).[4] A key rationale for pursuing a PPCF at this time is because the required funding and pace of R&D and project delivery are not readily achievable within the BDV timeframe. The proposed PPCF is envisioned to be executed (*e.g.,* tool delivery and operation, R&D, growing supply chains, and broader engagements/activities to support fusion demonstration and commercialization) by a network of regional ecosystems that will build upon local expertise, stimulate economic development, and bolster domestic supply chains anchored in fusion S&T translation and innovation.[5]

The PPCF would be aligned and coordinated with various priority initiatives of the BDV and the SC FES program, such as the Milestone-Based Fusion Development Program [6] (''Milestone Program'') and Fusion Innovation Research Engine (FIRE) Collaboratives,[7] taking advantage of regional capabilities and investing in infrastructure (*e.g.,* test and manufacturing tools) to de-risk fusion S&T.

The purpose of the PPCF would be to (1) conduct applied R&D to help address and resolve common, priority S&T gaps in the technology roadmaps of private-sector-led FPPs aligned with the SC FES Fusion Science & Technology (FS&T) Roadmap, with an emphasis on pre-competitive R&D; (2) deliver and operate critical test platforms for the benefit of all consortium members; and (3) stimulate the growth of supply chains that will be needed to support fusion demonstration and deployment. The vision of the consortium would be to enable timely commercial fusion demonstration and deployment led by the private sector and to help establish a world-leading and vibrant U.S. fusion industry.

Questions for Input

SC is issuing this RFI to seek input on the vision, mission, impact, near-to-medium term feasibility, including funding, and structure of the proposed fusion energy PPCF. Responses should address/discuss any or all of the following topics (limit all responses to five pages total):

- PPCF vision, mission, impact (including proposed examples discussed previously):
- How can a PPCF provide incentives from both public and private sector to invest in common Fusion Materials & Technology (FM&T) de-risk capabilities?
- What are some cost-share models that could incentivize the private sector in engaging with local, State, and Federal government to address FM&T gaps?
- What are the priority S&T gaps in the technology roadmaps of private-sector-led FPPs which a PPCF could address?
- What will be the impact of the PPCF, as envisioned?
- How can a PPCF help support supply chains, community engagement and technology adoption of fusion energy in the long term?
- On which topics should a public-private consortium framework focus? Possible topics include (but are not limited to): the fusion fuel cycle,

[1] The purpose of Sematech was to (1) conduct research on advanced semiconductor manufacturing techniques and (2) develop techniques to use manufacturing expertise for the manufacture of a variety of semiconductor products; *https://www.esd.whs.mil/Portals/54/Documents/FOID/Reading%20Room/Science_and_Technology/10-F-0709_A_Final_Report_to_the_Department_of_Defense_February_21_1987.pdf.*

[2] *https://www.csis.org/analysis/implementing-chips-act-sematechs-lessons-national-semiconductor-technology-center.*

[3] *https://www.whitehouse.gov/ostp/news-updates/2022/03/15/fact-sheet-developing-a-bold-vision-for-commercial-fusion-energy.*

[4] The S&T gaps and critical testing platforms, discussed in multiple recent consensus expert reports and ongoing FESAC charges, will be formally laid out in a national fusion S&T roadmap under development by FES.

[5] The PPCF is also partially inspired by J. Gruber and S. Johnson, *Jump-starting America: How Breakthrough Science Can Revive Economic Growth and the American Dream* (Public Affairs, New York, 2019).

[6] Program announcement: *https://www.energy.gov/science/articles/department-energy-announces-50-million-milestone-based-fusion-development-program;* selections*: https://www.energy.gov/articles/doe-announces-46-million-commercial-fusion-energy-development.*

[7] The new FES FIRE (Fusion Innovation Research Engine) Collaboratives program will consist of virtual, centrally managed teams (led by national laboratories and/or universities) called ''Collaboratives.'' This program bridges FES's foundational research programs to the work and needs of the growing fusion industry. *https://science.osti.gov/fes/-/media/grants/pdf/foas/2024/DE-FOA-0003361.pdf,*

blankets, structural materials, and gyrotrons.

• What are some public-private consortia models that could be emulated or adapted to best serve the needs of the U.S. in establishing a robust fusion power industry?

• Near-to-medium term (in the next three, five, and ten years) feasibility of a fusion energy PPCF:

• Which sources of funding are likely to be available from non-Federal sources (including State/local governments, private sector, philanthropy)?

• How can universities and national laboratories support a fusion energy PPCF and what important roles can they serve?

• What is the expected amount of funding needed to make a meaningful impact toward bridging S&T gaps?

• What type of work (in both delivery/operation of tools and associated R&D) would be considered ''pre-competitive?''

• What are key short-term fusion FM&T capabilities needed now that could be supported through a PPCF and what are some longer-term capabilities that should be considered?

• PPCF organizational structure and relationship to DOE:

• Which flexibilities may be required to meet S&T goals in the areas of intellectual property, U.S. manufacturing, research security, foreign work, and partnerships, etc.?

• How may the PPCF stimulate partnerships with State/local governments and economic development in communities? How about international partnerships?

• What organizational structures may work to achieve the mission, vision, and impact of the proposed PPCF?

Signing Authority

This document of the Department of Energy was signed on June 3, 2024, by Harriet Kung, Acting Director, Office of Science, pursuant to delegated authority from the Secretary of Energy. The document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on June 4, 2024.

Treena V. Garrett,

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

[FR Doc. 2024–12539 Filed 6–6–24; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

Docket Numbers: EG24–198–000.
Applicants: Liberty 1 Solar, LLC.
Description: Liberty 1 Solar, LLC submits notice of self-certification of exempt wholesale generator status.
Filed Date: 6/3/24.
Accession Number: 20240603–5116.
Comment Date: 5 p.m. ET 6/24/24.

Take notice that the Commission received the following electric rate filings:

Docket Numbers: ER24–2171–000.
Applicants: Tri-State Generation and Transmission Association, Inc.
Description: § 205(d) Rate Filing: Formula Rate Tariff to be effective 7/1/2024.
Filed Date: 5/31/24.
Accession Number: 20240531–5418.
Comment Date: 5 p.m. ET 6/21/24.

Docket Numbers: ER24–2172–000.
Applicants: PJM Interconnection, L.L.C.
Description: § 205(d) Rate Filing: Amendment to ISA, SA No. 1442; Queue No. NQ–123 (amend) to be effective 8/3/2024.
Filed Date: 6/3/24.
Accession Number: 20240603–5012.
Comment Date: 5 p.m. ET 6/24/24.

Docket Numbers: ER24–2174–000.
Applicants: Nebraska Public Power District, Southwest Power Pool, Inc.
Description: § 205(d) Rate Filing: Nebraska Public Power District submits tariff filing per 35.13(a)(2)(iii: Nebraska Public Power District Revisions to Formula Rate to be effective 1/1/2025.
Filed Date: 6/3/24.
Accession Number: 20240603–5136.
Comment Date: 5 p.m. ET 6/24/24.

Docket Numbers: ER24–2175–000.
Applicants: Alabama Power Company, Georgia Power Company, Mississippi Power Company.
Description: § 205(d) Rate Filing: Alabama Power Company submits tariff filing per 35.13(a)(2)(iii: Goat Rock Solar LGIA Filing to be effective 5/22/2024.
Filed Date: 6/3/24.
Accession Number: 20240603–5137.
Comment Date: 5 p.m. ET 6/24/24.

Docket Numbers: ER24–2176–000.
Applicants: Elwood Energy LLC.
Description: Request for Limited Waiver of Elwood Energy LLC.
Filed Date: 5/31/24.
Accession Number: 20240531–5453.
Comment Date: 5 p.m. ET 6/21/24.

Docket Numbers: ER24–2177–000.
Applicants: Louisiana Energy and Power Authority.
Description: Request to Recover Costs Associated with Acting as a Local Balancing Authority of Louisiana Energy and Power Authority.
Filed Date: 6/3/24.
Accession Number: 20240603–5191.
Comment Date: 5 p.m. ET 6/24/24.

Docket Numbers: ER24–2179–000.
Applicants: Bayou Galion Solar Project, LLC.
Description: Baseline eTariff Filing: Application For Market Based Rate to be effective 8/3/2024.
Filed Date: 6/3/24.
Accession Number: 20240603–5214.
Comment Date: 5 p.m. ET 6/24/24.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf*. For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov*.

Dated: June 3, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–12546 Filed 6–6–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Combined Notice of Filings

June 3, 2024.

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

Filings Instituting Proceedings

Docket Numbers: RP24–805–000.
Applicants: Tennessee Gas Pipeline Company, L.L.C.
Description: § 4(d) Rate Filing: Negotiated Rate and Non-Conforming Agreements Antero Filing to be effective 6/1/2024.
Filed Date: 5/31/24.
Accession Number: 20240531–5257.
Comment Date: 5 p.m. ET 6/12/24.

Docket Numbers: RP24–806–000.
Applicants: Gas Transmission Northwest LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Agreements—NRG Business Marketing to be effective 6/1/2024.
Filed Date: 5/31/24.
Accession Number: 20240531–5259.
Comment Date: 5 p.m. ET 6/12/24.

Docket Numbers: RP24–807–000.
Applicants: Rockies Express Pipeline LLC.
Description: § 4(d) Rate Filing: REX 2024–05–31 Negotiated Rate Agreement Amendments to be effective 6/1/2024.
Filed Date: 5/31/24.
Accession Number: 20240531–5266.
Comment Date: 5 p.m. ET 6/12/24.

Docket Numbers: RP24–808–000.
Applicants: White River Hub, LLC.
Description: Annual Fuel Gas Reimbursement Report of White River Hub, LLC.
Filed Date: 5/31/24.
Accession Number: 20240531–5309.
Comment Date: 5 p.m. ET 6/12/24.

Docket Numbers: RP24–809–000.
Applicants: Sabine Pipe Line LLC.
Description: § 4(d) Rate Filing: Fuel Tracker Filing Normal July 2024 to be effective 7/1/2024.
Filed Date: 5/31/24.
Accession Number: 20240531–5320.
Comment Date: 5 p.m. ET 6/12/24.

Docket Numbers: RP24–810–000.
Applicants: Eastern Shore Natural Gas Company.
Description: § 4(d) Rate Filing: Fuel Retention & Cash Out Adjustment 2024 to be effective 7/1/2024.
Filed Date: 5/31/24.
Accession Number: 20240531–5323.
Comment Date: 5 p.m. ET 6/12/24.

Docket Numbers: RP24–811–000.
Applicants: Natural Gas Pipeline Company of America LLC.
Description: § 4(d) Rate Filing: Negotiated Rate Agreement Filing—Macquarie Energy LLC to be effective 6/1/2024.
Filed Date: 5/31/24.
Accession Number: 20240531–5370.
Comment Date: 5 p.m. ET 6/12/24.

Docket Numbers: RP24–812–000.
Applicants: ANR Pipeline Company.
Description: § 4(d) Rate Filing: ANR—Citadel 140723 Negotiated Rate Agreement to be effective 6/1/2024.
Filed Date: 5/31/24.
Accession Number: 20240531–5401.
Comment Date: 5 p.m. ET 6/12/24.

Docket Numbers: RP24–814–000.
Applicants: Transcontinental Gas Pipe Line Company, LLC.
Description: § 4(d) Rate Filing: Non-Conforming—REA—Interim Firm Service—July 2024 to be effective 7/1/2024.
Filed Date: 5/31/24.
Accession Number: 20240531–5428.
Comment Date: 5 p.m. ET 6/12/24.

Docket Numbers: RP24–815–000.
Applicants: Texas Eastern Transmission, LP.
Description: Compliance filing: TETLP 2024 Stipulation and Agreement Filing to be effective 12/1/9998.
Filed Date: 6/3/24.
Accession Number: 20240603–5002.
Comment Date: 5 p.m. ET 6/17/24.

Docket Numbers: RP24–816–000.
Applicants: Southern Star Central Gas Pipeline, Inc.
Description: § 4(d) Rate Filing: Vol. 2—Amended Non-Conforming Discount Agreements—Empire District Electric to be effective 5/31/2024.
Filed Date: 6/3/24.
Accession Number: 20240603–5007.
Comment Date: 5 p.m. ET 6/17/24.

Docket Numbers: RP24–817–000.
Applicants: Texas Eastern Transmission, LP.
Description: § 4(d) Rate Filing: Negotiated Rates—Releases eff 6–1–24 to be effective 6/1/2024.
Filed Date: 6/3/24.
Accession Number: 20240603–5068.
Comment Date: 5 p.m. ET 6/17/24.

Docket Numbers: RP24–818–000.
Applicants: Rover Pipeline LLC.
Description: § 4(d) Rate Filing: Summary of Negotiated Rate Capacity Release Agreements 6–3–2024 to be effective 6/1/2024.
Filed Date: 6/3/24.
Accession Number: 20240603–5103.
Comment Date: 5 p.m. ET 6/17/24.

Docket Numbers: RP24–819–000.
Applicants: Equitrans, L.P.
Description: § 4(d) Rate Filing: Negotiated Rate Capacity Release Agreements 06012024 to be effective 6/1/2024.
Filed Date: 6/3/24.
Accession Number: 20240603–5119.
Comment Date: 5 p.m. ET 6/17/24.

Docket Numbers: RP24–820–000.
Applicants: NEXUS Gas Transmission, LLC.
Description: § 4(d) Rate Filing: Negotiated Rates—Castleton contract 860576 eff 6–1–24 to be effective 6/1/2024.
Filed Date: 6/3/24.
Accession Number: 20240603–5130.
Comment Date: 5 p.m. ET 6/17/24.

Docket Numbers: RP24–821–000.
Applicants: Cheniere Creole Trail Pipeline, L.P.
Description: § 4(d) Rate Filing: Cheniere Creole Trail Rate Schedule Change Filing to be effective 8/1/2024.
Filed Date: 6/3/24.
Accession Number: 20240603–5134.
Comment Date: 5 p.m. ET 6/17/24.

Any person desiring to intervene, to protest, or to answer a complaint in any of the above proceedings must file in accordance with Rules 211, 214, or 206 of the Commission's Regulations (18 CFR 385.211, 385.214, or 385.206) on or before 5:00 p.m. Eastern time on the specified comment date. Protests may be considered, but intervention is necessary to become a party to the proceeding.

Filings in Existing Proceedings

Docket Numbers: RP01–382–034.
Applicants: Northern Natural Gas Company.
Description: Northern Natural Gas Company submits Carlton Reimbursement Report.
Filed Date: 6/3/24.
Accession Number: 20240603–5098.
Comment Date: 5 p.m. ET 6/17/24.

Docket Numbers: RP24–757–001.
Applicants: Florida Gas Transmission Company, LLC.
Description: Compliance filing: Revised Rate Schedule FTS–WD–3 re: RP24–757–000 to be effective 7/3/2024.
Filed Date: 6/3/24.
Accession Number: 20240603–5097.
Comment Date: 5 p.m. ET 6/17/24.

Any person desiring to protest in any the above proceedings must file in accordance with Rule 211 of the Commission's Regulations (18 CFR 385.211) on or before 5:00 p.m. Eastern time on the specified comment date.

The filings are accessible in the Commission's eLibrary system (*https://elibrary.ferc.gov/idmws/search/fercgensearch.asp*) by querying the docket number.

eFiling is encouraged. More detailed information relating to filing requirements, interventions, protests, service, and qualifying facilities filings can be found at: *http://www.ferc.gov/docs-filing/efiling/filing-req.pdf.* For other information, call (866) 208–3676 (toll free). For TTY, call (202) 502–8659.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: June 3, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–12549 Filed 6–6–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL24–106–000]

Bellflower Solar 1, LLC; Notice of Institution of Section 206 Proceeding and Refund Effective Date

On June 3, 2024, the Commission issued an order in Docket No. EL24–106–000, pursuant to section 206 of the Federal Power Act (FPA), 16 U.S.C. 824e, instituting an investigation to determine whether Bellflower Solar 1, LLC's Rate Schedule is unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. *Bellflower Solar 1, LLC,* 187 FERC ¶ 61,130 (2024).

The refund effective date in Docket No. EL24–106–000, established pursuant to section 206(b) of the FPA, will be the date of publication of this notice in the **Federal Register**.

Any interested person desiring to be heard in Docket No. EL24–106–000 must file a notice of intervention or motion to intervene, as appropriate, with the Federal Energy Regulatory Commission, in accordance with Rule 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214 (2023), within 21 days of the date of issuance of the order.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*) using the ''eLibrary'' link. Enter the docket number excluding the last three digits in the docket number field to access the document. From FERC's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field. User assistance is available for eLibrary and the FERC's website during normal business hours from FERC Online Support at 202–502–6652 (toll free at 1–866–208–3676) or email at *ferconlinesupport@ferc.gov,* or the Public Reference Room at (202) 502–8371, TTY (202)502–8659. Email the Public Reference Room at *public.referenceroom@ferc.gov.*

The Commission strongly encourages electronic filings of comments, protests and interventions in lieu of paper using the ''eFile'' link at *http://www.ferc.gov.* In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, DC 20426. Submissions sent via any other carrier must be addressed to: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

Dated: June 3, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–12547 Filed 6–6–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1991–019]

City of Bonners Ferry; Notice of Intent To File License Application, Filing of Pre-Application Document, and Approving Use of the Traditional Licensing Process

a. *Type of Filing:* Notice of Intent to File License Application and Request to Use the Traditional Licensing Process.

b. *Project No.:* 1991–019.

c. *Date Filed:* April 29, 2024.

d. *Submitted By:* City of Bonners Ferry, Idaho (City).

e. *Name of Project:* Moyie River Hydroelectric Project.

f. *Location:* On the Moyie River in Boundary County, Idaho. The project occupies Federal lands managed by the U.S. Forest Service.

g. *Filed Pursuant to:* 18 CFR 5.3 of the Commission's regulations.

h. *Potential Applicant Contact:* Michael B. Klaus, City of Bonners Ferry, Idaho; 7232 Main Street #149, Bonners Ferry ID, 83805; (208) 267–0357; email *mklaus@bonnersferry.id.gov*.

i. *FERC Contact:* Ingrid Brofman at (202) 502–8347; or email at *Ingrid.brofman@ferc.gov*.

j. The City filed a request to use the Traditional Licensing Process on April 29, 2024. The City provided public notice of its request on April 29, 2024. In a letter dated June 3, 2024, the Director of the Division of Hydropower Licensing approved the City's request to use the Traditional Licensing Process.

k. With this notice, we are initiating informal consultation with the U.S. Fish and Wildlife Service and/or NOAA Fisheries under section 7 of the Endangered Species Act and the joint agency regulations thereunder at 50 CFR part 402; and NOAA Fisheries under section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act and implementing regulations at 50 CFR 600.920. We are also initiating consultation with the Idaho State Historic Preservation Officer, as required by section 106, National Historic Preservation Act, and the implementing regulations of the Advisory Council on Historic Preservation at 36 CFR 800.2.

l. With this notice, we are designating the City as the Commission's non-Federal representative for carrying out informal consultation pursuant to section 7 of the Endangered Species Act and section 305(b) of the Magnuson-Stevens Fishery Conservation and Management Act; and consultation pursuant to section 106 of the National Historic Preservation Act.

m. The City filed a Pre-Application Document (PAD; including a proposed process plan and schedule) with the Commission, pursuant to 18 CFR 5.6 of the Commission's regulations.

n. A copy of the PAD may be viewed and/or printed on the Commission's website (*http://www.ferc.gov*), using the ''eLibrary'' link. Enter the docket number, excluding the last three digits in the docket number field to access the document. For assistance, contact FERC at *FERCOnlineSupport@ferc.gov* or call toll free, (886) 208–3676 or TTY (202) 502–8659.

o. The licensee states its unequivocal intent to submit an application for a new license for Project No. 1991–019. Pursuant to 18 CFR 16.8, 16.9, and 16.10 each application for a new license and any competing license applications must be filed with the Commission at least 24 months prior to the expiration of the existing license. All applications for license for this project must be filed by May 31, 2027.

p. Register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filing and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

q. The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202)502–6595 or *OPP@ferc.gov*.

Dated: June 3, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–12548 Filed 6–6–24; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IC24–20–000]

Commission Information Collection Activities FERC–917 and FERC–918; Consolidated Comment Request; Extension

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of information collections and request for comments.

SUMMARY: In compliance with the requirements of the Paperwork Reduction Act of 1995, the Federal Energy Regulatory Commission (Commission or FERC) is soliciting public comment on the currently approved information collections, FERC–917 (Electric Transmission Facilities) and FERC–918 (Standards for Business Practices and Communication Protocols for Public Utilities), both under OMB Control No. 1902–0233.

DATES: Comments on the collections of information are due August 6, 2024.

ADDRESSES: You may submit copies of your comments (identified by Docket No. IC24–20–000 and the specific FERC collection number (FERC–917 and/or FERC–918) by one of the following methods:

Electronic filing through *http://www.ferc.gov,* is preferred.

- *Electronic Filing:* Documents must be filed in acceptable native applications and print-to-PDF, but not in scanned or picture format.
- For those unable to file electronically, comments may be filed by USPS mail or by hand (including courier) delivery:
  - *Mail via U.S. Postal Service Only:* Addressed to: Federal Energy Regulatory Commission, Secretary of the Commission, 888 First Street NE, Washington, DC 20426.
  - *Hand (including courier) Delivery:* Deliver to: Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, MD 20852.

Instructions: All submissions must be formatted and filed in accordance with submission guidelines at: *http://www.ferc.gov.* For user assistance, contact FERC Online Support by email at *ferconlinesupport@ferc.gov,* or by phone at (866) 208–3676 (toll-free).

Docket: Users interested in receiving automatic notification of activity in this docket or in viewing/downloading comments and issuances in this docket may do so at *http://www.ferc.gov.*

FOR FURTHER INFORMATION CONTACT: Jean Sonneman may be reached by email at *DataClearance@FERC.gov,* telephone at (202) 502–6362.

SUPPLEMENTARY INFORMATION:

Title: FERC–917, Electric Transmission Facilities and FERC–918, Standards for Business Practices and Communication Protocols for Public Utilities.

OMB Control No.: 1902–0233.

Type of Request: Three-year extension of the FERC–917 and FERC–918 information collection requirements with no changes to the reporting requirements.

Type of Respondents: Public utilities transmission providers.

Abstract: The information collection requirements in the FERC 917 and 918 include posting requirements in compliance with Federal Power Act sections 206. Furthermore, the requirements for posting are described in the Commission's pro forma Open Access Transmission Tariff (OATT) that is prescribed by 18 CFR 35.28 to ensure non-discriminatory practices in electric energy systems and markets. Additionally, the specifications to posting information and standards that must be followed are outlined in 18 CFR part 37 (Open Access Same Time Information System (OASIS)) and part 38 (Standards for Public Utility Business Operations and Communications) of the Commission's regulations.

The FERC 917 and 918 information collections specifically contain the burden related to gathering and posting information (on OASIS) as specified in the OATT [1] and the burden related to complying with standards that are described by the North American Energy Standards Board (NAESB).[2]

This notice and information collection request pertains to the extension of the existing requirements with no change to the reporting requirements.[3]

Estimate of Annual Burden: [4] The Commission estimates the annual public reporting burden for the information collection to remain consistent with the

[1] The requirements for OASIS were established in FERC order 888 and 889. Later, in FERC Order 1000–A, the FERC Information Collection under OMB control no. 1902–0233 was created.

[2] 18 CFR part 38

[3] There is a separate docket no. (RM21–17) that is revising the OATT at this time. To reduce confusion between the revision and the extension, the Commission is issuing this notice for the extension to requirements that are not being revised in the separate rulemaking effort.

[4] Burden is defined as the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. For further explanation of what is included in the information collection burden, refer to 5 CFR part 1320.

previous estimate. However, the Commission has updated the number of respondents with a more current estimate.

FERC–917 (ELECTRIC TRANSMISSION FACILITIES) AND FERC–918 (STANDARDS FOR BUSINESS PRACTICES AND COMMUNICATION PROTOCOLS FOR PUBLIC UTILITIES)

	Number of respondents	Annual number of responses per respondent	Annual number of responses	Average annual burden hours & cost[5] per response ($)	Total average annual burden hours & total annual cost ($)	Average annual cost per respondent ($)
	(1)	(2)	(1) * (2) = (3)	(4)	(3) * (4) = (5)	(5) ÷ (1) = (6)
FERC–917 & FERC–918						
Non-Discriminatory Open Access Transmission Tariff (reporting).	162	1	162	566 hrs.; $56,600	91,692 hrs.; $9,169,200	$56,600
Open Access Transmission Tariff (record keeping).	162	1	162	10 hrs.; $1000	1,620 hrs.; $162,000	1,000
Information to be posted on the OASIS and Auditing Transmission service (reporting).	162	1	162	376 hrs.; $37,600	60,912 hrs.; $6,091,200	37,600
Information to be posted on the OASIS and Auditing Transmission service (record keeping).	162	1	162	45 hrs.; $4,500	7,290 hrs.; $6,091,200	4,500
Total					161,514 hrs.; $16,151,400	

Comments: Comments are invited on: (1) whether the collections of information is necessary for the proper performance of the functions of the Commission, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden and cost of the collections of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collections; and (4) ways to minimize the burden of the collections of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: June 3, 2024.

Debbie-Anne A. Reese,

Acting Secretary.

[FR Doc. 2024–12545 Filed 6–6–24; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL OP–OFA–129]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information 202–564–5632 or *https://www.epa.gov/nepa.*

Weekly receipt of Environmental Impact Statements (EIS)

Filed May 24, 2024 10 a.m. EST

Through June 3, 2024 10 a.m. EST

Pursuant to 40 CFR 1506.9.

Notice

Section 309(a) of the Clean Air Act requires that EPA make public its comments on EISs issued by other Federal agencies. EPA's comment letters on EISs are available at: *https://cdxapps.epa.gov/cdx-enepa-II/public/action/eis/search.*

EIS No. 20240093, Draft, FHWA, GA, I–285 Top End Express Lanes, Comment Period Ends: 07/29/2024, Contact: Sabrina David 404–562–3630.

EIS No. 20240094, Final, FTA, WA, Operations and Maintenance Facility South Final Environmental Impact Statement, Review Period Ends: 07/08/2024, Contact: JUSTIN ZWEIFEL 206–257–2141.

EIS No. 20240095, Draft, USA, HI, Army Training Land Retention of State Lands at Kahuku Training Area, Kawailoa-Poamoho Training Area, and Makua Military Reservation Island of O'ahu, Comment Period Ends: 08/07/2024, Contact: Matthew Foster 808–656–6821.

EIS No. 20240096, Final, USFS, CA, Social and Ecological Resilience Across the Landscape 2.0 (SERAL 2.0), Review Period Ends: 07/08/2024, Contact: Benjamin Cossel 209–288–6261.

EIS No. 20240097, Final, NPS, MT, Yellowstone National Park Bison Management Plan, Review Period Ends: 07/08/2024, Contact: Morgan Warthin 406–404–5096.

EIS No. 20240098, Draft, USACE, MS, Pearl River Basin, Mississippi Federal Flood Risk Management Project, Comment Period Ends: 07/22/2024, Contact: Eric Williams 504–862–2862.

EIS No. 20240099, Draft, BLM, OR, Lakeview Draft Resource Management Plan and Draft Environmental Impact Statement, Comment Period Ends: 09/05/2024, Contact: Michael Collins 541–947–6012.

EIS No. 20240100, Final, BLM, ID, Lava Ridge Wind Project Final Environmental Impact Statement, Review Period Ends: 07/08/2024, Contact: Kasey Prestwich 208–732–7204.

Dated: June 3, 2024.

Nancy Abrams,

Associate Director, Office of Federal Activities.

[FR Doc. 2024–12535 Filed 6–6–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[EPA–HQ–OPP–2024–0211; FRL–11998–01–OCSPP]

Alpha-Pinene, Anisyl Alcohol, Butyl Salicylate, Cineole (Eucalyptol), and Phenylacetaldehyde; Receipt of Application for Emergency Exemption, Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Colorado Department of Agriculture to use the pesticides, alpha-pinene, anisyl alcohol,

[5] The Commission staff estimates that the average respondent for this collection is similarly situated to the Commission, in terms of salary plus benefits. Based on FERC's 2024 annual average of $207,786 (for salary plus benefits), the average hourly cost is $100/hour.

butyl salicylate, cineole (eucalyptol), and phenylacetaldehyde (CAS Nos. 80–56–8, 1331–81–3, 2052–14–4, 470–82–6, and 122–78–1, respectively) to treat up to 1,400 acres of sweet corn to control corn earworm. The applicant proposes the use of new chemicals which have not been registered by EPA. EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before June 24, 2024.

ADDRESSES: Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2024–0211, by one of the following methods:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.
- *Mail:* OPP Docket, Environmental Protection Agency Docket Center (EPA/DC), (28221T), 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001.
- *Hand Delivery:* To make special arrangements for hand delivery or delivery of boxed information, please follow the instructions at *https://www.epa.gov/dockets/where-send-comments-epa-dockets*.

Additional instructions on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets*.

FOR FURTHER INFORMATION CONTACT: 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) 566–2875; email address: *RDFRNotices@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this action apply to me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. The following list of North American Industrial Classification System (NAICS) codes is not intended to be exhaustive, but rather provides a guide to help readers determine whether this document applies to them. Potentially affected entities may include:

- Crop production (NAICS code 111).
- Animal production (NAICS code 112).
- Food manufacturing (NAICS code 311).
- Pesticide manufacturing (NAICS code 32532).

B. What should I consider as I prepare my comments for EPA?

1. *Submitting CBI.* Do not submit this information to EPA through *www.regulations.gov* or email. Clearly mark the part or all of the information that you claim to be CBI. For CBI information in a disk or CD–ROM that you mail to EPA, mark the outside of the disk or CD–ROM as CBI and then identify electronically within the disk or CD–ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. *Tips for preparing your comments.* When preparing and submitting your comments, see the commenting tips at *https://www.epa.gov/dockets/commenting-epa-dockets*.

3. *Environmental justice.* EPA seeks to achieve environmental justice, the fair treatment and meaningful involvement of any group, including minority and/or low- income populations, in the development, implementation, and enforcement of environmental laws, regulations, and policies. To help address potential environmental justice issues, the Agency seeks information on any groups or segments of the population who, as a result of their location, cultural practices, or other factors, may have atypical or disproportionately high and adverse human health impacts or environmental effects from exposure to the pesticides discussed in this document, compared to the general population.

II. What action is the Agency taking?

Under section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), at the discretion of the EPA Administrator, a Federal or State agency may be exempted from any provision of FIFRA if the EPA Administrator determines that emergency conditions exist which require the exemption. The Colorado Department of Agriculture has requested the EPA Administrator to issue a specific exemption for the use of alpha-pinene, anisyl alcohol, butyl salicylate, cineole (eucalyptol), and phenylacetaldehyde (partnered with a toxicant insecticide as an attract-and-kill insect control strategy) in sweet corn to control corn earworm. Information in accordance with 40 CFR part 166 was submitted as part of this request.

As part of this request, the applicant asserts that emergency conditions exist due to insufficient means to control corn earworm in sweet corn, and the use of the formulation containing alpha-pinene, anisyl alcohol, butyl salicylate, cineole (eucalyptol, and phenylacetaldehyde will help avert significant economic losses.

The Applicant proposes to make no more than 8 applications per treatment site of Insect Attractant (containing the following registered ingredient, d-limonene (0.2%), and the following new chemical ingredients: Alpha-pinene (0.5%); anisyl alcohol (0.5%), butyl salicylate (0.9%); cineole (eucalyptol), (0.5%); and phenylacetaldehyde (0.8%) per gallon of product) to treat up to 2% (28 acres) of the 1,400 maximum sweet corn acreage the applicant requested under this specific exemption from June 10—October 10, 2024. The total amount of pesticide applied is not to exceed 1,300 gallons of product, equivalent to a combined total of 384.28 pounds of d-limonene (20.28 lbs.), alpha-pinene (61.62 lbs.), anisyl alcohol (56.42 lbs.), butyl salicylate (112.71 lbs.), cineole (eucalyptol) (54.99 lbs.), and phenylacetaldehyde (98.54 lbs.), and is to be used only in two Colorado counties, Delta and Montrose.

This notice does not constitute a decision by EPA on the application itself. The regulations governing FIFRA section 18 at 40 CFR part 166.24(a)(1) require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (*i.e.,* an active ingredient) which has not been registered by EPA. The notice provides an opportunity for public comment on the application.

The Agency will review and consider all comments received during the comment period in determining whether to issue the specific exemption requested by the Colorado Department of Agriculture.

Authority: 7 U.S.C. 136 *et seq.*

Dated: May 23, 2024.

Charles Smith,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 2024–12416 Filed 6–6–24; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–12025–01–OA]

Announcement of Meeting of the National Environmental Education Advisory Council

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Committee Act (FACA), the Environmental Protection Agency (EPA) gives notice of a virtual meeting of the National Environmental Education Advisory Council (NEEAC). The NEEAC was created by Congress to advise, consult with, and make recommendations to the Administrator of the Environmental Protection Agency on matters related to activities, functions, and policies of EPA under the National Environmental Education Act (the Act). This meeting will be open to the public. For information on public attendance and participation, please see the registration information under **SUPPLEMENTARY INFORMATION**. The purpose of this meeting is to review the NEEAC charge and develop a work plan to produce the report to the EPA Administrator on the status of environmental education as stated in the National Environmental Education Act of 1990.

DATES: The National Environmental Education Advisory Council will hold a virtual public meeting on Thursday, June 27th, 2024, from 10:00 a.m. until 3:00 p.m. Central Standard Time. A link for participation will be provided upon request.

FOR FURTHER INFORMATION CONTACT: Javier Araujo, Designated Federal Officer, *araujo.javier@epa.gov,* 202–441–8981, U.S. EPA, Office of Environmental Education, William Jefferson Clinton North Room, 1426, 1200 Pennsylvania Avenue NW, Washington, DC 20460.

Information on Accessibility: For information to access or services for individuals requiring accessibility accommodations, please contact Javier Araujo by email at *araujo.javier@epa.gov*. To request accommodation, please do so five (5) business days prior to the meeting, to give as much time as possible to process your request.

SUPPLEMENTARY INFORMATION: Members of the public wishing to gain access to the virtual meeting, make brief oral comments, or provide a written statement to the NEEAC must register by contacting Javier Araujo, Designated Federal Officer, at *araujo.javier@epa.gov* by June 20, 2024 (5) business days prior to the scheduled meeting. Oral comments at this meeting will be limited to three minutes and will be accommodated as time permits.

Once available, the agenda and other supporting materials will be available online at: *https://www.epa.gov/education/national-environmental-education-advisory-council-neeac*.

Meeting Access: For information on access or services for individuals with disabilities or to request accommodations, please contact Javier Araujo at *araujo.javier@epa.gov* or 202–441–8981, preferably at least (5) business days prior to the meeting, to give EPA as much time as possible to process your request.

Jessica Loya,

Deputy Associate Administrator, Office of Public Engagement and Environmental Education.

[FR Doc. 2024–12510 Filed 6–6–24; 8:45 am]

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FEDERAL HOUSING FINANCE AGENCY

[No. 2024–N–6]

Proposed Collection; Comment Request

AGENCY: Federal Housing Finance Agency.

ACTION: Federal Home Loan Bank Director—60-day notice of submission of information collection for approval from Office of Management and Budget.

SUMMARY: In accordance with the requirements of the Paperwork Reduction Act of 1995 (PRA), the Federal Housing Finance Agency (FHFA or the Agency) is seeking public comments concerning an information collection known as ''Federal Home Loan Bank Directors,'' which has been assigned control number 2590–0006 by the Office of Management and Budget (OMB). FHFA intends to submit the information collection to OMB for review and approval of a three-year extension of the control number, which is due to expire on July 31, 2024.

DATES: Interested persons may submit comments on or before August 6, 2024.

ADDRESSES: Submit comments to FHFA, identified by ''Proposed Collection; Comment Request: 'Federal Home Loan Bank Directors, (No. 2024–N–6)' '' by any of the following methods:

- *Agency Website: www.fhfa.gov/open-for-comment-or-input.*
- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments. If you submit your comment to the *Federal eRulemaking Portal,* please also send it by *email* to FHFA at *RegComments@fhfa.gov* to ensure timely receipt by the agency.
- *Mail/Hand Delivery:* Federal Housing Finance Agency, Fourth Floor, 400 Seventh Street SW, Washington, DC 20219, ATTENTION: Proposed Collection; Comment Request: ''Federal Home Loan Bank Directors, (No. 2024–N–6).'' Please note that all mail sent to FHFA via U.S. Mail is routed through a national irradiation facility, a process that may delay delivery by approximately two weeks. For any time-sensitive correspondence, please plan accordingly.

FHFA will post all public comments on the FHFA public website at *http://www.fhfa.gov,* except as described below. Commenters should submit only information that the commenter wishes to make available publicly. FHFA may post only a single representative example of identical or substantially identical comments, and in such cases will generally identify the number of identical or substantially identical comments represented by the posted example. FHFA may, in its discretion, redact or refrain from posting all or any portion of any comment that contains content that is obscene, vulgar, profane, or threatens harm. All comments, including those that are redacted or not posted, will be retained in their original form in FHFA's internal file and considered as required by all applicable laws. Commenters that would like FHFA to consider any portion of their comment exempt from disclosure on the basis that it contains trade secrets, or financial, confidential or proprietary data or information, should follow the procedures in section IV.D. of FHFA's *Policy on Communications with Outside Parties in Connection with FHFA Rulemakings,* see *https://www.fhfa.gov/sites/default/files/documents/Ex-Parte-Communications-Public-Policy_3-5-19.pdf.* FHFA cannot guarantee that such data or information, or the identity of the commenter, will remain confidential if disclosure is sought pursuant to an applicable statute or regulation. See 12 CFR 1202.8, 12 CFR 1214.2. and *https://www.fhfa.gov/about/foia-reference-guide* for additional information.

FOR FURTHER INFORMATION CONTACT: Kenya Bryant, Financial Analyst, *Kenya.Bryant@fhfa.gov,* (202) 649–3938; or Angela Supervielle, Senior Counsel, *Angela.Supervielle@fhfa.gov,* (202) 649–3973 (these are not toll-free numbers); Federal Housing Finance Agency, 400 Seventh Street SW, Washington, DC

20219. For TTY/TRS users with hearing and speech disabilities, dial 711 and ask to be connected to any of the contact numbers above.

SUPPLEMENTARY INFORMATION:

A. Need for and Use of the Information Collection

Section 7 of the Federal Home Loan Bank Act (Bank Act) vests the management of each Federal Home Loan Bank (Bank) in its board of directors.[1] As required by section 7, each Bank's board comprises two types of directors: (1) member directors, who are drawn from the officers and directors of member institutions located in the Bank's district and who are elected to represent members in a particular state in that district; and (2) independent directors, who are unaffiliated with any of the Bank's member institutions, but who reside in the Bank's district and are elected on an at-large basis.[2] Both types of directors serve four-year terms, which are staggered so that approximately one-quarter of a Bank's total directorships are up for election every year.[3] Section 7 and FHFA's implementing regulation, codified at 12 CFR part 1261, establish the eligibility requirements for both types of Bank directors and the professional qualifications for independent directors, and set forth the procedures for their election.

Part 1261 of the regulations requires that each Bank administer its own annual director election process. As part of this process, a Bank must require each nominee for both types of directorship, including any incumbent that may be a candidate for re-election, to complete and return to the Bank a form that solicits information about the candidate's statutory eligibility to serve and, in the case of independent director candidates, about his or her professional qualifications for the directorship being sought.[4] Specifically, member director candidates are required to complete the *Federal Home Loan Bank Member Director Eligibility Certification Form (Member Director Eligibility Certification Form),* while independent director candidates must complete the *Federal Home Loan Bank Independent Director Application Form (Independent Director Application Form).* Each Bank must also require all of its incumbent directors to certify annually that they continue to meet all eligibility requirements.[5] Member directors do this by completing the *Member Director Eligibility Certification Form* again every year, while independent directors complete the abbreviated *Federal Home Loan Bank Independent Director Annual Certification Form (Independent Director Annual Certification Form)* to certify their ongoing eligibility.

The Banks use the information collection contained in the *Independent Director Application Form* and part 1261 to determine whether individuals who wish to stand for election or re-election as independent directors satisfy the statutory eligibility requirements and possess the professional qualifications required under the statute and regulations. Only individuals meeting those requirements and qualifications may serve as an independent director.[6] On an annual basis, the Banks use the information collection contained in the *Independent Director Annual Certification Form* and part 1261 to determine whether its incumbent independent directors continue to meet the statutory eligibility requirements. The Banks use the information collection contained in the *Member Director Eligibility Certification Form* and part 1261 to determine whether individuals who wish to stand for election or re-election as member directors satisfy the statutory eligibility requirements. Only individuals meeting these requirements may serve as a member director.[7] On an annual basis, the Banks also use the information collection contained in the *Member Director Eligibility Certification Form* and part 1261 to determine whether its incumbent member directors continue to meet the statutory eligibility requirements.

The OMB control number for this information collection is 2590–0006. The current clearance for the information collection will expire on July 31, 2024. The likely respondents are individuals who are prospective and incumbent Bank directors.

B. Burden Estimate

FHFA estimates the total annual hour burden imposed upon respondents by the three Bank director forms comprising this information collection to be 269 hours (39 hours + 200 hours + 30 hours = 269 hours, as detailed below).

The Agency estimates the total annual hour burden on all member director candidates and incumbent member directors associated with review and completion of the *Member Director Eligibility Certification Form* to be 39 hours. This includes a total annual average of 72 member director nominees (24 open seats per year with three nominees for each) completing the form as an application, with 1 response per nominee taking an average of 15 minutes (.25 hours) (72 respondents × .25 hours = 18 hours). It also includes a total annual average of 84 incumbent member directors not up for election completing the form as an annual certification, with 1 response per individual taking an average of 15 minutes (.25 hours) (84 individuals × .25 hours = 21 hours).

The Agency estimates the total annual hour burden on all independent director candidates associated with review and completion of the *Independent Director Application Form* to be 200 hours. This includes a total annual average of 100 applications for independent director positions with 1 response per individual taking an average of 2.0 hours (100 applications × 2.0 hours = 200 hours).

The Agency estimates the total annual hour burden on all incumbent independent directors associated with review and completion of the *Independent Director Annual Certification Form* to be 30 hours. This includes a total annual average of 60 incumbent independent directors not up for election, with 1 response per individual taking an average of 30 minutes (.5 hours) (60 individuals × .5 hours = 30 hours).

C. Comments Request

FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of FHFA's estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) 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.

Shawn Bucholtz,

Chief Data Officer, Federal Housing Finance Agency.

BILLING CODE 8070–01–P

[1] *See* 12 U.S.C. 1427(a)(1).

[2] *See* 12 U.S.C. 1427(b) and (d).

[3] *See* 12 U.S.C. 1427(d).

[4] *See* 12 CFR 1261.7(c) and (f); 12 CFR 1261.14(b).

[5] *See* 12 CFR 1261.12.

[6] *See* 12 U.S.C. 1427(a)(3).

[7] *See* 12 U.S.C. 1427(a)(3) and (b)(1).

FEDERAL HOUSING FINANCE AGENCY

Federal Home Loan Bank
Member Director
Eligibility Certification Form

FHFA Form #131 (04/2022)

INSTRUCTIONS | Clear All Fields

This **Federal Home Loan Bank Member Director Eligibility Certification Form** must be completed by individuals wishing to accept a nomination to stand for election as a member director of the Federal Home Loan Bank of (Bank) or to be considered for appointment by the Bank's board to fill a member directorship that has become vacant. It must also be completed annually by each incumbent member director. Your responses to the questions on this Form will assist the Bank in verifying that you meet the eligibility requirements to serve as a member director. **Please complete and execute this Form and return it to the Bank on or before** .

You are eligible to serve as a member of the Bank only if you meet all of the following requirements:

- You are a citizen of the United States.
- You are an officer or director of a member institution of the Bank:
  - That was a member of the Bank as of December 31, ; and
  - Whose voting state for purposes of Bank directorship elections is the state that is represented by the directorship for which you have been nominated; and
- Each member of the Bank for which you are an officer or director is in compliance with all of its applicable minimum capital requirements established by its primary regulator (this requirement does not apply in the case of any member for which you are an officer or director that does not have capital requirements established by a primary regulator, such as a non-depository community development financial institution).

These eligibility requirements may be found in sections 7(a) and (b) of the Federal Home Loan Bank Act, 12 U.S.C. 1427(a) and (b), and in Federal Housing Finance Agency regulations at 12 CFR 1261.5(a) and (b).

Please follow the instructions below appropriate for the purpose for which you are completing this Form.

NOMINEES IN THE ANNUAL ELECTION CYCLE

If you have been nominated to stand for election as a member director of the Bank you must complete and execute this Form and submit it to the Bank on or before the date specified by the Bank to accept the nomination. If you do not submit a completed and executed Form by that date, you will be deemed to have declined the nomination. By law, the Bank may not permit a directorship nominee to stand for election unless it has verified that the nominee is legally eligible to serve in the directorship for which he or she has been nominated. Further, the Bank may neither declare elected any nominee nor seat any director-elect whom it has reason to know is ineligible to serve.

CANDIDATES TO FILL A VACANT MEMBER DIRECTORSHIP

If the Bank's board of directors is considering you as a candidate to fill the unexpired term of office of a vacant member directorship on the Bank's board, you must complete and execute this Form and return it to the Bank on or before the date specified by the Bank. If you fail to submit a completed and executed Form by that date, or if you submit a Form that does not adequately demonstrate that you meet all applicable eligibility requirements, the Bank may determine that you are ineligible to serve, in which case the Bank's board would be prohibited by law from electing you to fill the vacant directorship. By law, the Bank's board may not elect any person to fill a vacant directorship unless it has verified that the individual is legally eligible to serve in that directorship.

ANNUAL ELIGIBILITY CERTIFICATIONS BY INCUMBENT DIRECTORS

The Bank is required by law to solicit information from its incumbent directors annually to verify that each director remains in compliance with the applicable statutory and regulatory eligibility requirements. During each calendar year that you are an incumbent member director, you must complete and execute this Form and return it to the Bank on or before the date specified by the Bank. If you fail to submit a completed and executed Form by that date, or if you submit a Form that does not adequately demonstrate that you continue to meet all applicable eligibility requirements, the Bank may determine that you are ineligible to serve, in which case it would be required by law to declare your directorship vacant.

PERSONAL INFORMATION

Please provide your personal information as indicated in Questions 1 – 4.

1. **Full Name:**
2. **Other Names Used or Known by:**
3. **Contact Information:**

Phone Number:

Home: Office: Cell:

E-mail Address:

Mailing Address:

Number/Street (or PO Box) City State ZIP Code

ELIGIBLITY REQUIREMENTS

Please answer Question 4 – 6, which pertain to your compliance with the statutory and regulatory eligibility requirements for member directors, in full. You may continue your answers onto additional pages, if necessary, each of which shall be attached to, and deemed a part of, this Form.

4. **Citizenship.**

Are you a citizen of the United States? ☐ Yes ☐ No

5. Primary Member Affiliation. Please provide the following information about the entity you serve as an officer or director that is a member of the Bank on whose board you serve or have been nominated to serve:

Name of the member:

FHFA ID number of the member:

Voting state in which the member is located:

Your title:

Your business address at the member:

Number/Street City State ZIP Code

Does this member comply with all applicable minimum capital requirements established by its primary regulator?

☐ Yes ☐ No ☐ Not Applicable

6. Other Member Affiliations. Please provide the following information about any other entity you serve as an officer or director that is a member of the Bank on whose board you serve or have been nominated to serve (if more than one, please provide the information on a separate sheet, which shall be attached to, and deemed a part of, this Form):

A. Other than the institution you listed in response to Question 5, do you serve as an officer or director of any other institution that is a member of this Bank?

☐ Yes ☐ No

B. If you answered Yes to Question 6A, please provide the following information for each member of the Federal Home Loan Bank that you serve as an officer or director:

Name of the member:

FHFA ID number of the member:

Your title:

Does this member comply with all applicable minimum capital requirements established by its primary regulator?

☐ Yes ☐ No ☐ Not Applicable

By executing this Form, you are certifying that the information you have provided is true, correct, and complete to the best of your knowledge and that you understand that you have a continuing obligation to inform the Bank of any facts that may call into question your eligibility or ability to serve as a Bank director. You further acknowledge that the Bank and the Federal Housing Finance Agency may perform a background check on you, including without limitation regarding any information disclosed herein.

Signature/Date:

Reminder: Apply your electronic signature above here. If you physically sign, please include date.

Privacy Act Statement: In accordance with the Privacy Act (5 U.S.C. 552a), the following notice is provided. This information is solicited under authority of 12 U.S.C. 1427(a) and (b) and 12 CFR 1261.5, 1261.7, and 1261.10 to 1261.13. Furnishing the information on this Form is voluntary, but failure to do so may result in your not meeting the statutory and regulatory eligibility requirements to serve as a Federal Home Loan Bank member director. The purpose of this information is to facilitate the timely determination of your eligibility to serve as a member director. Information may be disclosed in accordance with the routine uses identified in FHFA-System of Records Notice FHFA-8 Federal Home Loan Bank Directors, which may be found here.

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

OMB No. 2590-0006
Expires 07/31/2024

	FEDERAL HOUSING FINANCE AGENCY Federal Home Loan Bank Independent Director Application Form	**FHFA Form #129 (03/2023)**
INSTRUCTIONS		**Clear Form**

You either have expressed interest in, or have been recommended for, nomination to stand for election as an independent director of the Federal Home Loan Bank of (Bank). **If you would like the Bank's board of directors to consider you as a possible nominee for an independent directorship, you must complete and execute this Federal Home Loan Bank Independent Director Application Form and submit it to the Bank on or before** . If you do not submit a completed and executed Form by that date, you will be deemed to have declined to be considered for nomination.

By law, the Bank's board of directors may nominate you for an independent directorship only if it has verified that you meet the legal eligibility requirements applying to independent directors and possess the professional qualifications that are specified by law for the type of independent directorship for which you are being considered. Your responses to the questions on this Form will assist the Bank in verifying that you are legally eligible, and possess the required professional qualifications, to serve as an independent director of the Bank if elected.

You are eligible to serve as an independent director of the Bank only if you meet all of the following requirements:

- You are a citizen of the United States.
- You are a *bona fide* resident of the Bank District, as determined by meeting either one of the following two sets of criteria:
  - Your principal residence is located in the Bank District; or
  - You both:
    - Own or lease in your own name a residence in the Bank District; and
    - Are employed in a voting state in the Bank District.
- Neither you nor your spouse are:
  - An officer of any Federal Home Loan Bank; or
  - An officer, employee, or director of any member of, or recipient of advances from, the Bank. For purposes of this prohibition:
    - "Advances" includes any form of lending, regardless of whether it is denominated as an "advance"; and
    - "Member" and "recipient of advances" include the institution itself and the institution's holding company, except where the assets of all members or all recipients of advances constitute less than 35 percent of the assets of the holding company, on a consolidated basis.

These eligibility requirements may be found in sections 7(a) and (b) of the Federal Home Loan Bank Act (Bank Act), 12 U.S.C. 1427(a) and (b), and in Federal Housing Finance Agency regulations at 12 CFR 1261.5(c) and 1261.10.

In addition, you must demonstrate that you possess certain professional qualifications, which differ depending on whether you are seeking nomination for a "regular" or a "public interest" independent directorship. By law, the Bank must designate at least two of the independent directorships on its board as "public interest" directorships. These independent directorships may be filled only by individuals having, at the time of nomination, more than four (4) years of experience representing consumer or community interests in banking services, credit needs, housing, or consumer financial protections.

Regular independent directorships, that is, those that are not public interest directorships, must be filled by individuals having, at the time of nomination, experience in or knowledge of one or more of the following areas: auditing and accounting, derivatives, financial management, organizational management, project development, risk management practices, and the law. Such knowledge or experience must be commensurate with that needed to oversee a financial institution with a size and complexity comparable to that of the Bank. The requirements regarding professional qualifications may be found in section 7(a)(3)(B) of the Bank Act, 12 U.S.C. 1427(a)(3)(B), and in FHFA's regulations at 12 CFR 1261.7(e).

Please answer all applicable questions in full and do not answer any question by referring to another document, except where expressly permitted to do so. You may continue your answers on additional pages, if necessary, each of which shall be attached to, and deemed a part of, this Form.

PERSONAL INFORMATION

Please provide your personal information as indicated in Questions 1 - 4

1. **Full Name:**

2. **Other Names Used or Known by:**

3. **Contact Information:**

Phone Number:

Home: Office: Cell:

E-mail Address:

Mailing Address:

Number/Street (or PO Box) City State ZIP Code

4. **Current Employment, if applicable:**

Current Employer:

Your Title:

Your Employment Address:

Number/Street City State ZIP Code

CONTROLLED

ELIGIBILITY REQUIREMENTS

Please answer Question 5 – 8, regarding your eligibility to serve as an independent director, in full.

Citizenship and Residency

You must meet the legal requirements as to U.S. citizenship and Bank District residency to be eligible for nomination for an independent directorship.

5. Citizenship.

Are you a citizen of the United States? ☐ Yes ☐ No

6. Residency.

A. Please provide the street address of your principal residence.

Address:

Number/Street City State ZIP Code

If the residence entered in response to Question 6A is located within the Bank District, you meet the residency requirement and may skip to Question 7.

If your principal residence is not located within the Bank District, you may still meet the residency requirement if you own or lease another residence located within the Bank District and are employed within the Bank District; in this case, please continue with Question 6B. If you do not own or lease any residence within the Bank District, you are ineligible to be nominated for an independent directorship.

B. If your principal residence is not located within the Bank District, but you own or lease another residence within the Bank District, please provide the address of that residence.

Address:

Number/Street City State ZIP Code

C. Are you employed within the Bank District? ☐ Yes ☐ No

D. If you answered Yes to Question 6C, please identify your in-District employer:

☐ Check if your in-District employment information is the same as that entered in response to Question 4.

☐ Check if your in-District employment information is different from that entered in response to Question 4, then provide the following information:

Name of Your In-District Employer:

Your Title:

Your Employment Address:

Number/Street City State ZIP Code

Independence

The information you provide below will enable the Bank to determine whether you meet the independence requirements. You may be nominated if you do not currently meet the independence requirements, but you must agree as part of the certification at the end of this Form that you and your spouse will relinquish any positions that the Bank determines to be prohibited under those requirements. If elected, you may not be seated as an independent director so long as you or your spouse hold any such prohibited positions and, once seated, would become ineligible to continue to serve as an independent director if you or your spouse were to take any such prohibited positions.

7. Employment by a Federal Home Loan Bank.

A. Are you or your spouse an officer or employee of any Federal Home Loan Bank? ☐ Yes ☐ No

B. If you answered Yes to Question 7A, please provide the following information for each such position held by you or your spouse:

Name of the Person Holding the Position:

Federal Home Loan Bank of:

Title:

Date Position Began:

8. Employment by a Bank Member, Housing Associate, or Holding Company.

A. Are you or your spouse an officer, director, or employee of a member of the Bank, an entity certified as a housing associate of the Bank, or a holding company that controls one or more members or housing associates of the Bank? ☐ Yes ☐ No

B. If you answered Yes to Question 8A, please provide the following information for each such position held by you or your spouse:

Name of the Person Holding the Position:

Name of the Employer:

Check the appropriate response below to indicate whether the employer is:

☐ a member

☐ a holding company of a member

☐ a housing associate

☐ a holding company of a housing associate

Title:

Date Position Began:

If the employer is a holding company:

- Indicate the total assets of the holding company;
- Indicate the total assets of each member or housing associate of the Bank controlled by the holding company; and
- Provide documentation to support those amounts.

ACADEMIC AND EMPLOYMENT HISTORY

Please answer in full Questions 9 - 11, regarding your academic and employment background. If you wish, you may answer any or all of these questions by attaching a resume or CV, so long as you provide all of the information requested. Any such attachments shall be deemed a part of this Form.

☐ Check if you have attached a resume or CV in response to Questions 9 – 11.

9. **Academic Degrees.** Please list any college or advanced academic degrees that you have been awarded, specifying for each: the type of degree, the name and location of the academic institution that awarded your degree, and the date awarded.

10. Employment History. Please list, from most to least recent, the positions you have held during your professional career, specifying for each: the name and location of your employer, your position, and the date range (including month and year) during which you served in that position. Please explain any major gaps in your employment chronology.

11. Other Relevant Experience and Achievements. Please list any other significant positions you have held, or currently hold, (such as other directorships or volunteer positions) and any professional certifications that you believe are relevant to your qualifications to serve as an independent director of the Bank, specifying for each: the name and location of the organization with which you served, your position, and the date range (including month and year) during which you served in that position; for each certification, list the certification name, the certifying entity, and the date of your certification.

PROFESSIONAL QUALIFICATIONS

Please indicate in response to Question 12 whether you are seeking nomination for a public interest independent directorship or a regular independent directorship and then complete the appropriate questions regarding your qualifications for that type of independent directorship. If you wish to be considered for both types of independent directorships, or are unsure, please check both options. If you wish to be considered for a public interest independent directorship, you must answer Question 13 in full. If you wish to be considered for a regular independent directorship, you must answer Questions 14 – 15 in full. If you wish to be considered for only one type of independent directorship, you are not required to answer the question or questions pertaining to the other type of independent directorship, although you may choose to do so if you wish to highlight relevant knowledge or experience in the areas addressed in those questions.

12. Type of Independent Directorship Being Sought. Please check one or both of the boxes below to indicate the type of independent directorship you are seeking.

☐ Check if you are seeking a public interest independent directorship.

☐ Check if you are seeking a regular independent directorship.

Public Interest Independent Directorship

By statute, a nominee for a public interest independent directorship must have "more than 4 years of experience in representing consumer or community interests on banking services, credit needs, housing, or consumer financial protections." Qualifying experience in one of the four enumerated areas may have been acquired in professional, public service, or volunteer positions, so long as the work done was substantial in terms of time commitment and responsibility. As indicated by the statute's use of the word "representing," the experience must have involved advocating for, or otherwise acting primarily for the direct benefit of, consumer or community interests in one of the four enumerated areas. Further, the experience must accrue from activities personally undertaken by the individual seeking nomination as a public interest independent director, as opposed to being attributed based solely on the activities of an organization with which the person was associated. Please reach out to the Bank if you have questions as to whether your experience meets the statutory requirements to qualify for service as a public interest independent director.

13. Representation of Consumer and Community Interests. Please explain in detail how you have represented consumer or community interests in banking services, credit needs, housing, or consumer financial protections for more than four years. At a minimum:

- Identify the positions through which you obtained your qualifying experience and specify the dates during which you served in those positions.
- Specify whether those positions involved banking services, credit needs, housing, or consumer financial protections.
- To the extent that your experience was obtained with an organization or agency, describe generally the mission of each such organization or agency and the manner in which its mission is typically fulfilled.
- Describe your responsibilities in those positions and, if any were not full-time paid employment, indicate the amount of time you spent fulfilling those responsibilities annually.
- Describe your major accomplishments in those positions that relate to the experience needed to qualify as a public interest independent director.

Answer to Question 13

Regular Independent Directorship

If you are seeking a regular independent directorship, please answer in full Questions 14 – 15, which pertain to your professional qualifications to serve in that capacity. If you are seeking a public interest independent directorship, you are not required to answer these questions, but may choose to do so if you possess relevant knowledge and experience that you wish to highlight.

14. Primary Areas of Knowledge and Experience. Please indicate below, by checking the appropriate boxes, the professional areas in which you have significant knowledge or experience that is commensurate with that needed to oversee a financial institution with a size and complexity comparable to that of the Bank.

- ☐ Auditing and accounting
- ☐ Derivatives
- ☐ Financial management
- ☐ Organizational management
- ☐ Project development
- ☐ Risk management practices
- ☐ The law

15. Description of Knowledge and Experience. For each of your primary areas of professional knowledge and experience indicated in response to Question 14, please describe in detail the nature of that knowledge and experience and the circumstances under which you obtained it. At a minimum, for each area:

- Identify the entities with which you were employed or otherwise associated when you gained the knowledge or experience and briefly describe the business or mission of those entities (e.g., "investment bank," "law firm," etc.).
- Identify the positions you have held with those entities and describe your major accomplishments in those positions with respect to the relevant areas.

Note if more space needed for answer to Question 15, continue typing response onto page 11.

Continuation of Answer to Question 15

Other Matters

16. **Personal Integrity.** Is there anything in your background that might cause a reasonable person to question your personal integrity, your ability to fulfill the fiduciary duties of a board director, or your competence to supervise the management of the Bank (issues of concern could include, but are not limited to: past felony convictions or pending felony charges; any findings by a court or administrative body that you have violated federal or state civil laws relating to securities, banking, housing, or real estate; suspension or revocation of a professional license; a personal or business bankruptcy filing; a foreclosure action; or having been the subject of a tax lien)?

☐ Yes ☐ No

If you answered Yes, please fully describe the incidents, the timeframes in which they occurred, and their ultimate disposition and provide supporting documentation where appropriate.

17. Conflicts of Interest. Other than any relationships described in response to Questions 7 – 8, do you or, to your knowledge, do any of your immediate family members (i.e., a parent, sibling, spouse, child, other dependent, or any relative sharing your residence) or close business associates (i.e., a corporation or organization of which you are an officer or a partner, or in which you own more than ten percent of any class of equity security (including subordinated debt); an individual that is an officer or a partner of, or who owns more than ten percent of any class of equity security (including subordinated debt) in, such a corporation or organization; or a trust in which you have a substantial interest or serve in a fiduciary capacity) have any financial interests or other relationships that might create actual or apparent conflicts of interest or might otherwise lead a reasonable person to question your ability to administer the affairs of the Bank fairly and impartially?

☐ Yes ☐ No

If you answered Yes, please fully describe the nature of those interests or relationships, the individuals or entities involved, and their relationship to you.

By executing this Form, you are certifying that:

- **The information you have provided is true, correct, and complete to the best of your knowledge;**
- **You acknowledge that the Bank and the Federal Housing Finance Agency may perform a background check on you, including without limitation regarding any information disclosed herein;**
- **You understand that you have a continuing obligation to inform the Bank of any facts that may call into question your eligibility or ability to serve as a Bank director; and**
- **If you are nominated and elected to serve as a Bank director:**
  - **You and your spouse will relinquish any positions that the Bank determines to be prohibited by the statutory and regulatory independence requirements for independent directors; and**
  - **You will regularly attend the meetings of the Bank's board of directors and the Bank's board committees to which you are assigned and will devote the time necessary to adequately prepare for those meetings and execute your other responsibilities as an independent director.**

Signature/Date:

Reminder: Apply your electronic signature above here. If you physically sign, please include date.

Privacy Act Statement: In accordance with the Privacy Act (5 U.S.C. 552a), the following notice is provided. This information is solicited under authority of 12 U.S.C. 1427(a) and (b) and 12 CFR 1261.5, 1261.7, and 1261.10 to 1261.13. Furnishing the information on this Form is voluntary, but failure to do so may result in your not meeting the statutory and regulatory eligibility requirements to serve as a Federal Home Loan Bank independent director. The purpose of this information is to facilitate the timely determination of your eligibility to serve as an independent director. Information may be disclosed in accordance with the routine uses identified in FHFA-System of Records Notice FHFA-8 Federal Home Loan Bank Directors, which may be found on the FHFA privacy webpage here.

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

OMB No. 2590-0006
Expires 07/31/2024

FEDERAL HOUSING FINANCE AGENCY

Federal Home Loan Bank Independent Director
Annual Certification Form

FHFA Form #130
(03/2023)

INSTRUCTIONS | Clear Form

The Federal Home Loan Bank of (Bank) is required by law to solicit information from its incumbent directors annually to verify that each director remains in compliance with the applicable statutory and regulatory eligibility requirements. Your responses to the questions on this **Federal Home Loan Bank Independent Director Annual Certification Form** will assist the Bank in verifying that you continue to meet the eligibility requirements that apply to the independent directorship in which you are currently serving.

Please complete and execute this Form and return it to the Bank on or before .

If you fail to submit a completed and executed Form by that date, or if you submit a Form that does not adequately demonstrate that you continue to meet all applicable eligibility requirements, the Bank may determine that you are ineligible to serve, in which case the Bank would be required by law to declare your directorship vacant.

You are eligible to serve as an independent director of the Bank only if you meet all of the following requirements:

- You are a citizen of the United States.
- You are a *bona fide* resident of the Bank District, as determined by meeting either one of the following two sets of criteria:
  - Your principal residence is located in the Bank District; or
  - You both:
    - Own or lease in your own name a residence in the Bank District; and
    - Are employed in a voting state in the Bank District.
- Neither you nor your spouse are:
  - An officer of any Federal Home Loan Bank; or
  - An officer, employee, or director of any member of, or recipient of advances from, the Bank. For purposes of this prohibition:
    - "Advances" includes any form of lending, regardless of whether it is denominated as an "advance"; and
    - "Member" and "recipient of advances" include the institution itself and the institution's holding company, except where the assets of all members or all recipients of advances constitute less than 35 percent of the assets of the holding company, on a consolidated basis.

These eligibility requirements may be found in sections 7(a) and (b) of the Federal Home Loan Bank Act, 12 U.S.C. 1427(a) and (b), and in Federal Housing Finance Agency regulations at 12 CFR 1261.5(c) and 1261.10.

PERSONAL INFORMATION

Please provide your personal information as indicated in Questions 1 – 4.

1. **Full Name:**
2. **Other Names Used or Known by:**
3. **Contact Information:**

Phone Number:

Home: Office: Cell:

Email Address:

Mailing Address:

Number/Street (or PO Box) City State ZIP Code

4. **Current Employment, if applicable:**

Current Employer:

Your Title:

Your Employment Address:

Number/Street (or PO Box) City State ZIP Code

ELIGIBILITY REQUIREMENTS

Please answer Questions 5 – 8, regarding your eligibility to serve as an independent director in full.

Citizenship and Residency

You must meet the legal requirements as to U.S. citizenship and Bank District residency to be eligible for nomination for an independent directorship.

5. **Citizenship.**

Are you a citizen of the United States? ☐ Yes ☐ No

6. **Residency.**

A. Please provide the street address of your principal residence.

Address:

Number/Street City State ZIP Code

If the residence entered in response to Question 6A is located within the Bank District, you meet the residency requirement and may skip to Question 7.

If your principal residence is not located within the Bank District, you may still meet the residency requirement if you own or lease another residence located within the Bank District and are employed within the Bank District; in this case, please continue with Question 6B. If you do not own or lease any residence within the Bank District, you are ineligible to be nominated for an independent directorship.

B. If your principal residence is not located within the Bank District, but you own or lease another residence within the Bank District, please provide the address of that residence.

Address:

Number/Street City State ZIP Code

C. Are you employed within the Bank District? ☐ Yes ☐ No

D. If you answered Yes to Question 6C, please identify your in-District employer:

☐ Check if your in-District employment information is the same as that entered in response to Question 4.

☐ Check if your in-District employment information is different from that entered in response to Question 4, then provide the following information:

Name of Your In-District Employer:

Your Title:

Your Employment Address:

Number/Street City State ZIP Code

Independence

The information you provide below will enable the Bank to determine whether you continue to meet the independence requirements. You may be nominated if you do not currently meet the independence requirements, but you must agree as part of the certification at the end of this Form that you and your spouse will relinquish any positions that the Bank determines to be prohibited under those requirements. If elected, you may not be seated as an independent director so long as you or your spouse hold any such prohibited positions and, once seated, would become ineligible to continue to serve as an independent director if you or your spouse were to take any such prohibited positions.

7. Employment by a Federal Home Loan Bank.

A. Are you or your spouse an officer or employee of any Federal Home Loan Bank? ☐ Yes ☐ No

B. If you answered Yes to Question 7A, please provide the following information for each such position held by you or your spouse:

Name of the Person Holding the Position:

Federal Home Loan Bank of:

Title:

Date Position Began:

8. Employment by a Bank Member, Housing Associate, or Holding Company.

A. Are you or your spouse an officer, director, or employee of a member of the Bank, an entity certified as a housing associate of the Bank, or a holding company that controls one or more members or housing associates of the Bank? ☐ Yes ☐ No

B. If you answered Yes to Question 8A, please provide the following information for each such position held by you or your spouse:

Name of the Person Holding the Position:

Name of the Employer:

Choose the appropriate response below to indicate whether the employer is:

☐ a member

☐ a holding company of a member

☐ a housing associate

☐ a holding company of a housing associate

Title:

Date Position Began:

If the employer is a holding company:

- Indicate the total assets of the holding company;
- Indicate the total assets of each member or housing associate of the Bank controlled by the holding company; and
- Provide, or direct the Bank to, documentation to support those amounts.

Note if more space needed for answer to Question 8, continue typing response onto page 5.

Continuation of Answer to Question 8
By executing this Form, you are certifying that the information you have provided is true, correct, and complete to the best of your knowledge and that you understand that you have a continuing obligation to inform the Bank of any facts that may call into question your eligibility or ability to serve as a Bank director. You further acknowledge that the Bank and the Federal Housing Finance Agency may perform a background check on you, including without limitation regarding any information disclosed herein.
Signature/Date: *Reminder: Apply your electronic signature above here. If you physically sign, please include date.*
Privacy Act Statement: In accordance with the Privacy Act (5 U.S.C. 552a), the following notice is provided. This information is solicited under authority of 12 U.S.C. 1427(a) and (b) and 12 CFR 1261.5, 1261.7, and 1261.10 to 1261.13. Furnishing the information on this Form is voluntary, but failure to do so may result in your not meeting the statutory and regulatory eligibility requirements to continue to serve as a Federal Home Loan Bank independent director. The purpose of this information is to facilitate the timely determination of your eligibility to continue to serve as an independent director. Information may be disclosed in accordance with the routine uses identified in FHFA-System of Records Notice FHFA-8 Federal Home Loan Bank Directors, which may be found at here.
Paperwork Reduction Act Statement: Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.
OMB No. 2590-0006 **Expires 07/31/2024**

[FR Doc. 2024–12506 Filed 6–6–24; 8:45 am]
BILLING CODE 8070–01–C

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Reporting, Recordkeeping, and Disclosure Requirements Associated with the Consumer Financial Protection Bureau's (CFPB) Home Mortgage Disclosure Act (HMDA) Loan/Application Register Required by Regulation C (FR HMDA LAR; OMB No. 7100–0247).

DATES: Comments must be submitted on or before August 6, 2024.

ADDRESSES: You may submit comments, identified by FR HMDA LAR, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–

4775, 2001 C St. NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed 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;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Collection title: Reporting, Recordkeeping, and Disclosure Requirements Associated with the CFPB's Home Mortgage Disclosure Act Loan/Application Register Required by Regulation C.

Collection identifier: FR HMDA LAR.

OMB control number: 7100–0247.

General description of collection: The Home Mortgage Disclosure Act (HMDA) was enacted in 1975 and is implemented by Regulation C. Generally, the HMDA requires certain depository and non-depository institutions that make certain mortgage loans to collect, report, and disclose data about originations and purchases of mortgage loans, as well as loan applications that do not result in originations (for example, applications that are denied or withdrawn).

The FR HMDA LAR is the Board's information collection associated with the Consumer Financial Protection Bureau's (CFPB's) Regulation C. The FR HMDA LAR is used to (1) help determine whether financial institutions are serving the housing needs of their communities, (2) assist public officials in distributing public-sector investments so as to attract private investment to areas where it is needed, and (3) assist in identifying possible discriminatory lending patterns and enforcing anti-discrimination statutes.

Frequency: Quarterly and annually.

Respondents: Except those that are supervised by the CFPB: state member banks, their subsidiaries, subsidiaries of bank holding companies, subsidiaries of savings and loan holding companies, U.S. branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601–604a; 611–631).

Total estimated number of respondents: 654.

Total estimated annual burden hours: 960,235.

Board of Governors of the Federal Reserve System, June 4, 2024.

Benjamin W. McDonough,

Deputy Secretary and Ombuds of the Board.

[FR Doc. 2024–12499 Filed 6–6–24; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Financial Statements for Holding Companies (FR Y–9 Reports; OMB No. 7100–0128).

DATES: Comments must be submitted on or before August 6, 2024.

ADDRESSES: You may submit comments, identified by FR Y–9 reports, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*

• *Email: regs.comments@federalreserve.gov*. Include the OMB number or FR number in the subject line of the message.

• *FAX:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed 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;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection

Collection title: Financial Statements for Holding Companies.

Collection identifier: FR Y–9 reports.

OMB control number: 7100–0128.

General description of collection: The Board requires bank holding companies, most savings and loan holding companies, securities holding companies, and U.S. intermediate holding companies (collectively, HCs) to provide standardized financial statements through one or more of the FR Y–9 reports. The information collected on the FR Y–9 reports is necessary for the Board to identify emerging financial risks and monitor the safety and soundness of HC operations.

The Consolidated Financial Statements for Holding Companies (FR Y–9C) consists of standardized financial statements for HCs similar to the Call Reports filed by commercial banks. The FR Y–9C collects consolidated data and is filed quarterly by top-tier HCs with total consolidated assets of $3 billion or more.

The Parent Company Only Financial Statements for Large Holding Companies (FR Y–9LP), must be submitted quarterly by each HC that files the FR Y–9C, as well as by each of its subsidiary HCs. The report consists of standardized financial statements, including the following schedules: Income Statement, Cash Flow Statement, Balance Sheet, Investments in Subsidiaries and Associated Companies, Memoranda, and Notes to the Parent Company Only Financial Statements.

The Parent Company Only Financial Statements for Small Holding Companies (FR Y–9SP), is filed semiannually by HCs with total consolidated assets of less than $3 billion. In a banking organization with total consolidated assets of less than $3 billion that has tiered HCs, each HC in the organization must submit, or have the top-tier HC submit on its behalf, a separate FR Y–9SP. This report collects basic balance sheet and income data for the parent company, as well as data on its intangible assets and intercompany transactions.

The Financial Statements for Employee Stock Ownership Plan Holding Companies (FR Y–9ES) is filed annually by each employee stock ownership plan (ESOP) that is also an HC. The report collects financial data on the ESOP's benefit plan activities. The FR Y–9ES consists of four schedules: Statement of Changes in Net Assets Available for Benefits, Statement of Net Assets Available for Benefits, Memoranda, and Notes to the Financial Statements.

The instructions to each of the FR Y–9C, FR Y–9LP, FR Y–9SP, and FR Y–9ES state that respondent HCs should retain workpapers and other records used in the preparation of the reports for a period of three years following submission. In addition, HCs must maintain in their files a manually signed and attested printout of the data submitted under each form for a period of three years.

The Supplement to the Consolidated Financial Statements for Holding Companies (FR Y–9CS) is a voluntary, free-form supplemental report that the Board may utilize to collect critical additional data deemed to be needed from HCs in an expedited manner. The FR Y–9CS data collections are used to assess and monitor emerging issues related to HCs, and the report is intended to supplement the other FR Y–9 reports. The data requested by the FR Y–9CS would depend on the Board's data needs in any given situation. For example, changes made by the Financial Accounting Standards Board may introduce into generally accepted accounting principles new data items that are not currently collected by the other FR Y–9 reports. The Board could use the FR Y–9CS report to collect these data until the items are implemented into the other FR Y–9 reports.

Proposed revisions: The Board proposes to revise the FR Y–9C and FR Y–9LP to align with the definition of loan modifications to borrowers experiencing financial difficulty, as described in Accounting Standards Update 2022–02, ''Financial Instruments—Credit Losses (Topic 326): Troubled Debt Restructurings and Vintage Disclosures''. Additionally, the Board proposes to replace, as appropriate, references to ''troubled debt restructurings'' with ''modifications to borrowers experiencing financial difficulty'' in the FR Y–9C and FR Y–9LP. All of the proposed changes to the FR Y–9C and FR Y–9LP would take effect as of the December 31, 2024, report date. There are no proposed revisions at this time for the FR Y–9SP, FR Y–9ES, or FR Y–9CS.

The Board invites comment on this proposal and acknowledges that this proposal to report ''loan modifications to borrowers experiencing financial difficulty'' may diverge from the proposed changes to the Call Report.[1] Therefore, the Board is specifically interested in the following:

1. What challenges, if any, would HCs face if the FR Y–9C and FR Y–9LP reporting definitions were out of sync with the Call Report?

2. What challenges, if any, would HCs face if loan modifications to borrowers experiencing financial difficulty were reported on the FR Y–9C and FR Y–9LP using a 12-month lookback, and different lookback criteria were used on the Call Report? If the Call Report used different lookback criteria, would it be preferable for the FR Y–9C and FR Y–9LP to adopt the same definition?

[1] *See* 88 FR 66933 (September 28, 2023)

Frequency: Quarterly, semiannual, annual, and as needed.

Respondents: HCs.

Total estimated number of respondents:

Reporting: FR Y–9C (non-advanced approaches holding companies with less than $5 billion in total assets): 107; FR Y–9C (non-advanced approaches holding companies with $5 billion or more in total assets): 236; FR Y–9C (advanced approaches holding companies): 9; FR Y–9LP: 411; FR Y–9SP: 3,596; FR Y–9ES: 73; FR Y–9CS: 236.

Recordkeeping: FR Y–9C: 352; FR Y–9LP: 411; FR Y–9SP: 3,596; FR Y–9ES: 73; FR Y–9CS: 236.

Estimated average hours per response:

Reporting: FR Y–9C (non-advanced approaches holding companies with less than $5 billion in total assets): 35.34; FR Y–9C (non-advanced approaches holding companies with $5 billion or more in total assets): 44.54; FR Y–9C (advanced approaches holding companies): 49.76; FR Y–9LP: 5.27; FR Y–9SP: 5.45; FR Y–9ES: 0.50; FR Y–9CS: 0.50.

Recordkeeping: FR Y–9C: 1; FR Y–9LP: 1; FR Y–9SP: 0.50; FR Y–9ES: 0.50; FR Y–9CS: 0.50.

Total estimated change in burden: 0.

Total estimated annual burden hours: 114,489.

Board of Governors of the Federal Reserve System, June 4, 2024.

Benjamin W. McDonough,

Deputy Secretary and Ombuds of the Board.

[FR Doc. 2024–12553 Filed 6–6–24; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations, and Financial Statements of U.S. Nonbank Subsidiaries of U.S. Holding Companies (FR 2314, FR 2314S Y–11, Y–11S; OMB No. 7100–0073).

DATES: Comments must be submitted on or before August 6, 2024.

ADDRESSES: You may submit comments, identified by FR 2314 and FR Y–11, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/*. Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx*.
- *Email: regs.comments@federalreserve.gov*. Include the OMB number or FR number in the subject line of the message.
- *FAX:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St. NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining

whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed 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;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection

Collection title: Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations, and Financial Statements of U.S. Nonbank Subsidiaries of U.S. Holding Companies.

Collection identifier: FR 2314, FR 2314S, Y–11, Y–11S; OMB No. 7100–0073.

OMB control number: 7100–0073.[1]

General description of collection: The FR 2314 reporting forms collect financial information for non-functionally regulated direct or indirect foreign subsidiaries of U.S. state member banks, Edge and agreement corporations, and holding companies (*i.e.,* bank holding companies, savings and loan holding companies, securities holding companies, and intermediate holding companies). The data from the FR 2314 forms are used to identify current and potential problems at the foreign subsidiaries of U.S. parent companies, to monitor the activities of U.S. banking organizations in specific countries, and to develop a better understanding of activities within the industry, in general, and of individual institutions, in particular.

The FR Y–11 reporting forms collect financial information for individual non-functionally regulated U.S. nonbank subsidiaries of domestic holding companies (HCs), which is essential for monitoring the subsidiaries' potential impact on the condition of the HC or its subsidiary banks. HCs file the FR Y–11 on a quarterly or annual basis, or the FR Y–11S on an annual basis, predominantly based on whether the organization meets certain asset size thresholds. The data from the FR Y–11 forms are used with other holding company data to assess the condition of HCs that are heavily engaged in nonbanking activities and to monitor the volume, nature, and condition of their nonbanking operations.

Proposed revisions: The Board proposes to revise the FR 2314 and FR Y–11 forms and instructions to be consistent with adopted changes to U.S. generally accepted accounting principles related to troubled debt restructurings, provisions for credit losses on off-balance sheet credit exposures, and expected recoveries of amounts previously charged off included within the allowances for credit losses. The Board also proposes to revise the FR 2314 and FR Y–11 instructions by modifying and clarifying the recordkeeping requirements related to the submitted form. Additionally, the Board proposes to incorporate six line items from the FR 2502q, Quarterly Report of Assets and Liabilities of Large Foreign Offices of U.S. Banks (OMB Control No. 7100–0079), into the FR 2314. The revisions are proposed to take effect for the December 31, 2024, as-of date.

Lastly, following the completion of this clearance, the Board will remove the Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations (FR Y–7N) and Abbreviated Financial Statements of U.S. Nonbank Subsidiaries Held by Foreign Banking Organizations (Y–7NS) from OMB No. 7100–0125. These reports will be moved to the OMB No. for the Financial Statement of Foreign Subsidiaries of U.S. Banking Organizations, Financial Statement of U.S. Nonbank Subsidiaries of U.S. Holding Companies (FR 2314, FR 2314S, FR Y–11, FR Y–11S; OMB No. 7100–0073). There are no proposed revisions to the FR 2314S and FR Y–11S at this time.

Frequency: Quarterly and annually.

Respondents: U.S. banking organizations and U.S. holding companies.

Total estimated number of respondents: Reporting: FR 2314 (quarterly): 434; FR 2314 (annually): 223; FR 2314S: 295; FR Y–11 (quarterly): 386; FR Y–11 (annually): 211; FR Y–11S: 286. *Recordkeeping:* FR 2314 (quarterly): 421; FR 2314 (annually): 223; FR 2314S: 295; FR Y–11 (quarterly): 386; FR Y–11 (annually): 211; FR Y–11S: 286.

Estimated average hours per response: Reporting: FR 2314 (quarterly): 8.1; FR 2314 (annually): 7.9; FR 2314S: 1; FR Y–11 (quarterly): 8.3; FR Y–11 (annually): 8.3; FR Y–11S: 1. *Recordkeeping:* FR 2314 (quarterly): 0.2; FR 2314 (annually): 0.2; FR 2314S: 0.2; FR Y–11 (quarterly): 0.2; FR Y–11 (annually): 0.2; FR Y–11S: 0.2.

Total estimated change in burden: 3,796.

Total estimated annual burden hours: 31,820.

Board of Governors of the Federal Reserve System, June 4, 2024.

Benjamin W. McDonough,

Deputy Secretary and Ombuds of the Board.

[FR Doc. 2024–12555 Filed 6–6–24; 8:45 am]

BILLING CODE 6210–01–P

[1] As part of this clearance, the Board will clear the FR 2314, FR 2314S, Y–11, and FR Y–11S under the FR 2314 OMB control number (7100–0073), and then discontinue the FR Y–11's separate OMB control number (7100–0244). This non-substantive change is aimed at simplifying the tracking and clearance process for the four related forms. This change would not modify the reporting or recordkeeping requirements of the forms described in this Supporting Statement in any way. The collection will then be titled Financial Statements of U.S. Nonbank Subsidiaries of U.S. Holding Companies and Financial Statements of Foreign Subsidiaries of U.S. Banking Organizations (FR 2314, FR 2314S, FR Y–11, and FR Y–11S; OMB No. 7100–0073).

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Interagency Bank Merger Act Application (FR 2070; OMB No. 7100–0171).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements (which contain more detailed information about the information collections and burden estimates than this notice), and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collection

Collection title: Interagency Bank Merger Act Application.

Collection identifier: FR 2070.

OMB control number: 7100–0171.

General description of collection: The Board, Office of the Comptroller of the Currency, and Federal Deposit Insurance Corporation each use this reporting form to collect information on depository institution merger proposals that require prior approval under the Bank Merger Act. The Board collects the information gathered by the FR 2070 so that it may meet its statutory obligations with respect to each merger proposal in which the acquiring, assuming, or resulting bank would be a state member bank (SMB).

Frequency: Event-generated.

Respondents: SMBs regulated by the Board.

Total estimated number of respondents: 65.

Total estimated annual burden hours: 2,183.

Current actions: On January 29, 2024, the Board published a notice in the **Federal Register** (89 FR 5542) requesting public comment for 60 days on the extension, without revision, of the FR 2070. The comment period for this notice expired on March 29, 2024. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, June 4, 2024.

Benjamin W. McDonough,

Deputy Secretary and Ombuds of the Board.

[FR Doc. 2024–12498 Filed 6–6–24; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision, the Reports of Foreign Banking Organizations (FR Y–7N, FR Y–7NS, and FR Y–7Q; OMB No. 7100–0125).

DATES: Comments must be submitted on or before August 6, 2024.

ADDRESSES: You may submit comments, identified by FR Y–7N, FR Y–7NS, and FR Y–7Q, by any of the following methods:

- *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St. NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than

this notice), and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above. On the page displayed at the link above, you can find the supporting information by referencing the collection identifier, FR Y–7N, FR Y–7NS, and FR Y–7Q. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposals

The Board invites public comment on the following information collections, which are being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collections of information are necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed information collections, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collections

Collection title: Reports of Foreign Banking Organizations.

Collection identifier: FR Y–7N, FR Y–7NS, and FR Y–7Q.

OMB control number: 7100–0125.

General description of collection: The FR Y–7N and FR Y–7NS collect financial information for certain non-functionally regulated U.S. nonbank subsidiaries held by foreign banking organizations (FBOs) other than through a U.S. bank holding company, financial holding company (FHC), or U.S. bank. For purposes of these reports, an FBO is a foreign bank that operates a branch, agency, or commercial lending company subsidiary in the United States; controls a bank in the United States; or controls an Edge corporation acquired after March 5, 1987. FBOs file the FR Y–7N quarterly or annually or the FR Y–7NS annually, predominantly based on asset size thresholds. The Federal Reserve uses the data collected on the FR Y–7N, FR Y–7NS, and FR Y–7Q to assess an FBO's ability to be a continuing source of strength to its U.S. operations and to determine compliance with applicable U.S. laws and regulations. In addition, the FR Y–7Q collects consolidated regulatory capital information from all FBOs, which the Federal Reserve uses to assess the FBO's ability to be a continuing source of strength to its U.S. banking operations and to determine compliance with U.S. laws and regulations.

Proposed revisions: The Board proposes to revise the FR Y–7N forms and instructions to be consistent with adopted changes to U.S. generally accepted accounting principles (GAAP) related to troubled debt restructurings (TDRs), provisions for credit losses on off-balance sheet credit exposures, and expected recoveries of amounts previously charged off included within the allowances for credit losses. The Board also proposes to revise the FR Y–7N and FR Y–7NS instructions by modifying and clarifying the recordkeeping requirements of the submitted form. Lastly, the Board proposes to remove the FR Y–7N and Y–7NS from OMB No. 7100–0125 and transfer to the OMB No. for the Financial Statement of Foreign Subsidiaries of U.S. Banking Organizations, Financial Statement of U.S. Nonbank Subsidiaries of U.S. Holding Companies (FR 2314, FR 2314S, FR Y–11, FR Y–11S; OMB No. 7100–0073). The revisions are proposed to take effect for the December 31, 2024, as-of date. There are no proposed revisions to the FR Y–7Q at this time.

Frequency: Quarterly, annually.

Respondents: FBOs.

Total estimated number of respondents: 197.

Total estimated change in burden: 221.

Total estimated annual burden hours: 2,856.

Board of Governors of the Federal Reserve System, June 4, 2024.

Benjamin W. McDonough,

Deputy Secretary and Ombuds of the Board.

[FR Doc. 2024–12554 Filed 6–6–24; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, without revision, the Interagency Notice of Change in Control, Interagency Notice of Change in Director or Senior Executive Officer, and Interagency Biographical and Financial Report (FR 2081a, b, and c; OMB No. 7100–0134).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements (which contain more detailed information about the information collections and burden estimates than this notice), and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Information Collections

Collection title: Interagency Notice of Change in Control.

Collection identifier: FR 2081a.

OMB control number: 7100–0134.

General description of collection: The FR 2081a must be submitted in connection with the acquisition or, in certain circumstances, the retention of control of a state member bank (SMB), savings and loan holding company (SLHC), or bank holding company (BHC) (or group of BHCs or SLHCs) by an individual, a group of individuals, a company, or a group of companies that would not be BHCs or SLHCs after consummation of the proposed transaction. The notice must be submitted to the appropriate Reserve Bank and include a description of the proposed transaction, the purchase price and funding source, the personal and financial information of the proposed acquirer(s), and any proposed new management.

Frequency: Event-generated.

Respondents: SMBs, BHCs, SLHCs, and associated individuals.

Total estimated number of respondents: 153.

Estimated average hours per response: Reporting, 17; Disclosure, 1.

Total estimated annual burden hours: 2,754.

Collection title: Interagency Notice of Change in Director or Senior Executive Officer.

Collection identifier: FR 2081b.

OMB control number: 7100–0134.

General description of collection: The FR 2081b is used, under certain circumstances, to notify the appropriate Reserve Bank of a proposed change to an institution's board of directors or senior executive officers. The notice must be filed if the institution is not in compliance with all minimum capital requirements, is in troubled condition, or is otherwise required by the Board to provide such notice. The reporting form may be filed by the relevant SMB, SLHC, or BHC, or by the affected individual.

Frequency: Event-generated.

Respondents: SMBs, BHCs, SLHCs, and associated individuals.

Total estimated number of respondents: 112.

Estimated average hours per response: 2.

Total estimated annual burden hours: 224.

Collection title: Interagency Biographical and Financial Report.

Collection identifier: FR 2081c.

OMB control number: 7100–0134.

General description of collection: The FR 2081c is used by certain shareholders, directors, and executive officers in connection with the FR 2081a, FR 2081b, as well as applications for BHC and SLHC formations, acquisitions, and mergers, among other filings. Information requested on this reporting form is subject to verification and requests for clarification or supplementation may be necessary. The FR 2081c requests the following information: (1) certain biographical information, such as personal information, employment records, education and professional credentials, and business and banking affiliations; (2) certain legal and related information; and (3) a financial report on the notificant, including a balance sheet, a cash flow statement, and various supporting schedules.

Frequency: Event-generated.

Respondents: SMBs, BHCs, SLHCs, and associated individuals.

Total estimated number of respondents: 906.

Estimated average hours per response: 5.

Total estimated annual burden hours: 4,530.

Current actions: On January 29, 2024, the Board published a notice in the **Federal Register** (89 FR 5540) requesting public comment for 60 days on the extension, without revision, of the FR 2081a, b, and c. The comment period for this notice expired on March 29, 2024. The Board did not receive any comments.

Board of Governors of the Federal Reserve System, June 4, 2024.

Benjamin W. McDonough,

Deputy Secretary and Ombuds of the Board.

[FR Doc. 2024–12557 Filed 6–6–24; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) is adopting a proposal to extend for three years, with revision, the Government Securities Dealers Reports (FR 2004; OMB No. 7100–0003).

DATES: The revisions are effective July 3, 2024.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. The OMB inventory, as well as copies of the PRA Submission, supporting statements (which contain more detailed information about the information collections and burden estimates than this notice), and approved collection of information instrument(s) are available at *https://www.reginfo.gov/public/do/PRAMain.* These documents are also available on the Federal Reserve Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above. On the page displayed at the link above, you can find the supporting information by referencing the collection identifier, FR 2004.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Revision, of the Following Information Collection

Collection title: Government Securities Dealers Reports.

Collection identifier: FR 2004.

OMB control number: 7100–0003.

General description of collection: This information collection is comprised of the:

- Weekly Report of Dealer Positions (FR 2004A),
- Weekly Report of Cumulative Dealer Transactions (FR 2004B),
- Weekly Report of Dealer Financing and Fails (FR 2004C),
- Weekly Report of Specific Issues (FR 2004SI),
- Daily Report of Specific Issues (FR 2004SD),
- Supplement to the Daily Report of Specific Issues (FR 2004SD ad hoc),
- Daily Report of Dealer Activity in Treasury Financing (FR 2004WI),
- Settlement Cycle Report of Dealer Fails and Transaction Volumes: Class A (FR 2004FA),
- Settlement Cycle Report of Dealer Fails and Transaction Volumes: Class B (FR 2004FB),

• Settlement Cycle Report of Dealer Fails and Transaction Volumes: Class C (FR 2004FC), and

• Settlement Cycle Report of Dealer Fails and Transaction Volumes (FR 2004FM).

The Federal Reserve Bank of New York, on behalf of the Federal Reserve System, collects data from primary dealers in the U.S. Government securities market. Filing of these data is required to obtain the benefit of primary dealer status. The Federal Reserve uses these data to (1) monitor the condition of the U.S. Government securities market in its Treasury market surveillance and analysis of the market and (2) assist and support the U.S. Department of the Treasury (Treasury) in its role as fiscal agent for Treasury financing operations. In addition, these data are used in the analysis of broad financial conditions and a range of financial stability issues.

Frequency: Weekly, monthly, daily, and event-generated.

Respondents: Primary Government security dealers.

Total estimated number of respondents: 24.

Total estimated change in burden: 1,310.

Total estimated annual burden hours: 35,189.

Current actions: On January 29, 2024, the Board published a notice in the **Federal Register** (89 FR 5539) requesting public comment for 60 days on the extension, with revision, of the FR 2004. Since the last clearance, a new type of repo financing called ''sponsored general collateral repo'' has gained significant popularity among clients of primary dealers. Such type of financing is not separately listed in the current FR 2004C. To improve our ability to track the usage of this product by primary dealers, the Board proposed to revise the FR 2004C for each asset category by adding three columns to separately capture sponsored general collateral Triparty Repo financing by maturity tenors. The comment period for this notice expired on March 29, 2024. The Board received one comment from a financial services group. The commenter stated that the proposed June 5, 2024, implementation date conflicted with the T–1 go live and competed with limited IT resources. After consideration, the Board will extend the implementation date to July 3, 2024. Aside from the change discussed above, the Board adopted the extension, with revision, of the FR 2004 as originally proposed.

Board of Governors of the Federal Reserve System, June 4, 2024.

Benjamin W. McDonough,

Deputy Secretary and Ombuds of the Board.

[FR Doc. 2024–12497 Filed 6–6–24; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, with revision the Consolidated Report of Condition and Income for Edge and Agreement Corporations (FR 2886b; OMB No. 7100–0086).

DATES: Comments must be submitted on or before August 6, 2024.

ADDRESSES: You may submit comments, identified by FR 2886b, by any of the following methods:

• *Agency Website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*

• *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.

• *Fax:* (202) 452–3819 or (202) 452–3102.

• *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St. NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St. NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above. On the page displayed at the link above, you can find the supporting information by referencing the collection identifier, FR 2886b. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed 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;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, With Revision, the Following Information Collection

Collection title: Consolidated Report of Condition and Income for Edge and Agreement Corporations.

Collection identifier: FR 2886b.

OMB control number: 7100–0086.

General description of collection: The FR 2886b reporting form is filed quarterly or annually by Edge and agreement corporations (collectively, Edges or Edge corporations). The Board is responsible for authorizing, supervising, and assigning ratings to Edges. The Board and the Federal Reserve Banks use the data collected by the FR 2886b to supervise Edge corporations and to monitor and develop a better understanding of Edge activities.

Proposed revisions: The Board proposes to revise the FR 2886b form and instructions to be consistent with adopted changes to U.S. generally accepted accounting principles (GAAP) related to troubled debt restructurings, provisions for credit losses on off-balance sheet credit exposures, and expected recoveries of amounts previously charged off included within the allowances for credit losses. The Board also proposes to revise the FR 2886b instructions by (1) specifying when respondents should submit their reports if the submission deadline falls on a weekend or holiday, and (2) adding a recordkeeping requirement for respondents to maintain a record of the data submitted for three years. These revisions are proposed to take effect as of the December 31, 2024, as-of date.

Frequency: Quarterly and annually.

Respondents: Edge and agreement corporations.

Total estimated number of respondents: 64.

Total estimated change in burden: 96.

Total estimated annual burden hours: 1,432.

Board of Governors of the Federal Reserve System, June 4, 2024.

Benjamin W. McDonough,

Deputy Secretary and Ombuds of the Board.

[FR Doc. 2024–12556 Filed 6–6–24; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice, request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System (Board) invites comment on a proposal to extend for three years, without revision, the Recordkeeping and Disclosure Requirements Associated with CFPB's Regulation Z (FR Z; OMB No. 7100–0199)

DATES: Comments must be submitted on or before August 6, 2024.

ADDRESSES: You may submit comments, identified by FR Z, by any of the following methods:

- *Agency website: https://www.federalreserve.gov/.* Follow the instructions for submitting comments at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx.*
- *Email: regs.comments@federalreserve.gov.* Include the OMB number or FR number in the subject line of the message.
- *Fax:* (202) 452–3819 or (202) 452–3102.
- *Mail:* Federal Reserve Board of Governors, Attn: Ann E. Misback, Secretary of the Board, Mailstop M–4775, 2001 C St NW, Washington, DC 20551.

All public comments are available from the Board's website at *https://www.federalreserve.gov/apps/foia/proposedregs.aspx* as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any confidential business information, identifying information, or contact information. Public comments may also be viewed electronically or in paper in Room M–4365A, 2001 C St NW, Washington, DC 20551, between 9:00 a.m. and 5:00 p.m. on weekdays, except for Federal holidays. For security reasons, the Board requires that visitors make an appointment to inspect comments. You may do so by calling (202) 452–3684. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

Additionally, commenters may send a copy of their comments to the Office of Management and Budget (OMB) Desk Officer for the Federal Reserve Board, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street, NW, Washington, DC 20503, or by fax to (202) 395–6974.

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer—Nuha Elmaghrabi—Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, *nuha.elmaghrabi@frb.gov,* (202) 452–3884.

SUPPLEMENTARY INFORMATION: On June 15, 1984, OMB delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve and assign OMB control numbers to collections of information conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

During the comment period for this proposal, a copy of the proposed PRA OMB submission, including the draft reporting form and instructions, supporting statement (which contains more detail about the information collection and burden estimates than this notice), and other documentation, will be made available on the Board's public website at *https://www.federalreserve.gov/apps/reportingforms/home/review* or may be requested from the agency clearance officer, whose name appears above. Final versions of these documents will be made available at *https://www.reginfo.gov/public/do/PRAMain,* if approved.

Request for Comment on Information Collection Proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper

performance of the Board's functions, including whether the information has practical utility;

b. The accuracy of the Board's estimate of the burden of the proposed 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;

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Board should modify the proposal.

Proposal Under OMB Delegated Authority To Extend for Three Years, Without Revision, the Following Information Collection

Collection title: Recordkeeping and Disclosure Requirements Associated with CFPB's Regulation Z.

Collection identifier: FR Z.

OMB control number: 7100–0199.

General description of collection: The Truth in Lending Act (TILA) and Regulation Z require creditors to provide consumers with disclosures about the costs, terms, and related information regarding a wide range of credit products for personal, family, or household purposes. Depending on the credit product, required disclosures include information that must be provided at the time of the consumer's application for credit, at consummation (for closed-end credit) or account-opening (for open-end credit), and throughout the term of the loan. The TILA and Regulation Z also contain rules concerning recordkeeping and credit advertising.

The FR Z is the Board's information collection associated with the Consumer Financial Protection Bureau's (CFPB's) Regulation Z. FR Z is used to promote the informed use of credit by consumers for personal, family, or household purposes by requiring these disclosures about the terms and costs of these products, as well as ensuring that consumers are provided with timely information on the nature and costs of the residential real estate settlement process.

Frequency: Event-generated.

Respondents: State member banks with assets of $10 billion or less that are not affiliated with an insured depository institution with assets over $10 billion (irrespective of the consolidated assets of any holding company); non-depository affiliates of such state member banks; and non-depository affiliates of bank holding companies that are not affiliated with an insured depository institution with assets over $10 billion.

Total estimated number of respondents: 3,695.

Total estimated annual burden hours: 387,079.

Board of Governors of the Federal Reserve System, June 4, 2024.

Benjamin W. McDonough,

Deputy Secretary and Ombuds of the Board.

[FR Doc. 2024–12500 Filed 6–6–24; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3457–PN]

Medicare and Medicaid Programs: Application by the Community Health Accreditation Partner (CHAP) Inc. for Continued CMS-Approval of Its Hospice Accreditation Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Notice with request for comment.

SUMMARY: This notice acknowledges the receipt of an application from the Community Health Accreditation Partner for continued recognition as a national accrediting organization for hospices that wish to participate in the Medicare or Medicaid programs.

DATES: To be assured consideration, comments must be received at one of the addresses provided below, no later than 5 p.m. on July 8, 2024.

ADDRESSES: In commenting, refer to file code CMS–3457–PN.

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 *http://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–3457–PN, P.O. Box 8016, Baltimore, MD 21244–8010.

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–3457–PN, Mail Stop C4–26–05, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Submission of comments on paperwork requirements. You may submit comments on this document's paperwork requirements by following the instructions at the end of the ''Collection of Information Requirements'' section in this document. For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

FOR FURTHER INFORMATION CONTACT:

Lillian Williams, (410) 786–8636.

Erin Imhoff, (410) 786–2337.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments: All comments received before the close of the comment period are available for viewing by the public, including any personally identifiable or confidential business information that is included in a comment. We post all comments received before the close of the comment period on the following website as soon as possible after they have been received: *http://www.regulations.gov.* Follow the search instructions on that website to view public comments.

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services in a hospice, provided that certain requirements are met by the hospice. Section 1861(dd) of the Social Security Act (the Act) establishes distinct criteria for facilities seeking designation as a hospice. Regulations concerning provider agreements are at 42 CFR part 489 and those pertaining to activities relating to the survey and certification of facilities are at 42 CFR part 488. The regulations at 42 CFR part 418 specify the conditions that a hospice must meet in order to participate in the Medicare program, the scope of covered services and the conditions for Medicare payment for hospice services.

Generally, to enter into an agreement, a hospice must first be certified by a State survey agency (SA) as complying with the conditions or requirements set forth in part 418. Thereafter, the hospice is subject to regular surveys by a State survey agency to determine whether it continues to meet these requirements.

However, section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by a Centers for Medicare & Medicaid Services (CMS) approved national Accrediting Organization (AO) that all applicable Medicare conditions are met or exceeded, we will deem those provider entities as having met the requirements. Accreditation by an AO is voluntary and is not required for Medicare participation.

If an AO is recognized by the Secretary of the Department of Health and Human Services (the Secretary) as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare conditions. A national AO applying for approval of its accreditation program under part 488, subpart A, must provide CMS with reasonable assurance that the AO requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare conditions. Our regulations concerning the approval of AOs are set forth at §§ 488.4 and 488.5. The regulations at § 488.5(e)(2)(i) require AOs to reapply for continued approval of its accreditation program every 6 years or sooner as determined by CMS.

Community Health Accreditation Partner's (CHAP's) current term of approval for their hospice accreditation program expires February 24, 2025.

II. Approval of Deeming Organizations

Section 1865(a)(2) of the Act and our regulations at § 488.5 require that our findings concerning review and approval of a national AO's requirements consider, among other factors, the applying AO's requirements for accreditation; survey procedures; resources for conducting required surveys; capacity to furnish information for use in enforcement activities; monitoring procedures for provider entities found not in compliance with the conditions or requirements; and ability to provide CMS with the necessary data for validation.

Section 1865(a)(3)(A) of the Act further requires that we publish, within 60 days of receipt of an organization's complete application, a notice identifying the national accrediting body making the request, describing the nature of the request, and providing at least a 30-day public comment period. We have 210 days from the receipt of a complete application to publish notice of approval or denial of the application.

The purpose of this proposed notice is to inform the public of the CHAP request for continued approval of its hospice accreditation program. This notice also solicits public comment on whether the CHAP's requirements meet or exceed the Medicare conditions of participation (CoPs) for hospices.

III. Evaluation of Deeming Authority Request

CHAP submitted all the necessary materials to enable us to make a determination concerning its request for continued approval of its hospice accreditation program. This application was determined to be complete on April 20, 2024. Under section 1865(a)(2) of the Act and our regulations at § 488.5 (Application and re-application procedures for national AO) our review and evaluation of CHAP will be conducted in accordance with, but not necessarily limited to, the following factors:

- The equivalency of CHAP's standards for hospices as compared with CMS' hospice CoPs.
- CHAP's survey process to determine the following:

++ The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training.

++ The comparability of CHAP's processes to those of state agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

++ CHAP's processes and procedures for monitoring hospices, which are found out of compliance with CHAP's program requirements. These monitoring procedures are used only when CHAP identifies noncompliance. If noncompliance is identified through validation reviews or complaint surveys, the SA monitors corrections as specified at § 488.9.

++ CHAP's capacity to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

++ CHAP's capacity to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

++ The adequacy of CHAP's staff and other resources, and its financial viability.

++ CHAP's capacity to adequately fund required surveys.

++ CHAP's policies with respect to whether surveys are announced or unannounced, to ensure that surveys are unannounced.

++ CHAP's policies and procedures to avoid conflicts of interest, including the appearance of conflicts of interest, involving individuals who conduct surveys or participate in accreditation decisions.

++ CHAP's agreement to provide CMS with a copy of the most current accreditation survey, together with any other information related to the survey as we may require (including corrective action plans).

IV. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping, or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

V. Response to Comments

Because of the large number of public comments, we normally receive on **Federal Register** documents, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, when we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Vanessa Garcia, who is the Federal Register Liaison, to electronically sign this document forpurposes of publication in the **Federal Register**.

Vanessa Garcia,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2024–12495 Filed 6–6–24; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–2390]

Proposal To Refuse To Approve a New Drug Application Supplement for HETLIOZ (Tasimelteon); Opportunity for a Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Director of the Center for Drug Evaluation and Research (Center Director) at the Food and Drug Administration (FDA or Agency) is

proposing to refuse to approve a supplemental new drug application (sNDA) submitted by Vanda Pharmaceuticals, Inc. (Vanda), for HETLIOZ (tasimelteon) capsules, 20 milligrams (mg), in its present form. This notice summarizes the grounds for the Center Director's proposal and offers Vanda an opportunity to request a hearing on the matter.

DATES: Either electronic or written requests for a hearing must be submitted by July 8, 2024; submit data, information, and analyses in support of the hearing and any other comments by August 6, 2024.

ADDRESSES: You may submit hearing requests, documents in support of the hearing, and any other comments as follows. Please note that late, untimely filed requests and documents will not be considered. The *https://www.regulations.gov* electronic filing system will accept hearing requests until 11:59 p.m. Eastern Time at the end of July 8, 2024, and will accept documents in support of the hearing and any other comments until 11:59 p.m. Eastern Time at the end of August 6, 2024. Documents received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before these dates.

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov*. Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2022–N–2390 for ''Proposal To Refuse To Approve a New Drug Application Supplement for HETLIOZ (Tasimelteon); Opportunity for a Hearing.'' 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: Christopher Koepke, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Silver Spring, MD 20993, 301–651–7695, *Christopher.Koepke@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION:

I. Proposal To Refuse To Approve sNDA 205677–012

FDA approved new drug application 205677 for HETLIOZ (tasimelteon) capsules for treatment of non-24-hour sleep-wake disorder on January 31, 2014, and for treatment of Smith-Magenis syndrome in patients 16 years of age and older on December 1, 2020. On May 4, 2023, Vanda submitted sNDA 205677–012 for HETLIOZ (tasimelteon) capsules, 20 mg, as an efficacy supplement proposing to add a new indication for the treatment of insomnia characterized by difficulties with sleep initiation.

To support an indication for the treatment of insomnia characterized by difficulties with sleep initiation, Vanda referred to three studies, Study 3101, Study 3104, and Study 3107, as primary support for demonstrating substantial evidence of effectiveness. The application proposes that Studies 3101, 3104, and 3107 together; Study 3104 alone; or Study 3104 with confirmatory evidence, provides substantial evidence of effectiveness for the proposed conditions of use.

On March 4, 2024, the Office of Neuroscience in the Center for Drug Evaluation and Research (CDER) issued a complete response letter to Vanda under § 314.110(a) (21 CFR 314.110(a)) stating that sNDA 205677–012 could not be approved in its present form because the application does not provide substantial evidence of effectiveness for tasimelteon and does not demonstrate that the drug is safe for the treatment of insomnia characterized by difficulties with sleep initiation. The complete response letter described the specific deficiencies that led to this determination and, where possible, recommended ways that Vanda might remedy these deficiencies. Those deficiencies are summarized below.

(1) Studies 3101 and 3107 are not adequate and well-controlled for

insomnia disorder because the design excluded subjects with insomnia disorder, and scientific evidence was not provided to demonstrate that changes in healthy volunteers without insomnia disorder would correspond to a similar degree of response in patients with insomnia disorder (see 21 CFR 314.126(b)(3)).

(2) The application does not include adequate subjective, patient-reported data to demonstrate clinical benefit associated with the polysomnogram findings in Study 3104. Only one subjective endpoint at an early timepoint was found to be nominally significant; no other secondary endpoints were nominally significant, and none were statistically significant. Endpoints derived from patient-reported outcome measures are necessary to demonstrate that the change in sleep latency measured by polysomnogram is perceptible to the patient and that the patient experiences a measurable subjective improvement in symptoms.

(3) The results of Studies 3101 and 3107 do not demonstrate statistically or nominally significant improvements on subjective sleep latency. Furthermore, they are not adequate to provide substantiation of the effect of a drug used for insomnia, which is a chronic indication, because they were single-dose studies in healthy subjects that excluded subjects with insomnia.

(4) The application does not provide longer-term efficacy data to demonstrate that this treatment would be effective for long-term use in this chronic condition.

(5) The application does not provide data to support effectiveness in patients 65 years of age and older with insomnia disorder, who are within the intended patient population according to the proposed conditions of use.

(6) The application does not provide long-term safety data in adults of all ages with insomnia disorder. In addition, the application provided insufficient data to support safety in patients 65 years and older with insomnia disorder.

(7) With respect to the proposals that Study 3104 alone, or with confirmatory evidence, is sufficient to demonstrate substantial evidence of effectiveness, the application does not establish either. Even if Study 3104 did not have the deficiencies described in the complete response letter and summarized above, and even if a single adequate and well-controlled study could be sufficient for the proposed conditions of use, Study 3104 lacks the features of a study that could alone provide substantial evidence of effectiveness. In addition, the confirmatory evidence proposed in the application (*i.e.,* to provide evidence of effectiveness for closely related approved indications, mechanistic data, or the effectiveness of members of the same pharmacological class as tasimelteon) would be insufficient.

These deficiencies preclude a finding that the application provides substantial evidence of effectiveness for tasimelteon or that the application demonstrates that tasimelteon is safe, for the treatment of insomnia characterized by difficulties with sleep initiation. The complete response letter stated that to address the deficiencies, Vanda would need to submit at least one positive, adequate, and well-controlled study that addresses the deficiencies described in the complete response letter.

The complete response letter stated that Vanda is required either to resubmit the application, fully addressing all deficiencies listed in the letter, or take other actions available under § 314.110 (*i.e.,* withdraw the application or request an opportunity for a hearing).

Following the complete response letter, in a letter dated April 11, 2024, Vanda indicated that it wished to receive approval of its application or a notice of opportunity for a hearing. For the reasons described above, FDA cannot approve the application in its current form; thus, we are issuing this notice of opportunity for a hearing.

II. Notice of Opportunity for a Hearing

For the reasons stated above and as explained in the March 4, 2024, complete response letter, notice is given to Vanda and all other interested persons that the Center Director proposes that FDA issue an order refusing to approve sNDA 205677–012 on the grounds that the application fails to meet the criteria for approval under section 505(d) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 355(d)) because there is a lack of substantial evidence that the drug is effective, and the drug has not been shown to be safe, for treatment of insomnia characterized by difficulties with sleep initiation (sections 505(d)(4) and 505(d)(5) of the FD&C Act).[1]

Vanda may request a hearing before the Commissioner of Food and Drugs (the Commissioner) on the Center Director's proposal to refuse to approve sNDA 205677–012. Pursuant to § 314.200(c)(1) (21 CFR 314.200(c)(1)), if Vanda decides to seek a hearing, it must file: (1) a written notice of participation and request for a hearing on or before 30 days after the notice is published in the **Federal Register** and (2) the studies, data, information, and analyses relied upon to justify a hearing, as specified in § 314.200, on or before 60 days after the date the notice is published in the **Federal Register**.

As stated in § 314.200(g), a request for a hearing may not rest upon mere allegations or denials but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing to resolve. We note in this regard that because CDER proposes to refuse to approve sNDA 205677–012 based on the multiple deficiencies summarized above, any hearing request from Vanda should address all those deficiencies. Failure to request a hearing within the time provided and in the manner required by § 314.200 constitutes a waiver of the opportunity to request a hearing. If a hearing request is not properly submitted, FDA will issue a notice refusing to approve sNDA 205677–012.

The Commissioner will grant a hearing if there exists a genuine and substantial issue of fact or if the Commissioner concludes that a hearing would otherwise be in the public interest (see § 314.200(g)(6)). If a hearing is granted, it will be conducted according to the procedures provided in 21 CFR parts 10 through 16 (see 21 CFR 314.201).

Paper submissions under this notice of opportunity for a hearing should be filed in one copy, except for those submitted as ''Confidential Submissions'' (see ''Written/Paper Submissions'' and ''Instructions'' in **ADDRESSES**). Except for data and information prohibited from public disclosure under 21 U.S.C. 331(j) or 18 U.S.C. 1905, submissions may be seen in the Dockets Management Staff Office between 9 a.m. and 4 p.m., Monday through Friday, and on the internet at *https://www.regulations.gov.* This notice is issued under section 505(c)(1)(B) of the FD&C Act and §§ 314.110(b)(3) and 314.200.

Dated: May 31, 2024.

Douglas C. Throckmorton,

Deputy Director, Center for Drug Evaluation and Research.

[FR Doc. 2024–12564 Filed 6–6–24; 8:45 am]

BILLING CODE 4164–01–P

[1] Section 505(d) of the FD&C Act provides that FDA shall refuse to approve an application if, among other reasons, ''upon the basis of the information submitted to him as part of the application, or upon the basis of any other information before him with respect to such drug, he has insufficient information to determine whether such drug is safe for use under such conditions'' or ''there is a lack of substantial evidence that the drug will have the effect it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the proposed labeling thereof[.]'' (Sections 505(d)(4) and 505(d)(5) of the FD&C Act.)

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–2559]

Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments—Supplemental Biologics License Application 761069/S–043 for IMFINZI (durvalumab) Injection

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; establishment of a public docket; request for comments.

SUMMARY: The Food and Drug Administration (FDA) announces a forthcoming public advisory committee meeting of the Oncologic Drugs Advisory Committee (the Committee). The general function of the Committee is to provide advice and recommendations to FDA on regulatory issues. The meeting will be open to the public. FDA is establishing a docket for public comment on this document.

DATES: The meeting will be held on July 25, 2024, from 9 a.m. to 2:15 p.m. Eastern Time.

ADDRESSES: FDA and invited participants may attend the meeting at FDA White Oak Campus, 10903 New Hampshire Ave., Bldg. 31 Conference Center, the Great Room (Rm. 1503), Silver Spring, MD 20993–0002. The public will have the option to participate via an online teleconferencing and/or video conferencing platform, and the advisory committee meeting will be heard, viewed, captioned, and recorded through an online teleconferencing and/or video conferencing platform.

Answers to commonly asked questions about FDA advisory committee meetings may be accessed at: *https://www.fda.gov/Advisory Committees/AboutAdvisoryCommittees/ucm408555.htm.*

FDA is establishing a docket for public comment on this meeting. The docket number is FDA–2024–N–2559. The docket will close on July 24, 2024. 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 July 24, 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.

Comments received on or before July 11, 2024, will be provided to the Committee. Comments received after that date will be taken into consideration by FDA. In the event that the meeting is cancelled, FDA will continue to evaluate any relevant applications or information, and consider any comments submitted to the docket, as appropriate.

You may submit comments as follows:

Electronic Submissions

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

Written/Paper Submissions

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

Instructions: All submissions received must include the Docket No. FDA–2024–N–2559 for ''Oncologic Drugs Advisory Committee; Notice of Meeting; Establishment of a Public Docket; Request for Comments—Supplemental Biologics License Application 761069/S–043 for IMFINZI (durvalumab) Injection.'' 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.'' FDA 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 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 the 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: Takyiah Stevenson, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 240–402–2507, email: *ODAC@fda.hhs.gov,* 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 FDA'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 and/or video conferencing platform. The Committee will discuss supplemental biologics license application (sBLA) 761069/S–043, for IMFINZI (durvalumab) injection, submitted by AstraZeneca UK Limited. The proposed indication (use) is IMFINZI in combination with chemotherapy as neoadjuvant treatment, followed by IMFINZI as monotherapy after surgery, for the treatment of adult patients with resectable non-small cell lung cancer (NSCLC). The Committee will also be asked to discuss whether drug sponsors should be required to adequately justify treatment of patients both before and after surgery for resectable NSCLC prior to an approval that would include both neoadjuvant and adjuvant therapy.

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. Background material and the link to the online teleconference and/or video conference meeting will be available at *https://www.fda.gov/AdvisoryCommittees/Calendar/default.htm.* Scroll down to the appropriate advisory committee meeting link. The meeting will include slide presentations with audio and video components to allow the presentation of materials for online participants 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. All electronic and written submissions to the Docket (see **ADDRESSES**) on or before July 11, 2024, will be provided to the Committee. Oral presentations from the public will be scheduled between approximately 12:15 p.m. and 1:15 p.m. Eastern Time and will take place entirely through an online meeting platform. Those individuals interested in making formal oral presentations should notify the contact person and submit 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 July 2, 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 July 3, 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 Takyiah Stevenson (see **FOR FURTHER INFORMATION CONTACT**) 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. 1001 *et seq.*). This meeting notice also serves as notice that, pursuant to § 10.19 (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 both in-person and 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 § 10.19 are met.

Dated: June 4, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–12532 Filed 6–6–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2018–N–0073]

Agency Information Collection Activities; Submission for Office of Management and Budget Review; Comment Request; Irradiation in the Production, Processing, and Handling of Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a proposed collection of information has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments (including recommendations) on the collection of information by July 8, 2024.

ADDRESSES: To ensure that comments on the information collection are received, OMB recommends that written comments be submitted to *https://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. The OMB control number for this information collection is 0910–0186. Also include the FDA docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Amber Sanford, Office of Operations, Food and Drug Administration, Three White Flint North, 10A–12M, 11601 Landsdown St., North Bethesda, MD 20852, 301–796–8867, *PRAStaff@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Irradiation in the Production, Processing, and Handling of Food

OMB Control Number 0910–0186—Extension

This information collection supports FDA regulations. Under sections 201(s) and 409 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(s) and 348), food irradiation is subject to regulation by FDA under the food additive premarket approval provisions. The regulations providing for uses of

irradiation in the production, processing, and handling of food are found in part 179 (21 CFR part 179). To ensure safe use of a radiation source, § 179.21(b)(1) requires that the label of sources bear appropriate and accurate information identifying the source of radiation and the maximum (or minimum and maximum) energy of the emitted radiation. Section 179.21(b)(2) requires that the label or accompanying labeling bear adequate directions for installation and use and a statement supplied by us that indicates maximum dose of radiation allowed. Section 179.26(c) requires that the label or accompanying labeling bear a logo and a radiation disclosure statement. Section 179.25(e) requires that food processors who treat food with radiation make and retain, for 1 year past the expected shelf life of the products up to a maximum of 3 years, specified records relating to the irradiation process (*e.g.,* the food treated, lot identification, scheduled process, etc.). The records required by § 179.25(e) are used by our inspectors to assess compliance with the regulation that establishes limits within which radiation may be safely used to treat food. We cannot ensure safe use without a method to assess compliance with the dose limits, and there are no practicable methods for analyzing most foods to determine whether they have been treated with ionizing radiation and are within the limitations set forth in part 179. Records inspection is the only way to determine whether firms are complying with the regulations for treatment of foods with ionizing radiation.

Description of Respondents: Respondents to the information collection are businesses engaged in the irradiation of food.

In the **Federal Register** of January 23, 2024 (89 FR 4311), FDA published a 60-day notice requesting public comment on the proposed collection of information. One comment related to the PRA was received which suggested that FDA could enhance and improve the information received in this collection of information by clarifying reporting requirements, detailing consistent guidelines, conducting training and educational programs to increase understanding, and integrating technology into the process. The comment also indicated that regular audits and checks should be instituted, and the implementation of these suggestions will increase the quality of the information being collected.

FDA strives to protect the public health and safety in irradiated food and packaging. FDA's website at *https://www.fda.gov/food/food-ingredients-packaging/irradiation-food-packaging* provides a discussion of FDA's regulation of irradiated food as well as information about the history, science, and regulations of irradiated food and packaging. In addition, FDA offers educational webinars, such as the joint CFSAN/JIFSAN webinar on Food Packaging and Irradiation. This webinar can be found on YouTube at *https://www.youtube.com/watch?v=X3rYqwHx_KU.* This webinar provides some clarification on food processing and handling of irradiated food. FDA also conducts inspections on an as-needed basis to check on the accuracy of the records being maintained by food processors and to ensure the safety of irradiated food and packaging.

We estimate the burden of this collection of information as follows:

TABLE 1—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR section	Number of recordkeepers	Number of records per recordkeeper	Total annual records	Average burden per recordkeeping	Total hours
179.25(e), large processors	4	300	1,200	1	1,200
179.25(e), small processors	4	30	120	1	120
Total					1,320

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Based on a review of the information collection since our last request for OMB approval, we have made no adjustments to our burden estimate. Our estimate of the recordkeeping burden under § 179.25(e) is based on our experience regulating the safe use of radiation as a direct food additive. The number of firms who process food using irradiation is extremely limited. We estimate that there are four irradiation plants whose business is devoted primarily (*i.e.,* approximately 100 percent) to irradiation of food and other agricultural products. Four other firms also irradiate small quantities of food. We estimate that this irradiation accounts for no more than 10 percent of the business for each of these firms. Therefore, the average estimated burden is based on four facilities devoting 100 percent of their business to food irradiation, and four facilities devoting 10 percent of their business to food irradiation.

No burden has been estimated for the labeling requirements in §§ 179.21(b)(1), 179.21(b)(2), and 179.26(c) because the disclosures are supplied by FDA. Under 5 CFR 1320.3(c)(2), the public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not subject to review by OMB under the PRA.

Dated: June 4, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–12536 Filed 6–6–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2024–N–0008]

Advisory Committee; Arthritis Advisory Committee; Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of Federal advisory committee.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the renewal of the Arthritis Advisory Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Arthritis Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until the April 5, 2026, expiration date.

DATES: Authority for the Arthritis Advisory Committee will expire on April 5, 2026, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Jessica Seo, Center for Drug Evaluation Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–9001, *AAC@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.65 and approval by the Department of Health and Human Services and by the General Services Administration, FDA is announcing the renewal of the Arthritis Advisory Committee (the Committee). The Committee is a discretionary Federal advisory committee established to provide advice to the Commissioner. The Committee advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective drugs for human use and, as required, any other product for which FDA has regulatory responsibility.

The Committee reviews and evaluates data concerning the safety and effectiveness of marketed and investigational human drug products for use in the treatment of arthritis, rheumatism, and related diseases, and makes appropriate recommendations to the Commissioner.

Pursuant to its Charter, the Committee shall consist of a core of 11 voting members including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of arthritis, rheumatology, orthopedics, epidemiology or statistics, analgesics, and related specialties. Members will be invited to serve for overlapping terms of up to 4 years. Non-Federal members of this committee will serve as Special Government Employees, representatives, or Ex-Officio members. Federal members will serve as Regular Government Employees or Ex-Officios. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. In addition to the voting members, the Committee may include one non-voting representative member who is identified with industry interests. There may also be an alternate industry representative.

The Commissioner or designee shall have the authority to select members of other scientific and technical FDA advisory committees (normally not to exceed 10 members) to serve temporarily as voting members and to designate consultants to serve temporarily as voting members when: (1) expertise is required that is not available among current voting standing members of the Committee (when additional voting members are added to the Committee to provide needed expertise, a quorum will be based on the combined total of regular and added members) or (2) to comprise a quorum when, because of unforeseen circumstances, a quorum is or will be lacking. Because of the size of the Committee and the variety in the types of issues that it will consider, FDA may, in connection with a particular committee meeting, specify a quorum that is less than a majority of the current voting members. The Agency's regulations (21 CFR 14.22(d)) authorize a committee charter to specify quorum requirements.

If functioning as a medical device panel, an additional non-voting representative member of consumer interests and an additional non-voting representative member of industry interests will be included in addition to the voting members.

Further information regarding the most recent charter and other information can be found at *https://www.fda.gov/advisory-committees/human-drug-advisory-committees/arthritis-advisory-committee* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This notice is issued under the Federal Advisory Committee Act as amended (5 U.S.C. 1001 et seq). For general information related to FDA advisory committees, please visit us at *http://www.fda.gov/AdvisoryCommittees/default.htm.*

Dated: June 4, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–12525 Filed 6–6–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. FDA–2022–N–0335]

Advisory Committee; Obstetrics, Reproductive and Urologic Drugs Advisory; Renewal

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; renewal of Federal advisory committee.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is announcing the renewal of the Obstetrics, Reproductive and Urologic Drugs Advisory Committee by the Commissioner of Food and Drugs (the Commissioner). The Commissioner has determined that it is in the public interest to renew the Obstetrics, Reproductive and Urologic Drugs Advisory Committee for an additional 2 years beyond the charter expiration date. The new charter will be in effect until the March 23, 2026, expiration date.

DATES: Authority for the Obstetrics, Reproductive and Urologic Drugs Advisory Committee will expire on March 23, 2026, unless the Commissioner formally determines that renewal is in the public interest.

FOR FURTHER INFORMATION CONTACT: Joyce Frimpong, Center for Drug Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 31, Rm. 2417, Silver Spring, MD 20993–0002, 301–796–7973, email: *ORUDAC@fda.hhs.gov.*

SUPPLEMENTARY INFORMATION: Pursuant to 41 CFR 102–3.65 and approval by the Department of Health and Human Services and by the General Services Administration, FDA is announcing the renewal of the Obstetrics, Reproductive and Urologic Drugs Advisory Committee (the Committee). The Committee is a discretionary Federal advisory committee established to provide advice to the Commissioner. The Committee advises the Commissioner or designee in discharging responsibilities as they relate to helping to ensure safe and effective drugs for human use and, as required, any other product for which FDA has regulatory responsibility.

The Committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drug products for use in the practice of obstetrics, gynecology, urology, and related specialties, and makes

appropriate recommendations to the Commissioner.

Pursuant to its Charter, the Committee shall consist of a core of 11 voting members including the Chair. Members and the Chair are selected by the Commissioner or designee from among authorities knowledgeable in the fields of obstetrics, gynecology, urology, pediatrics, epidemiology, or statistics and related specialties. Members will be invited to serve for overlapping terms of up to 4 years. Non-Federal members of this committee will serve as Special Government Employees, representatives, or Ex-Officio members. Federal members will serve as Regular Government Employees or Ex-Officios. The core of voting members may include one technically qualified member, selected by the Commissioner or designee, who is identified with consumer interests and is recommended by either a consortium of consumer-oriented organizations or other interested persons. In addition to the voting members, the Committee may include one non-voting representative member who is identified with industry interests. There may also be an alternate industry representative.

The Commissioner or designee shall have the authority to select members of other scientific and technical FDA advisory committees (normally not to exceed 10 members) to serve temporarily as voting members and to designate consultants to serve temporarily as voting members when: (1) expertise is required that is not available among current voting standing members of the Committee (when additional voting members are added to the Committee to provide needed expertise, a quorum will be based on the combined total of regular and added members), or (2) to comprise a quorum when, because of unforeseen circumstances, a quorum is or will be lacking. Because of the size of the Committee and the variety in the types of issues that it will consider, FDA may, in connection with a particular committee meeting, specify a quorum that is less than a majority of the current voting members. The Agency's regulations (21 CFR 14.22(d)) authorize a committee charter to specify quorum requirements.

If functioning as a medical device panel, an additional non-voting representative member of consumer interests and an additional non-voting representative member of industry interests will be included in addition to the voting members.

Further information regarding the most recent charter and other information can be found at *https://www.fda.gov/advisory-committees/human-drug-advisory-committees/obstetrics-reproductive-and-urologic-drugs-advisory-committee-formerly-bone-reproductive-and* or by contacting the Designated Federal Officer (see **FOR FURTHER INFORMATION CONTACT**). In light of the fact that no change has been made to the committee name or description of duties, no amendment will be made to 21 CFR 14.100.

This notice is issued under the Federal Advisory Committee Act as amended (5 U.S.C. 1001 *et seq.*). For general information related to FDA advisory committees, please visit us at *https://www.fda.gov/Advisory Committees/default.htm.*

Dated: June 4, 2024.

Lauren K. Roth,

Associate Commissioner for Policy.

[FR Doc. 2024–12528 Filed 6–6–24; 8:45 am]

BILLING CODE 4164–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Privacy Act of 1974; System of Records

AGENCY: National Institutes of Health (NIH), Department of Health and Human Services (HHS).

ACTION: Notice of a new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended (Privacy Act, or Act), the Department of Health and Human Services (HHS) is establishing a new System of Records (SOR), 09–25–0224, ''NIH Police Records,'' to be maintained by the National Institutes of Health (NIH). The new system of records will contain records about individuals who are the subject of investigations of crime, civil disturbances, and traffic accidents occurring on or otherwise affecting the protection of life and property on NIH property. Because the records will constitute law enforcement investigatory material, elsewhere in the **Federal Register** the agency has published a notice of proposed rulemaking (NPRM) to exempt this system of records from certain requirements of the Privacy Act based on subsections (j)(2) and (k)(2) of the Act. The system of records is more fully described in the system of records notice (SORN) published in this notice.

DATES: The comment period for this SORN is co-extensive with the 60-day comment period provided in the NPRM; *i.e.,* written comments on the SORN should be submitted by August 6, 2024. The new system of records, including the routine uses and the exemptions, will become effective when NIH publishes a Final Rule, which will not occur until the 60-day comment period provided in the NPRM has expired and any comments received on the NPRM (or on this SORN) have been addressed.

ADDRESSES: The public should address written comments, identified by the Privacy Act System of Records (PA SOR) Number 09–25–0224, by any of the following methods:

- *Federal eRulemaking Portal: https://regulations.gov.* Follow the instructions for submitting comments.
- *Email: privacy@mail.nih.gov* and include PA SOR number 09–25–0224 in the subject line of the message.
- *Phone:* (301) 402–6469 (not a toll-free number).
- *Fax:* (301) 402–0169.
- *Mail:* NIH Privacy Act Officer, Office of Management Assessment, National Institutes of Health, 6705 Rockledge Drive (RK1) 601, Rockville, MD 20892–7901.
- *Hand Delivery/Courier:* 6705 Rockledge Drive (RK1) 601, Rockville, MD 20892–7901.

Comments received will be available for inspection and copying at this same address from 9:00 a.m. to 3:00 p.m., Monday through Friday, Federal holidays excepted.

FOR FURTHER INFORMATION CONTACT: General questions about the system of records may be submitted to Dustin Close, NIH Privacy Act Officer, by email at *privacy@mail.nih.gov* or mail at the Office of Management Assessment (OMA), Office of the Director (OD), National Institutes of Health (NIH), 6705 Rockledge Drive (RK1) 601, Rockville, MD 20892–7901. Telephone: 301–402–6469.

SUPPLEMENTARY INFORMATION: The Privacy Act (5 U.S.C. 552a) governs the means by which the United States Government collects, maintains, and uses records in a system of records. A ''system of records'' is a group of any records under the control of a federal agency from which information about individuals is retrieved by name or other personal identifier. The Privacy Act requires each agency to publish in the **Federal Register** a SORN identifying and describing each system of records the agency maintains, including the purposes for which the agency uses records in the system of records, the routine uses for which the agency discloses, or may disclose, such information outside the agency without the subject individual's prior written consent, and procedures explaining how subject individuals can exercise their rights under the Privacy Act (*e.g.,* to

determine if the system of records contains information about them). At least 30 days prior to publication of this Notice in the **Federal Register**, the Department submitted a report on the proposed system of records to the Office of Management and Budget, the Committee on Government Reform and Oversight of the House of Representatives, and the Committee on Governmental Affairs of the Senate as required by 5 U.S.C. 552a(r) and in the form and manner required by Office of Management and Budget (OMB) Circular A–108.

The NIH Division of Police, which is within the Office of Research Services (ORS) in the NIH Office of the Director, was established to provide an immediate and primary law enforcement program for NIH. The NIH Division of Police derives its authority from 40 U.S.C. 1315, the law enforcement authority of the Secretary of Homeland Security for the protection of public property, and General Administrative Delegation of Authority Number 08, Control of Violations of Law at Certain NIH Facilities (September 1, 2020). Based on this establishing authority, the NIH Division of Police performs criminal law enforcement activity as its principal function. However, the NIH Division of Police conducts both criminal and non-criminal (*e.g.,* civil, administrative, regulatory) law enforcement investigations.

The NIH Division of Police is directly responsible for the provision of daily law enforcement and criminal and civil investigative activities required to protect the life, safety, and property of NIH employees, contractors, patients, and visitors. To perform these responsibilities, the NIH Division of Police compiles and maintains records of complaints of incidents, inquiries, investigative findings, arrest records, and court dispositions which are retrieved by personal identifiers and therefore constitute a ''system of records'' as defined by the Privacy Act at 5 U.S.C. 552a(a)(5). The records are used primarily to: (1) record incidents of crime, civil disturbance, and traffic accidents on the NIH enclave, and the investigation of such incidents; (2) maintain information essential to the protection of life, safety, and property at NIH; (3) provide official records of law enforcement investigative efforts for use in administrative, criminal, and civil proceedings; and (4) document criminal and civil law enforcement investigations.

All of the routine uses published in the SORN are compatible with the original purpose for which criminal and non-criminal (*e.g.,* civil, administrative, regulatory) law enforcement investigatory records are collected. Specifically:

- Routine use 1 will permit disclosures to HHS contractors who need access to the records in this system of records.
- Routine use 2 will permit HHS to disclose records to the Department of Justice or to a court or other adjudicative body in limited circumstances that are necessary to the conduct of legal proceedings.
- Routine use 3 will permit HHS to refer records to other appropriate law enforcement entities that have jurisdiction over a matter that NIH discovers.
- Where HHS has determined records to be sufficiently reliable to support a referral, routine use 4 will permit disclosures to another government agency or public authority of the fact that this system of records contains information relevant to decisions about an individual's employment, licensing, investigation, procurement, or other decision of that agency or public authority to help determine suitability as a contractor, licensee, grantee, or beneficiary. The receiving entity may then make a request to HHS supported by the written consent of the individual for further information if it so chooses.
- Routine use 5 will permit disclosures to the news media and general public when the information is in the public interest and would be required to be disclosed under the Freedom of Information Act, but where no FOIA request has been received.
- Routine use 6 is included as a courtesy to Members of Congress acting in their capacity as constituent representatives. Under normal circumstances, HHS would require any third party to present written consent of the record subject to obtain records about the record subject. However, if a record subject writes to a Member of Congress for assistance, and the Member writes to HHS showing a copy of the constituent's correspondence, HHS will recognize that request as if it were a formal authorization and respond in order to allow the Member of Congress to provide prompt service to the constituent.
- Routine use 7 will permit HHS to disclose records about accidents or traffic violations to the people involved so they can defend themselves or manage insurance claims.
- Routine uses 8 and 9 will authorize disclosures at the recommendation of OMB to help us reduce and manage data breaches.

Alfred C. Johnson,

Deputy Director for Management, National Institutes of Health.

SYSTEM NAME AND NUMBER:

NIH Police Records, 09–25–0224.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

The address of the agency component responsible for the system of records is: Division of Police, Office of Research Services (ORS), National Institutes of Health (NIH), Building 31, Room B3B17, 31 Center Drive, Bethesda, MD 20892–2012.

SYSTEM MANAGER(S):

Chief, Division of Police, Office of Research Services (ORS), National Institutes of Health, Building 31, Room B3B17, 31 Center Dr., Bethesda, MD 20892–2012. *NIHPoliceDepartment@nih.gov,* telephone (301) 496–2387.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

40 U.S.C. 1315 Law enforcement authority of Secretary of Homeland Security for protection of public property; Memorandum from the Assistant Secretary for Administration, OS, to the Director, NIH, June 13, 1968; Memorandum from the Assistant Secretary for Administration, OS, to the Director, NIH, June 13, 1968, entitled: Delegation of Authority to Assist in Controlling Violations of Law at Certain HEW Facilities Located in Montgomery County, Maryland; and NIH General Administrative Delegation of Authority Number 08, Control of Violations of Law at Certain NIH Facilities (September 1, 2020). Collection of Social Security Numbers (SSN) is authorized by Executive Order (E.O.) 9397, as amended by E.O. 13478, to be used as the enumerator when 40 U.S.C. 1315, as implemented by NIH General Administrative Delegation of Authority Number 08 authorizes use of enumerators or an indexing system or other method to identify individuals and maintain accurate records about them.

PURPOSE(S) OF THE SYSTEM:

The primary purposes for which the records are used are to: (1) record incidents of crime, civil disturbance, and traffic accidents on the NIH enclave, and the investigation of such incidents; (2) maintain information essential to the protection of life, safety, and property at NIH; (3) provide official records of law enforcement investigative

efforts for use in administrative, criminal and/or civil proceedings; and (4) document criminal and civil law enforcement investigations.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records will pertain to the following individuals: owners or operators of vehicles entering or attempting to enter NIH property; individuals who are involved in motor vehicle accidents; individuals arrested on the NIH property; individuals suspected of posing a threat to the safety of NIH visitors, personnel, and property; individuals who report or provide information about any of the above referenced activities; and individuals against whom criminal or civil penalties have been sought or imposed for any of the above-referenced activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records will consist of (as applicable) reports of moving and non-moving traffic violations, accident reports, missing property reports, and similar documents and files, containing data elements such as names, descriptions, and contact information for subjects of investigation and witnesses, Social Security Number (SSN), date of birth, and vehicle license plate number, brand or model information; and, if applicable, reports of criminal investigations, including indicia of arrests (*e.g.,* arrest reports fingerprints, photographs, and other items of evidence), and criminal intelligence reports.

RECORD SOURCE CATEGORIES:

The records in this system of records are obtained directly from the subject individual, or from interviews conducted by or are recorded by the NIH Police Officer based on their observation, including observation of camera footage, or statements made or given to them by witnesses or other involved individuals, or are obtained by the NIH Police Officer from sources such as the Federal Bureau of Instigation, Department of Motor Vehicles, the individual's employer, criminal database, local police, NIH Human Resources database, NIH Visitor Log records, and reports of investigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

These routine uses specify circumstances, in addition to those provided by statute in the Privacy Act of 1974 at 5 U.S.C. 552a(b), under which HHS may disclose information from this system of records to non-HHS officers and employees without the consent of the subject individual.

1. Information may be disclosed to an HHS contractor engaged by HHS to assist in accomplishment of an HHS function relating to the purposes of this system of records who needs to have access to the record to assist HHS in performing the activity. Any contractor will be required to comply with the requirements of the Privacy Act of 1974, as amended.

2. Information may be disclosed to the Department of Justice (DOJ) or to a court or other tribunal in litigation or other proceedings when: (a) HHS, or any component thereof; (b) any HHS employee in his/her official capacity; (c) any HHS employee in his/her individual capacity where DOJ (or HHS, where it is authorized to do so) has agreed to represent the employee; or (d) the United States Government, is a party to the proceedings and, by careful review, HHS determines that the records are both relevant and necessary to the proceedings.

3. Information may be disclosed to another federal agency or any foreign, state, local, or Tribal government agency responsible for enforcing, investigating, or prosecuting violations of administrative, civil, or criminal law or regulation where that information is relevant to an enforcement proceeding, investigation, or prosecution within the agency's jurisdiction.

4. Information may be disclosed to a federal, foreign, state, local, Tribal, or other public authority (*e.g.,* a licensing organization) of the fact that this system of records contains information relevant to the hiring or retention of an employee, the issuance or retention of a security clearance, the reporting of an investigation of an individual, the letting of a contract, or the issuance or retention of a license, grant, or other benefit. The other agency or licensing organization may then make a request supported by the written consent of the individual for further information if it so chooses. HHS will not make an initial disclosure unless the information has been determined to be sufficiently reliable to support a referral to another office within the agency or to another federal agency for criminal, civil, administrative, personnel, or regulatory action.

5. Information may be disclosed to the news media and general public when there is a legitimate public interest (for example, to provide information on events in the criminal process such as indictments, and that would be required to be publicly disclosed under FOIA if HHS received a request), or when necessary to protect the public from an imminent threat to life or property.

6. Information may be disclosed to a congressional office in response to a written inquiry from the congressional office made at the written request of the individual record subject.

7. An accident report, or records concerning an accident or moving or non-moving traffic violation, may be disclosed to any individual allegedly involved or injured in the accident or traffic violation.

8. Information may be disclosed to appropriate agencies, entities, and persons when (1) HHS suspects or has confirmed that there has been a breach of the system of records; (2) HHS has determined that as a result of the suspected or confirmed breach there is a risk of harm to individuals, HHS (including its information systems, programs, and operations), the federal government, or national security; and (3) the disclosure made to such agencies, entities, and persons is reasonably necessary to assist in connection with HHS's efforts to respond to the suspected or confirmed breach or to prevent, minimize, or remedy such harm.

9. Information may be disclosed to another federal agency or federal entity, when HHS determines that information from this system of records is reasonably necessary to assist the recipient agency or entity in (1) responding to a suspected or confirmed breach or (2) preventing, minimizing, or remedying the risk of harm to individuals, the recipient agency or entity (including its information systems, programs, and operations), the federal government, or national security, resulting from a suspected or confirmed breach.

POLICIES AND PRACTICES FOR STORAGE OF RECORDS:

Records are stored in various electronic media and in paper form.

In accordance with federal security requirements, policies, and controls, as implemented by NIH and HHS, records may be located on approved portable devices designed to hold any kind of digital, optical, or other data including: laptops, tablets, personal data assistants, Universal Serial Bus (USB) drives, media cards, portable hard drives, Smartphones, compact discs (CDs), digital versatile discs (DVDs), or other mobile storage devices.

POLICIES AND PRACTICES FOR RETRIEVAL OF RECORDS:

Records are retrieved by the subject individual's name or other personal identifier, such as date of birth-or Social Security Number.

POLICIES AND PRACTICES FOR RETENTION AND DISPOSAL OF RECORDS:

NIH Police Records are currently unscheduled and will be retained indefinitely until authorized for disposition under a schedule approved by the National Archives and Records Administration.

ADMINISTRATIVE, TECHNICAL, AND PHYSICAL SAFEGUARDS:

Measures to prevent unauthorized disclosures of NIH Police Records are implemented as appropriate for each location or form of storage and for the types of records maintained. Safeguards conform to the HHS Information Security and Privacy Program, *https://www.hhs.gov/ocio/securityprivacy/index.html.* Site(s) implement personnel and procedural safeguards such as the following:

Authorized Users: Access is strictly limited to authorized personnel whose duties require such access (*i.e.,* valid, business need-to-know).

Administrative Safeguards: Administrative controls include the completion of a Security Assessment and Authorization (SA&A) package and a Privacy Impact Assessment (PIA) for information technology (IT) systems used to maintain the records, and mandatory completion of annual NIH Information Security and Privacy Awareness training for personnel authorized to access the records. The SA&A package consists of a Security Categorization, e-Authentication Risk Assessment, System Security Plan, evidence of Security Control Testing, Plan of Action and Milestones, Contingency Plan, and evidence of Contingency Plan Testing. When the design, development, or operation of a system of records is required to accomplish an agency function and the agency engages an outside contractor to support that operation, the applicable Privacy Act Federal Acquisition Regulation (FAR) clauses are inserted in solicitations and contracts.

Physical Safeguards: Controls to secure the data and protect paper and electronic records, buildings, and related infrastructure against threats associated with their physical environment include the use of the HHS Employee ID or other badge, NIH key cards, security guards, cipher locks, biometrics, and closed-circuit TV. Paper records are secured in locked file cabinets, offices, and facilities. Electronic media are kept on secure servers or computer systems. Access to the restricted office area containing the rooms where records are stored is controlled through the use of limited access proximity cards. Only authorized users have access to these cards. Individuals who enter the restricted area without a limited access proximity card are under escort at all times. During regular business hours, rooms in this restricted area are unlocked but entry is controlled by on-site personnel. Rooms where records are stored are locked when not in use. Individually identifiable records are kept in locked file cabinets or in rooms under the direct control of the System Manager. Contractor interaction with records covered by this system of records will occur on-site and no physical records (paper or electronic) will be allowed to be removed from the NIH Division of Police unless authorized. All authorized users of personal information in connection with the performance of their jobs protect information from public view and from unauthorized personnel entering an unsupervised area/office.

Police incident and other sensitive reports and information are kept in a limited access locked room with live video surveillance. Intelligence reports containing investigations of criminal intelligence matters are kept in a safe in the offices of the Supervisor, Intelligence Section.

Technical Safeguards: Controls are generally executed by the computer system and are employed to minimize the possibility of unauthorized access, use, or dissemination of the data in the system. They include user identification, password protection, firewalls, virtual private network, encryption, intrusion detection system, common access cards, smart cards, biometrics and public key infrastructure. Computer records are accessible only through a series of code or keyword commands available from and under the direct control of the System Manager or delegated employees. These records are secured by a multi-level security system which is capable of controlling access to the individual data field level. Persons having access to the computer database can be restricted to a confined application which permits only a narrow ''view'' of the data.

RECORD ACCESS PROCEDURES:

This system of records will be exempt from access by subject individuals to the extent permitted by 5 U.S.C. 552(j)(2) or (k)(2). However, consideration will be given to any access request addressed to the System Manager listed above. Most records pertaining to traffic investigations will be accessible to any individual involved or injured in the traffic violation or accident without interfering with or compromising the integrity of an investigation. Individual record subjects seeking access to records about themselves must submit a written access request to the System Manager identified in the ''System Manager(s)'' section above, at the postal or electronic mail address indicated in that section. The request must reasonably specify the record contents being sought and contain the requester's full name, address, telephone number and/or email address, date of birth, and signature, and should identify the approximate date(s) the information was collected, and the types of information collected. So that HHS may verify the requester's identity, the requester's signature must be notarized, or the request must include the requester's written, signed certification that the requester is the individual who the requester claims to be and that the requester understands that the knowing and willful request of a record pertaining to an individual under false pretenses is a misdemeanor offense under the Privacy Act and subject to fine of up to five thousand dollars. If records are requested on behalf of a minor or legally incompetent individual, evidence of the requester's parental or guardianship relationship to the individual must be included and the identity of both the subject individual and the requesting parent or guardian must be verified.

CONTESTING RECORD PROCEDURES:

This system of records will be exempt from amendment to the extent permitted by 5 U.S.C. 552(j)(2) or (k)(2). However, consideration will be given to any amendment request addressed to the System Manager listed above. Individuals seeking to amend records about them in this system of records must submit a written amendment request to the System Manager, containing the same information required for an access request. The amendment request must include verification of identity in the same manner required for an access request; must reasonably identify the record and specify the information contested, the corrective action sought, and the reason(s) for requesting the amendment and should include supporting information. The right to contest records is limited to information that is factually inaccurate, incomplete, irrelevant, or untimely (obsolete).

NOTIFICATION PROCEDURES:

This system of records will be exempt from notification to the extent permitted by 5 U.S.C. 552(j)(2) or (k)(2). However, consideration will be given to any notification request addressed to the System Manager listed above.

Individuals who want to know whether this system of records contains records about them must submit a written notification request to the System Manager. The notification request must contain the same information required for an access request and must include verification of identity in the same manner required for an access request.

EXEMPTIONS PROMULGATED FOR THE SYSTEM:

As provided in the Department's notice of proposed rulemaking, upon publication of a Final Rule, law enforcement investigatory material in this system of records will be exempt from certain requirements of the Privacy Act as follows:

• Based on 5 U.S.C. 552a(j)(2) and (k)(2), all criminal and non-criminal (*e.g.,* civil, administrative, regulatory) law enforcement investigatory material will be exempt from the requirements in subsections (c)(3), (d)(1) through (4), (e)(1), (e)(4)(G) through (I), and (f) of the Privacy Act; provided, however, that for investigative material compiled for law enforcement purposes other than material within the scope of 5 U.S.C. 552a(j)(2), if maintenance of the records causes a subject individual to be denied a federal right, privilege, or benefit to or for which the individual would otherwise be entitled or eligible, the exemption based on 5 U.S.C. 552a(k)(2) will be limited to material that would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence.

• Because the NIH Division of Police is a component which performs criminal law enforcement as its principal function, based on 5 U.S.C. 552a(j)(2), criminal law enforcement investigatory material will be exempt from the additional requirements in these subsections of the Privacy Act: (c)(4), (e)(2) and (3), (e)(5), and (g).

• If any law enforcement investigatory material compiled in this system of records 09–25–0224 is from another system of records in which such material was exempted from access and other requirements of the Privacy Act based on (j)(2), it will be exempt in system of records 09–25–0224 on the same basis (5 U.S.C. 552a(j)(2)) and from the same requirements as in the source system of records.

HISTORY:

None.

[FR Doc. 2024–12468 Filed 6–6–24; 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 Special Emphasis Panel; Data Harmonization, Curation & Secondary Analysis of Existing Clinical Datasets.

Date: July 11, 2024.

Time: 9:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Tatiana Pasternak, Ph.D., Scientific Review Officer, Scientific Review Branch, 6001 Executive Boulevard, NINDS/NIH/DHHS, NSC, 6001 Executive Boulevard, Rockville, MD 20852, 301–496–9223, *tatiana.pasternak@nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; NINDS Human Genetics Resource Center Contract Review.

Date: July 12, 2024.

Time: 9:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Bo-Shiun Chen, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Boulevard, Rockville, MD 20852, 301–496–9223, *bo-shiun.chen@nih.gov*.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel; Clinical Trials and Biomarker Studies in Stroke (StrokeNet).

Date: July 25, 2024.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate cooperative agreement applications.

Place: National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 (Virtual Meeting).

Contact Person: Nilkantha Sen, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Activities, NINDS/NIH/DHHS, NSC, 6001 Executive Boulevard, Rockville, MD 20852, 301–496–9223, *nilkantha.sen@nih.gov*.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS).

Dated: June 4, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–12579 Filed 6–6–24; 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; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Validation of Biomarkers, June 25, 2024, 10:00 a.m. to June 25, 2024, 06:00 p.m., National Institutes of Health, Neuroscience Center, 6001 Executive Boulevard, Rockville, MD 20852 which was published in the **Federal Register** on May 30, 2024, FR Doc. 2024–11973, 89 FR 47156.

This notice is being amended to change the date of this one-day meeting from June 25, 2024, to June 27, 2024, and change the meeting time to 10:00 a.m. to 2:00 p.m. The meeting is closed to the public.

Dated: June 4, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–12578 Filed 6–6–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Nursing Research; 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 Nursing Research Special Emphasis Panel: Strategies to Improve Health Outcomes and Advance Health Equity in Rural Populations.

Date: July 11–12, 2024.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Nursing Research, 6700 B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Annie Laurie McRee, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 100, Bethesda, MD 20892, (301) 827–7396, *mcreeal@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.361, Nursing Research, National Institutes of Health, HHS)

Dated: June 3, 2024.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–12509 Filed 6–6–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed 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 Alcohol Abuse and Alcoholism Special Emphasis Panel; Review of Alcohol Research Centers (RFA AA–23–001).

Date: June 11, 2024.

Time: 1:00 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institute of Health, National Institute on Alcohol Abuse and Alcoholism, 6700B Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Ranga Srinivas, Ph.D., Chief, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, 6700 B Rockledge Drive, Room 2114, National Institutes of Health, Bethesda, MD 20892, (301) 451–2067, *srinivar@mail.nih.gov.*

This notice is being published less than 15 days from the meeting date due to exceptional circumstances. The technical and scientific peer review of applications assigned to this committee must take place urgently so that the Alcohol Research Centers program, which is a major research initiative for NIAAA, can be reviewed in time for the September 2024 Council and awarded by the end of the calendar year. If the meeting is not held on June 11, 2024, committee members with the requisite scientific expertise will be unable to attend due to scheduling conflicts.

(Catalogue of Federal Domestic Assistance Program Nos. 93.273, Alcohol Research Programs, National Institutes of Health, HHS)

Dated: June 3, 2024.

David W. Freeman,

Supervisory Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–12474 Filed 6–6–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel; Review of AREA grants in Cell Biology, Molecular Biology and Genetics.

Date: July 8–9, 2024.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jonathan Arias, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7840, Bethesda, MD 20892, (301) 435–2406, *ariasj@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Chem, Biochem, & Biophysics Fellowships.

Date: July 8–9, 2024.

Time: 10:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Dennis Pantazatos, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–2381, *dennis.pantazatos@nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Endocrine and Metabolic Systems Fellowship Study Section.

Date: July 9, 2024.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Hybrid Meeting).

Contact Person: Anthony Wing Sang Chan, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 809K, Bethesda, MD 20892, (301) 496–9392, *chana3@csr.nih.gov.*

Name of Committee: Infectious Diseases and Immunology B Integrated Review Group; HIV Comorbidities and Clinical Studies Study Section.

Date: July 9–10, 2024.

Time: 9:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Shannon J. Sherman, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Bethesda, MD 20892, (301) 594–0715, *shannon.sherman@nih.gov.*

Name of Committee: Cardiovascular and Respiratory Sciences Integrated Review Group; Integrative Myocardial Physiology/Pathophysiology A Study Section.

Date: July 9–10, 2024.

Time: 9:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Hybrid Meeting).

Contact Person: Abdelouahab Aitouche, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4222, MSC 7814, Bethesda, MD 20892, (301) 435–2365, *aitouchea@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; RFA–OD–

24–005: Down Syndrome Clinical Cohort Coordinating Center (DS–4C).

Date: July 9, 2024.

Time: 10:00 a.m. to 7:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Katherine M. Malinda, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4140, MSC 7814, Bethesda, MD 20892, (301) 435–0912,*malindakm@csr.nih.gov.*

Name of Committee: Center for Scientific Review Special Emphasis Panel; Fellowships: Oncology.

Date: July 9–10, 2024.

Time: 10:00 a.m. to 8:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Rockledge II, 6701 Rockledge Drive, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Nywana Sizemore, Ph.D., Scientific Review Officer, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6189, MSC 7804, Bethesda, MD 20892, (301) 408–9916, *sizemoren@csr.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine; 93.333, Clinical Research, 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: June 3, 2024.

Lauren A. Fleck,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–12475 Filed 6–6–24; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Minority Health and Health Disparities; 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 Minority Health and Health Disparities Special Emphasis Panel; HIV Related Co-Morbidities and Health Disparities.

Date: July 10, 2024.

Time: 11:00 a.m. to 1:00 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, NIMHD DEM II, Suite 800, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

Contact Person: Jingsheng Tuo, Ph.D., Scientific Review Officer, Office of Extramural Research Administration, National Institute on Minority Health and Health Disparities, National Institutes of Health, 6707 Democracy Blvd., Suite 800, Bethesda, MD 20892, (301) 451–5953, *jingsheng.tuo@nih.gov.*

Dated: June 3, 2024.

Victoria E. Townsend,

Program Analyst, Office of Federal Advisory Committee Policy.

[FR Doc. 2024–12511 Filed 6–6–24; 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–2438]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. 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).

DATES: Comments are to be submitted on or before September 5, 2024.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables 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.

You may submit comments, identified by Docket No. FEMA–B–2438, to 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.*

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: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed 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. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be

considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf.*

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. 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,

Assistant Administrator (Acting) for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Choctaw County, Oklahoma and Incorporated Areas Project: 22–06–0043S Preliminary Date: January 10, 2024	
Choctaw Nation of Oklahoma	Choctaw Nation of Oklahoma Headquarters, 1802 Chukka Hina, Durant, OK 74701.
City of Hugo	City Hall, 201 South 2nd Street, Hugo, OK 74743.
Town of Boswell	Town Hall, 410 6th Street, Boswell, OK 74727.
Town of Fort Towson	City Hall, 112 East Valliant Street, Fort Towson, OK 74735.
Town of Sawyer	Town Hall, 950 State Highway 147, Sawyer, OK 74756.
Town of Soper	City Hall, 600 Main Street, Soper, OK 74759.
Unincorporated Areas of Choctaw County	Choctaw County Court House, 300 East Duke Street, Hugo, OK 74743.

[FR Doc. 2024–12524 Filed 6–6–24; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2024–0002; Internal Agency Docket No. FEMA–B–2439]

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,

Assistant Administrator (Acting) 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.
Colorado:						
Adams	City of Thornton (23–08–0553P).	The Honorable Janifer Kulmann, Mayor, City of Thornton, 9500 Civic Center Drive, Thornton, CO 80229.	City Hall, 9500 Civic Center Drive, Thornton, CO 80229.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 20, 2024	080125
Adams	Unincorporated areas of Adams County (23–08–0553P).	Emma Pinter, Chair, Adams County Board of Commissioners, 4430 South Adams County Parkway, Brighton, CO 80601.	Adams County Community and Economic Development Department, 4430 South Adams County Parkway, 1st Floor, Suite W2000, Brighton, CO 80601.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 20, 2024	080001
Douglas	Unincorporated areas of Douglas County (23–08–0606P).	George Teal, Chair, Douglas County Board of Commissioners, 100 3rd Street, Castle Rock, CO 80104.	Department of Public Works Engineering, 100 3rd Street, Castle Rock, CO 80104.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 13, 2024	080049
Montrose	City of Montrose (22–08–0573P).	The Honorable J. David Reed, Mayor, City of Montrose, 400 East Main Street, Montrose, CO 81401.	City Hall, 433 South 1st Street, Montrose, CO 81401.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 12, 2024	080125
Montrose	Unincorporated areas of Montrose County (22–08–0573P).	Roger Rash, Chair, Montrose County Board of Commissioners, 1140 North Grand Avenue, Suite 250, Montrose, CO 81401.	Montrose County Government Center, 320 South 1st Street, Montrose, CO 81401.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 12, 2024	080124
Florida:						
Manatee	Unincorporated areas of Manatee County (23–04–6510P).	Charlie Bishop, Manatee County Administrator, 1112 Manatee Avenue West, Bradenton, FL 34205.	Manatee County Administration Building, 1112 Manatee Avenue West, Bradenton, FL 34205.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 23, 2024	120153
Pasco	Unincorporated areas of Pasco County (23–04–1143P).	Jack Mariano, Chair, Pasco County Board of Commissioners, 37918 Meridian Avenue, Dade City, FL 33525.	Pasco County Building Construction Services Department, 8731 Citizens Drive, Suite 230, New Port Richey, FL 34654.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 5, 2024	120230
Pinellas	City of Clearwater (23–04–5852P).	The Honorable Bruce Rector, Mayor, City of Clearwater, 100 South Myrtle Avenue, Clearwater, FL 33756.	City Hall, 100 South Myrtle Avenue, Clearwater, FL 33756.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 13, 2024	125096
Volusia	City of Daytona Beach (24–04–1863P).	The Honorable Derrick Henry, Mayor, City of Daytona Beach, 301 South Ridgewood Avenue, Daytona Beach, FL 32114.	City Hall, 301 South Ridgewood Avenue, Daytona Beach, FL 32114.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 12, 2024	125099
North Carolina: Mecklenburg.	Town of Cornelius (24–04–0324P).	The Honorable Woody Washam, Mayor, Town of Cornelius, P.O. Box 399, Cornelius, NC 28031.	Town Hall, 21445 Catawba Avenue, Cornelius, NC 28031.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 11, 2024	370498
North Dakota:						
McKenzie	City of Alexander (23–08–0604P).	The Honorable Kenneth Willcox, Mayor, City of Alexander, P.O. Box 336, Alexander, ND 58831.	City Hall, 112 Manning Avenue, Alexander, ND 58831.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 12, 2024	380055

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.
McKenzie	Unincorporated areas of McKenzie County (23–08–0604P).	Howdy Lawlar, Chair, McKenzie County Board of Commissioners, 201 5th Street Northwest, Suite 543, Watford City, ND 58854.	McKenzie County Public Works Department, 1300 12th Street Southeast, Watford City, ND 58854.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 12, 2024	380054
South Carolina: York.	Unincorporated areas of York County (23–04–6209P).	David Hudspeth, York County Manager, 6 South Congress Street, York, SC 29745.	York County Planning and Development Services Department, 18 West Liberty Street, York, SC 29745.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 12, 2024	450193
Tennessee: Rutherford.	City of Murfreesboro (24–04–2722P).	The Honorable Shane McFarland, Mayor, City of Murfreesboro, 111 West Vine Street, Murfreesboro, TN 37130.	City Hall, 111 West Vine Street, Murfreesboro, TN 37130.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 4, 2024	470168
Texas:						
Bexar	City of San Antonio (23–06–1913P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78214.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 9, 2024	480045
Bexar	City of San Antonio (23–06–2731P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78214.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 9, 2024	480045
Bexar	City of San Antonio (24–06–0704P).	The Honorable Ron Nirenberg, Mayor, City of San Antonio, P.O. Box 839966, San Antonio, TX 78283.	Transportation and Capital Improvements Department, Storm Water Division, 1901 South Alamo Street, 2nd Floor, San Antonio, TX 78214.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 26, 2024	480045
Bexar	Unincorporated areas of Bexar County (23–06–2243P).	The Honorable Peter Sakai, Bexar County Judge, 101 West Nueva Street, 10th Floor, San Antonio, TX 78205.	Bexar County Public Works Department, 1948 Proband Street, San Antonio, TX 78214.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 16, 2024	480035
Collin	Unincorporated areas of Collin County (23–06–2300P).	The Honorable Chris Hill, Collin County Judge, 2300 Bloomsdale Road, McKinney, TX 75071.	Juvenile Justice Alternative Education Program Building, 4690 Community Avenue, Suite 200, McKinney, TX 75071.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 16, 2024	480130
Denton	City of Denton (23–06–0359P).	Sara Hensley, City of Denton Manager, 215 East McKinney Street, Denton, TX 76201.	Development Services Department, 401 North Elm Street, Denton, TX 76201.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 9, 2024	480194
Denton	Unincorporated areas of Denton County (23–06–0359P).	The Honorable Andy Eads, Denton County Judge, 1 Courthouse Drive, Suite 3100, Denton, TX 76208.	Denton County Development Services Department, 3900 Morse Street, Denton, TX 76208.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 9, 2024	480774
Denton	Unincorporated areas of Denton County (24–06–0136P).	The Honorable Andy Eads, Denton County Judge, 1 Courthouse Drive, Suite 3100, Denton, TX 76208.	Denton County Development Services Department, 3900 Morse Street, Denton, TX 76208.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 16, 2024	480774
Ellis	City of Venus (23–06–0989P).	The Honorable Alejandro Galaviz, Mayor, City of Venus, 700 West U.S. Highway 67, Venus, TX 76084.	Department of Public Works, 700 West U.S. Highway 67, Venus, TX 76084.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 16, 2024	480883
Ellis	Unincorporated areas of Ellis County (23–06–0989P).	The Honorable Todd Little, Ellis County Judge, 101 West Main Street, Waxahachie, TX 75165.	Ellis County Engineering Department, 109 South Jackson Street, Waxahachie, TX 75165.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 16, 2024	480798
Guadalupe	City of New Braunfels (23–06–2669P).	Robert Camareno, Manager, City of New Braunfels, 550 Landa Street, New Braunfels, TX 78130.	City Hall, 550 Landa Street, New Braunfels, TX 78130.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 12, 2024	485493

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.
Hays	City of Kyle (24–06–0264P).	The Honorable Travis Mitchell, Mayor, City of Kyle, 100 West Center Street, Kyle, TX 78640.	City Hall, 100 West Center Street, Kyle, TX 78640.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 12, 2024	481108
Johnson	City of Cleburne (23–06–0045P).	The Honorable Scott Cain, Mayor, City of Cleburne, P.O. Box 677, Cleburne, TX 76031.	City Hall, 10 North Robinson Street, Cleburne, TX 76033.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 30, 2024	485462
Kaufman	City of Forney (23–06–1347P).	The Honorable Jason Roberson, Mayor, City of Forney, P.O. Box 826, Forney, TX 75126.	City Hall, 101 East Main Street, Forney, TX 75126.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 13, 2024	480410
Nueces	City of Corpus Christi (23–06–1985P).	The Honorable Paulette M. Guajardo, Mayor, City of Corpus Christi, 1201 Leopard Street, Corpus Christi, TX 78401.	City Hall, 1201 Leopard Street, Corpus Christi, TX 78401.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 16, 2024	485464
Tarrant	City of Crowley (23–06–2689P).	The Honorable Billy P. Davis, Mayor, City of Crowley, 201 East Main Street, Crowley, TX 76036.	Planning and Development Department, 201 East Main Street, Crowley, TX 76036.	*https://msc.fema.gov/portal/advanceSearch.*	Sep. 9, 2024	480591
Utah: Tooele	City of Tooele (23–08–0698P).	The Honorable Debbie Winn, Mayor, City of Tooele, 90 North Main Street, Tooele, UT 84074.	Engineering Department, 90 North Main Street, Tooele, UT 84074.	*https://msc.fema.gov/portal/advanceSearch.*	Aug. 22, 2024	490145

[FR Doc. 2024–12522 Filed 6–6–24; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2024–0002; Internal Agency Docket No. FEMA–B–2440]

Proposed Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Comments are requested on proposed flood hazard determinations, which may include additions or modifications of any Base Flood Elevation (BFE), base flood depth, Special Flood Hazard Area (SFHA) boundary or zone designation, or regulatory floodway on the Flood Insurance Rate Maps (FIRMs), and where applicable, in the supporting Flood Insurance Study (FIS) reports for the communities listed in the table below. The purpose of this notice is to seek general information and comment regarding the preliminary FIRM, and where applicable, the FIS report that the Federal Emergency Management Agency (FEMA) has provided to the affected communities. 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).

DATES: Comments are to be submitted on or before September 5, 2024.

ADDRESSES: The Preliminary FIRM, and where applicable, the FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables 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.

You may submit comments, identified by Docket No. FEMA–B–2440, to 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*.

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: FEMA proposes to make flood hazard determinations for each community listed below, in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a).

These proposed 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. These flood hazard determinations are used to meet the floodplain management requirements of the NFIP.

The communities affected by the flood hazard determinations are provided in the tables below. Any request for reconsideration of the revised flood hazard information shown on the Preliminary FIRM and FIS report that satisfies the data requirements outlined in 44 CFR 67.6(b) is considered an appeal. Comments unrelated to the flood hazard determinations also will be considered before the FIRM and FIS report become effective.

Use of a Scientific Resolution Panel (SRP) is available to communities in support of the appeal resolution process. SRPs are independent panels of experts in hydrology, hydraulics, and

other pertinent sciences established to review conflicting scientific and technical data and provide recommendations for resolution. Use of the SRP only may be exercised after FEMA and local communities have been engaged in a collaborative consultation process for at least 60 days without a mutually acceptable resolution of an appeal. Additional information regarding the SRP process can be found online at *https://www.floodsrp.org/pdfs/srp_overview.pdf*.

The watersheds and/or communities affected are listed in the tables below. The Preliminary FIRM, and where applicable, FIS report for each community are available for inspection at both the online location *https://hazards.fema.gov/femaportal/prelimdownload* and the respective Community Map Repository address listed in the tables. For communities with multiple ongoing Preliminary studies, the studies can be identified by the unique project number and Preliminary FIRM date listed in the tables. 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,

Assistant Administrator (Acting) for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Mohave County, Arizona and Incorporated Areas Project: 16–09–1559S Preliminary Date: December 08, 2023.	
City of Lake Havasu	Public Works Department, 900 London Bridge Road, Lake Havasu City, AZ 86404.
Unincorporated Areas of Mohave County	Mohave County Development Services, 3250 East Kino Avenue, Kingman, AZ 86409.
Pinal County, Arizona and Incorporated Areas Project: 20–09–0026S Preliminary Date: December 05, 2023	
City of Apache Junction	City Hall, 300 East Superstition Boulevard, Apache Junction, AZ 85119.
Unincorporated Areas of Pinal County	Pinal County Community Development Department, 85 North Florence Street, Florence, AZ 85132.

[FR Doc. 2024–12526 Filed 6–6–24; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2024–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below. The FIRM and FIS report are the basis of the floodplain management measures that a 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 Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP).

DATES: The date of September 26, 2024 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

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 determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes 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.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov*.

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Assistant Administrator (Acting) for Risk Management, Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Craighead County, Arkansas and Incorporated Areas Docket Nos.: FEMA–B–2072, FEMA–B–2118 and FEMA–B–2303	
City of Bay	City Hall, 220 Elder Street, Bay, AR 72411.
City of Bono	City Hall, 241 East College Street, Bono, AR 72416.
City of Brookland	City Hall, 613 Holman, Brookland, AR 72417.
City of Caraway	City Hall, 102 East State Street, Caraway, AR 72419.
City of Cash	City Hall, 4391 Highway 18, Cash, AR 72421.
City of Jonesboro	City Hall, 300 South Church Street, Jonesboro, AR 72401.
City of Lake City	City Hall, 406 Court Street, Lake City, AR 72437.
City of Monette	City Hall, 1 Drew Avenue, Monette, AR 72447.
Town of Black Oak	Town Hall, 205 South Main Street, Black Oak, AR 72414.
Town of Egypt	Town Hall, 11603 Highway 91, Egypt, AR 72427.
Unincorporated Areas of Craighead County	Craighead County Annex, 511 Union, Room 119, Jonesboro, AR 72401.
Weld County, Colorado and Incorporated Areas Docket No.: FEMA–B–2343	
City of Longmont	Development Services Center, 385 Kimbark Street, Longmont, CO 80501.
Town of Firestone	Town Hall, 9950 Park Avenue, Firestone, CO 80504.
Town of Frederick	Town Hall, 401 Locust Street, Frederick, CO 80530.
Town of Mead	Town Hall, 441 3rd Street, Mead, CO 80542.
Unincorporated Areas of Weld County	Weld County Administrative Building, 1150 O Street, Greeley, CO 80631.
Miami County, Kansas and Incorporated Areas Docket No.: FEMA–B–2325	
City of Osawatomie	City Hall, Code Enforcement Office, 439 Main Street, Osawatomie, Kansas 66064.
Unincorporated Areas of Miami County	Miami County Administration Building, 201 South Pearl Street, Suite 201, Paola, Kansas 66071.
Baraga County, Michigan (All Jurisdictions) Docket No.: FEMA–B–2355	
Keweenaw Bay Indian Community L'Anse Reservation	Keweenaw Bay Tribal Center, 16429 Beartown Road, Baraga, MI 49908.
Township of Arvon	Skanee Town Hall, 20986 Park Road, Skanee, MI 49962.
Township of Baraga	Township Building, 13919 State Highway M–38, Baraga, MI 49908.
Township of Covington	Township Multi-Purpose Building, 12898 Highway M28, Covington, MI 49919.
Township of L'Anse	Township Hall, 126 North Main Street, L'Anse, MI 49946.
Village of Baraga	Village Hall, 100 Hemlock Street, Baraga, MI 49908.
Village of L'Anse	Village Hall, 101 North Main Street, L'Anse, MI 49946.
Dodge County, Minnesota and Incorporated Areas Docket No.: FEMA–B–2345	
City of Dodge Center	City Hall, 35 East Main Street, Dodge Center, MN 55927.
City of Hayfield	City Hall, 18 West Main Street, Hayfield, MN 55940.
City of Kasson	City Hall, 401 5th Street SE, Kasson, MN 55944.
City of Mantorville	City Hall, 21 5th Street East, Mantorville, MN 55955.
Unincorporated Areas of Dodge County	Dodge County Environmental Services Department, 721 Main Street North, Department 123, Mantorville, MN 55955.
Pope County, Minnesota and Incorporated Areas Docket Nos.: FEMA–B–2128 and B–2315	
City of Cyrus	City Hall, 126 West Main Street, Cyrus, MN 56323.
City of Glenwood	City Hall, 100 17th Avenue NW, Glenwood, MN 56334.
City of Long Beach	Long Beach City Hall, 23924 North Lakeshore Drive, Glenwood, MN, 56334.
City of Starbuck	City Hall, 307 East 5th Street, Starbuck, MN 56381.
Unincorporated Areas of Pope County	Pope County Courthouse, 130 East Minnesota Avenue, Glenwood, MN 56334.
Broadwater County, Montana and Incorporated Areas Docket No.: FEMA–B–2320	
Unincorporated Areas of Broadwater County	Broadwater County Courthouse, 515 Broadway Street, Townsend, MT 59644.

Community	Community map repository address
Athens County, Ohio and Incorporated Areas Docket No.: FEMA–B–1340, FEMA–B–2257	
City of Athens	City Hall, 8 East Washington Street, Athens, OH 45701.
City of Nelsonville	City Hall, 211 Lake Hope Drive, Nelsonville, OH 45764.
Unincorporated Areas of Athens County	Athens County Courthouse, 1 South Court Street, Athens, OH 45701.
Village of Buchtel	Village Mayor's Office, 17710 Akron Avenue, Buchtel, OH 45716.
Village of Chauncey	City Building, 42 Converse Street, Chauncey, OH 45719.
Powhatan County, Virginia (All Jurisdictions) Docket No.: FEMA–B–2323	
Unincorporated Areas of Powhatan County	Powhatan County Administration Building, 3834 Old Buckingham Road, Suite F, Powhatan, VA 23139.

[FR Doc. 2024–12529 Filed 6–6–24; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

Federal Emergency Management Agency

[Docket ID FEMA–2024–0002]

Final Flood Hazard Determinations

AGENCY: Federal Emergency Management Agency, Department of Homeland Security.

ACTION: Notice.

SUMMARY: Flood hazard determinations, which may include additions or modifications of Base Flood Elevations (BFEs), base flood depths, Special Flood Hazard Area (SFHA) boundaries or zone designations, or regulatory floodways on the Flood Insurance Rate Maps (FIRMs) and where applicable, in the supporting Flood Insurance Study (FIS) reports have been made final for the communities listed in the table below. The FIRM and FIS report are the basis of the floodplain management measures that a 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 Federal Emergency Management Agency's (FEMA's) National Flood Insurance Program (NFIP).

DATES: The date of September 12, 2024 has been established for the FIRM and, where applicable, the supporting FIS report showing the new or modified flood hazard information for each community.

ADDRESSES: The FIRM, and if applicable, the FIS report containing the final flood hazard information for each community is available for inspection at the respective Community Map Repository address listed in the tables below and will be available online through the FEMA Map Service Center at *https://msc.fema.gov* by the date indicated above.

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 determinations listed below for the new or modified flood hazard information for each community listed. Notification of these changes 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.

This final notice is issued in accordance with section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR part 67. FEMA has developed criteria for floodplain management in floodprone areas in accordance with 44 CFR part 60.

Interested lessees and owners of real property are encouraged to review the new or revised FIRM and FIS report available at the address cited below for each community or online through the FEMA Map Service Center at *https://msc.fema.gov.*

The flood hazard determinations are made final in the watersheds and/or communities listed in the table below.

(Catalog of Federal Domestic Assistance No. 97.022, ''Flood Insurance.'')

Nicholas A. Shufro,

Assistant Administrator (Acting) for Risk Management,Federal Emergency Management Agency, Department of Homeland Security.

Community	Community map repository address
Riverside County, California and Incorporated Areas Docket No.: FEMA–B–2296	
City of Corona	City Hall, 400 South Vicentia Avenue, Corona, CA 92882.
City of Eastvale	City Hall, Public Works Department, 12363 Limonite Avenue, Suite 910, Eastvale, CA 91752.
City of Jurupa Valley	City Hall, 8930 Limonite Avenue, Jurupa Valley, CA 92509.
City of Norco	City Hall, 2870 Clark Avenue, Norco, CA 92860.
City of Riverside	Public Works, 3900 Main Street, 4th Floor, Riverside, CA 92522.
Unincorporated Areas of Riverside County	Riverside County Flood Control and Water Conservation District, 1995 Market Street, Riverside, CA 92501.

Community	Community map repository address
Hinsdale County, Colorado and Incorporated Areas Docket No.: FEMA–B–2336	
Town of Lake City	Town Hall, 230 North Bluff Street, Lake City, CO 81235.
Unincorporated Areas of Hinsdale County	Hinsdale County Courthouse, 311 Henson Street, Lake City, CO 81235.
Lincoln County, Colorado and Incorporated Areas Docket No.: FEMA–B–2332	
Town of Limon	Town Hall, 100 Civic Center Drive, Limon, CO 80828.
Unincorporated Areas of Lincoln County	Lincoln County Complex, 103 3rd Avenue, Hugo, CO 80821.
Doniphan County, Kansas and Incorporated Areas Docket No.: FEMA–B–2179	
City of Elwood	City Hall, 207 North 6th Street, Elwood, KS 66024.
City of Highland	City Hall, 220 West Main Street, Highland, KS 66035.
City of Leona	Doniphan County Courthouse Planning and Zoning, 120 East Chestnut Street, Troy, KS 66087.
City of Severance	Doniphan County Courthouse Planning and Zoning, 120 East Chestnut Street, Troy, KS 66087.
City of Troy	City Hall, 137 West Walnut Street, Troy, KS 66087.
City of Wathena	City Hall, 206 St. Joseph Street, Wathena, KS 66090.
City of White Cloud	City Hall, 208 Main Street, White Cloud, KS 66094.
Iowa Tribe of Kansas and Nebraska	Iowa Tribe of Kansas and Nebraska Tribal Administrative Office, 3345B Thrasher Road, White Cloud, KS 66094.
Unincorporated Areas of Doniphan County	Doniphan County Courthouse Planning and Zoning, 120 East Chestnut Street, Troy, KS 66087.
Stevens County, Minnesota and Incorporated Areas Docket No.: FEMA–B–2068, FEMA–B–2191, FEMA–B–2350	
City of Alberta	City Hall, 305 Main Street, Alberta, MN 56207.
City of Donnelly	City Hall, 107 3rd Street, Donnelly, MN 56235.
City of Morris	City Hall, 610 Oregon Avenue, Morris, MN 56267.
Township of Swan Lake	Swan Lake Township Hall, 43967 150th Street, Morris, MN 56267.
Unincorporated Areas of Stevens County	Stevens County Courthouse, 400 Colorado Avenue, Morris, MN 56267.
Tulsa County, Oklahoma and Incorporated Areas Docket No.: FEMA–B–2303	
City of Bixby	Public Works Dawes Building, 113 West Dawes Avenue, Bixby, OK 74008.
City of Broken Arrow	Operations Building, 485 North Poplar Avenue, Broken Arrow, OK 74012.
City of Tulsa	Stormwater Design Office, 2317 South Jackson Avenue, Suite 302, Tulsa, OK 74107.
Unincorporated Areas of Tulsa County	Tulsa County Headquarters, 218 West 6th Street, Suite 210, Tulsa, OK 74119.
Hamlin County, South Dakota and Incorporated Areas Docket No.: FEMA–B–2320	
City of Castlewood	City Hall, 204 East Main Street, Castlewood, SD 57223.
City of Estelline	City Office, 117 North Main Street, Estelline, SD 57234.
City of Lake Norden	City Office, 508 Main Avenue, Lake Norden, SD 57248.
Unincorporated Areas of Hamlin County	Hamlin County Courthouse, 300 4th Street, Hayti, SD 57241.

[FR Doc. 2024–12523 Filed 6–6–24; 8:45 am]

BILLING CODE 9110–12–P

DEPARTMENT OF HOMELAND SECURITY

[Docket No. DHS–2024–0018]

Faith-Based Security Advisory Council

AGENCY: Office of Partnership and Engagement (OPE), The Department of Homeland Security (DHS).

ACTION: Notice of open Federal advisory committee meeting.

SUMMARY: The Faith-Based Security Advisory Council (FBSAC) will hold a hybrid meeting (both in-person and virtual) on Monday, June 24, 2024. The meeting will be open to the public.

DATES: The meeting will take place from 3 p.m. ET to 4:30 p.m. ET on Monday, June 24, 2024. Please note that the meeting may end early if the Council has completed its business.

ADDRESSES: The FBSAC meeting will be held virtually and in-person at DHS

Headquarters. Members of the public interested in participating may do so by following the process outlined below (see ''Public Participation''). Written comments can be submitted from June 14, 2024, to June 28, 2024. Comments must be identified by Docket No. DHS–2024–0018 and may be submitted by one of the following methods:

- *Federal eRulemaking Portal: http://www.regulations.gov.* Follow the instructions for submitting comments.
- *Email: FBSAC@hq.dhs.gov.* Include Docket No. DHS–2024–0018 in the subject line of the message.
- *Mail:* Susan Schneider, Alternate Designated Federal Officer of Faith-Based Security Advisory Council, Office of Partnership and Engagement, Mailstop 0385, Department of Homeland Security, 2707 Martin Luther King Jr Ave SE, Washington, DC 20528.

Instructions: All submissions received must include the words ''Department of Homeland Security'' and ''DHS–2024–0018,'' the docket number for this action. Comments received will be posted without alteration at *http://www.regulations.gov,* including any personal information provided. You may wish to review the Privacy and Security Notice found via a link on the homepage of *http://www.regulations.gov.*

Docket: For access to the docket to read comments received by the Council, go to *http://www.regulations.gov,* search ''DHS–2024–0018,'' ''Open Docket Folder'' and provide your comments.

FOR FURTHER INFORMATION CONTACT: Susan Schneider, Alternate Designated Federal Officer, Faith-Based Security Advisory Council, Office of Partnership and Engagement, U.S. Department of Homeland Security at *FBSAC@hq.dhs.gov* or 771–233–5755.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under section 10(a) of the Federal Advisory Committee Act (FACA), Public Law 92–463 (5 U.S.C. ch. 10), which requires each FACA committee meeting to be open to the public unless the President, or the head of the agency to which the advisory committee reports, determines that a portion of the meeting may be closed to the public in accordance with 5 U.S.C. 552b(c).

The FBSAC provides organizationally independent, strategic, timely, specific, and actionable advice to the Secretary through the OPE Assistant Secretary, who serves as the DHS Faith-Based Organizations Security Coordinator on security and preparedness matters related to places of worship, faith communities, and faith-based organizations. The Council consists of members who are: faith-based organization security officials; faith-based organization leaders; faith leaders; State and local public safety, law enforcement, and emergency management leaders.

The agenda for the meeting is as follows:(1) remarks from senior DHS leaders and (2) briefings, public comment, member deliberation, and voting on the three draft reports from the Combatting Online Child Sexual Exploitation and Abuse, Countering and Responding to Targeted Violence and Terrorism, and Countering Transnational Repression Subcommittees. The FBSAC was tasked to create these three subcommittees on January 5, 2024. The taskings can be found on the FBSAC website at *https://www.dhs.gov/faith-based-security-advisory-council.* The meeting will adjourn at 4:30 p.m. ET.

Members of the public will be in listen-only mode except during the public comment session. Members of the public may register to participate in this Council via teleconference or in person via the following procedures. Each individual must provide their full legal name and email address no later than 5 p.m. ET on Friday, June 21, 2024, to Susan Schneider of the Council via email to *FBSAC@hq.dhs.gov* or via phone at 771–233–5755. Members of the public who have registered to participate will be provided the conference call and in person details after the closing of the public registration period and prior to the start of the meeting. Please note that there will be limited public seating and it will be available on a first-come, first-served basis.

For information on services for individuals with disabilities, or to request special assistance, please email *FBSAC@hq.dhs.gov* by 5 p.m. ET on Thursday, June 20, 2024. The FBSAC is committed to ensuring all participants have equal access regardless of disability status. If you require a reasonable accommodation due to a disability to fully participate, please contact Susan Schneider at *FBSAC@hq.dhs.gov* or 771–233–5755 as soon as possible.

Dated: June 4, 2024.

Susan R. Schneider,

Alternate Designated Federal Officer, Department of Homeland Security.

[FR Doc. 2024–12560 Filed 6–6–24; 8:45 am]

BILLING CODE 9112–FN–P

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

[Docket No. TSA–2018–0001]

Request for Applicants for Appointment to the Surface Transportation Security Advisory Committee

AGENCY: Transportation Security Administration, Department of Homeland Security.

ACTION: Committee management; request for applicants.

SUMMARY: The Transportation Security Administration (TSA) requests that qualified individuals interested in serving on the Surface Transportation Security Advisory Committee (STSAC) apply for appointment as identified in this notice. All applicants must represent one of the constituencies specified below in order to be eligible for appointment. STSAC's mission is to provide advice, consultation, and recommendations to the TSA Administrator on improving surface transportation security matters, including developing, refining, and implementing policies, programs, initiatives, rulemakings, and security directives pertaining to surface transportation security, while adhering to sensitive security information requirements. The STSAC considers risk-based approaches in the performance of its duties.

DATES: Applications for membership must be submitted to TSA using one of the methods in the **ADDRESSES** section below on or before July 8, 2024.

ADDRESSES: Applications must be submitted by one of the following means:

- *Email: STSAC@tsa.dhs.gov.*
- *Mail:* Gary Click, STSAC Designated Federal Officer, Transportation Security Administration (TSA–28), TSA Mailstop 6028, 6595 Springfield Center Drive, Springfield, VA 20598–6028.

See below for application requirements.

The STSAC will send you an email that confirms receipt of your application and will notify you of the final status of your application once TSA selects members.

FOR FURTHER INFORMATION CONTACT: Gary Click, STSAC Designated Federal Officer (DFO), Transportation Security Administration (TSA–28), TSA Mailstop 6028, 6595 Springfield Center Drive, Springfield, VA 20598–6028, *STSAC@tsa.dhs.gov,* 571–227–5866.

SUPPLEMENTARY INFORMATION: The STSAC is an advisory committee established pursuant to section 1969, Division K, *TSA Modernization Act,* of the *FAA Reauthorization Act of 2018* (Pub. L. 115–254; 132 Stat. 3186; Oct. 5, 2018). The committee is composed of individual members representing key constituencies affected by surface transportation security requirements.

Application for Advisory Committee Appointment

Any person wishing to be considered for appointment to the STSAC must provide the following information:

- Complete professional resume.
- Statement of interest and reasons for application, including the membership category represented, how you represent a significant portion of that constituency, and a brief explanation of how you can contribute to one or more TSA strategic initiatives based on your prior experience with TSA or your review of current TSA strategic documents. These documents can be found at *www.tsa.gov/about/strategy*.
- Home and work addresses, telephone number, and email address.

In order for DHS to fully leverage broad-ranging experience and education, the STSAC must be diverse with regard to professional and technical expertise. DHS is also committed to pursuing opportunities, consistent with applicable law, to compose a committee that reflects the diversity of the nation's people. If there are aspects of diversity that you wish to describe or emphasize in support of your candidacy, please do so within your statement of interest application. TSA does not discriminate based on race, color, religion, sex, national origin, sexual orientation, gender identity, marital status, political affiliation, disability and genetic information, age, membership in an employee organization, or other non-merit factor.

Please submit your application to the DFO in **ADDRESSES** noted above by July 8, 2024.

Membership

The STSAC is composed of no more than 40 voting members from among stakeholders representing each mode of surface transportation, such as passenger rail, freight rail, mass transit, pipelines, highways, over-the-road bus, school bus industry, and trucking, and may include representatives from—

- Associations representing such modes of surface transportation;
- Labor organizations representing such modes of surface transportation;
- Groups representing the users of such modes of surface transportation, including asset manufacturers, academics, and cybersecurity professionals, as appropriate;
- Relevant law enforcement, first responders, and security experts;
- Emergency Management Officials; and
- Such other groups as the TSA Administrator considers appropriate.

The STSAC also includes nonvoting members, serving in an advisory capacity, who are designated by TSA; the Department of Transportation; the Coast Guard; and such other Federal department or agency as the TSA Administrator considers appropriate.

The STSAC does not have a specific number of members allocated to any membership category and TSA may adjust the number of members in a category may to fit the needs of the Committee.

Appointees will be designated as representative members. Representative members speak for the key constituency group they represent. Membership on the Committee is personal to the appointee and a member may not send an alternate to a Committee meeting. The members of the committee shall not receive any compensation from the government by reason of their service on the Committee.

Committee Voting Membership

Committee voting members are appointed by and serve at the pleasure of the Administrator of TSA for a term of two years, but a voting member may continue to serve until the Administrator appoints a successor. Voting members who are currently serving on the Committee and whose 2-year term concludes in 2024 are eligible to reapply for membership and must submit a new application. The next 2-year term of appointments will begin November 2024.

Committee Meetings

The Committee shall meet as frequently as deemed necessary by the DFO in consultation with the Chairperson, but no less than two scheduled meetings each year. At least one meeting will be open to the public each year. Unless the DFO decides otherwise, meetings will be held in person in the Washington, DC, metropolitan area or through web conferencing. In addition, STSAC members are expected to participate on an STSAC subcommittee that normally meets more frequently to deliberate and discuss specific surface transportation matters.

Committee Membership Vetting

All applicants who are presented for appointment to the STSAC must successfully complete a security threat assessment (STA) by TSA, as access to sensitive security information will be necessary. U.S. citizens and those meeting residency requirements will be vetted using TSA's Universal Enrollment Services (UES), which includes the collection of biographic and biometric information to allow TSA to perform the STA in regards to criminal history, terrorists watch list, and citizenship. Selected applicants will be offered a no-cost authorization code to complete the three-step UES process; which includes online pre-enrollment and coordinating an in-person visit to the enrollment center. Non-U.S. applicants presented for appointment to the STSAC will be required to complete additional vetting.

Dated: June 3, 2024.

Eddie D. Mayenschein,

Assistant Administrator, Policy, Plans, and Engagement.

[FR Doc. 2024–12505 Filed 6–6–24; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R3–ES–2024–N031; FXES11130300000–245–FF03E00000]

Endangered and Threatened Species; Receipt of Recovery Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of permit applications; request for comments.

SUMMARY: We, the U.S. Fish and Wildlife Service, have received applications for permits to conduct activities intended to enhance the propagation or survival of endangered or threatened species under the Endangered Species Act. We invite the public and local, State, Tribal, and Federal agencies to comment on these applications. Before issuing any of the requested permits, we will take into consideration any information that we receive during the public comment period.

DATES: We must receive your written comments on or before July 8, 2024.

ADDRESSES: *Document availability and comment submission:* Submit requests for copies of the applications and related documents, as well as any comments, by one of the following

methods. All requests and comments should specify the applicant name(s) and application number(s) (*e.g.,* ESXXXXXX; see table in **SUPPLEMENTARY INFORMATION**):

- *Email (preferred method): permitsR3ES@fws.gov.* Please refer to the respective application number (*e.g.,* Application No. ESXXXXXX) in the subject line of your email message.
- *U.S. Mail:* Regional Director, Attn: Nathan Rathbun, U.S. Fish and Wildlife Service, Ecological Services, 5600 American Blvd. West, Suite 990, Bloomington, MN 55437–1458.

FOR FURTHER INFORMATION CONTACT: Nathan Rathbun, 612–713–5343 (phone); *permitsR3ES@fws.gov* (email). Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: We, the U.S. Fish and Wildlife Service, invite review and comment from the public and local, State, Tribal, and Federal agencies on applications we have received for permits to conduct certain activities with endangered and threatened species under section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*), and our regulations in the Code of Federal Regulations (CFR) at 50 CFR part 17. Documents and other information submitted with the applications are available for review, subject to the requirements of the Privacy Act and the Freedom of Information Act.

Background

The ESA prohibits certain activities with endangered and threatened species unless authorized by a Federal permit. The ESA and our implementing regulations in part 17 of title 50 of the Code of Federal Regulations (CFR) provide for the issuance of such permits and require that we invite public comment before issuing permits for activities involving endangered species.

A recovery permit issued by us under section 10(a)(1)(A) of the ESA authorizes the permittee to conduct activities with endangered species for scientific purposes that promote recovery or for enhancement of propagation or survival of the species. Our regulations implementing section 10(a)(1)(A) for these permits are found at 50 CFR 17.22 for endangered wildlife species, 50 CFR 17.32 for threatened wildlife species, 50 CFR 17.62 for endangered plant species, and 50 CFR 17.72 for threatened plant species.

Permit Applications Available for Review and Comment

The ESA requires that we invite public comment before issuing these permits. Accordingly, we invite local, State, Tribal, and Federal agencies and the public to submit written data, views, or arguments with respect to these applications. The comments and recommendations that will be most useful and likely to influence agency decisions are those supported by quantitative information or studies. Proposed activities in the following permit requests are for the recovery and enhancement of propagation or survival of the species in the wild.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ES73584A	Illinois Natural History Survey, Champaign, IL.	Fifteen freshwater mussel species, Neosho madtom (*Noturus placidus*).	Add new State—WI—to existing authorized States: IL, IN, MO, KS, OK.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Add new activities—Tissue sample, PIT tag—to existing authorized activities: Capture, handle, relocate under special circumstances.	Amend.
ESPER1224186	Greg Gaulke, Madison, WI.	Add new species—western fanshell (*Cyprogenia aberti*)—to 15 existing authorized freshwater mussel species.	IL, IN, IA, MI, MN, MO, OH, WI.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, tag, relocate under special circumstances.	Amend.
ES98673B	Jason Layne, Spring Hill, KS.	Add new species—tricolored bat (*Perimyotis subflavus*)—to existing authorized species: Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), northern long-eared bat (*M. septentrionalis*), Ozark big-eared bat (*Corynorhinus townsendii ingens*), and Virginia big-eared bat (*C. t. virginianus*).	Add new States—CO, FL, NM, TX—to existing authorized States: AL, AR, CT, DE, DC, FL, GA, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MO, MS, MT, NE, NH, NJ, NY, NC, ND, OK, OH, PA, RI, SC, SD, TN, VT, VA, WV, WI, WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, radio-tag, band, release.	Amend.
ESPER10699328 ...	Olivia Snobl, Eagle River, WI.	Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), northern long-eared bat (*M. septentrionalis*), tricolored bat (*Perimyotis subflavus*).	IL, IN, IA, MN, MI, OH, ND, SD, WI.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, band, release.	New.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ES15027A	Stantec Consulting Services Inc., Independence, IA.	Add new species—tricolored bat (*Perimyotis subflavus*)—to existing authorized species: Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), northern long-eared bat (*M. septentrionalis*).	Add new States—CO, DC, ME, NM, TX—to existing authorized States: AL, AR, CT, DE, FL, GA, IL, IN, IA, KS, KY, LA, MD, MA, MI, MN, MO, MS, MT, NE, NH, NJ, NY, NC, ND, PA, RI, OK, OH, SC, SD, TN, VT, VA, WV, WI, WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, radio-tag, band, enter hibernacula, release.	Amend.
ES49331D	Shane Brodnick, Barboursville, WV.	Add new species—tricolored bat (*Perimyotis subflavus*)—to existing authorized species: Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), northern long-eared bat (*M. septentrionalis*).	Add new States—DE, LA, ME, MN, MT, NE, ND, SD, RI, TX, DC, WI, WY—to existing authorized States: AL, AR, CT, FL, GA, IL, IN, IA, KS, KY, MD, MA, MI, MS, MO, NH, NJ, NY, NC, OH, OK, PA, SC, TN, VT, VA, WV.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, radio-tag, band, release.	Renew and Amend.
ESPER0037865	Mark Hove, Saint Paul, MN.	Add new mussel species—spectaclecase (*Cumberlandia monodonta*), snuffbox (*Epioblasma triquetra*), sheepnose (*Plethobasus cyphyus*)—to existing authorized species: Higgins' eye pearly mussel (*Lampsilis higginsi*), winged mapleleaf (*Quadrula fragosa*).	MN, WI	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, tag, relocate under special circumstances.	Amend.
ES02344A	Mainstream Divers, Inc., Murray, KY.	Add new species—southern pigtoe (*Pleurobema georgianum*), western fanshell (*Cyprogenia aberti*), and Ouachita fanshell (*Cyprogenia cf. aberti*)—to existing 28 authorized species of freshwater mussel.	AL, AR, FL, GA, IA, IL, IN, KS, KY, LA, MI, MN, NE MO, MS, TN, OH, OK, PA, SD, WI, WV.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, tag, relocate under special circumstances.	Amend.
ESPER0002430	David Ford, Spring, TX.	Add new species—Guadalupe orb (*Cyclonaias necki*), Texas pimpleback (*Cyclonaias petrina*), false spike (*Fusconaia mitchelli*), Guadalupe fatmucket (*Lampsilis bergmanni*), Texas fatmucket (*Lampsilis braceata*), Texas hornshell (*Popenaias popeii*), Texas fawnsfoot (*Truncilla macrodon*)—to 23 authorized freshwater mussel species.	AR, GA, LA, NM, OK, TN, TX.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture, handle, tag, relocate under special circumstances.	Amend.

Application No.	Applicant	Species	Location	Activity	Type of take	Permit action
ES99051B	Goniela Iskali, Bloomington, IN.	Add new species—tricolored bat (*Perimyotis subflavus*)—to existing authorized species: Indiana bat (*Myotis sodalis*), gray bat (*M. grisescens*), northern long-eared bat (*M. septentrionalis*).	AL, AR, CT, DE, FL, GA, IA, IL, IN, KY, KS, LA, MA, MD, ME, MI, MN, MO, MS, MT, NC, ND, NE, NH, NJ, NY, OH, OK, PA, RI, SC, SD, TN, TX, VA, VT, WI, WV, WY.	Conduct presence/absence surveys, document habitat use, conduct population monitoring, and evaluate impacts.	Capture with mist nets, handle, identify, radio-tag, band, collect non-intrusive measurements, release.	Amend.

Public Availability of Comments

Written comments we receive become part of the administrative record associated with this action. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can request in your comment that we withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so. Moreover, all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public disclosure in their entirety.

Next Steps

If we decide to issue permits to any of the applicants listed in this notice, we will publish a notice in the **Federal Register**.

Authority

We publish this notice under section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Sean Marsan,

Acting—Assistant Regional Director, Ecological Services, Midwest Region.

[FR Doc. 2024–12544 Filed 6–6–24; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[245D0102DM DS61100000 DLSN00000.000000 DX61101]; OMB Control Number 1094–0001]

Agency Information Collection Activities; The Alternatives Process in Hydropower Licensing

AGENCY: Department of the Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Office of the Secretary, Office of Environmental Policy and Compliance, Department of the Interior, is requesting comments on the proposed renewal of an information collection request related to the alternatives process in hydropower licensing. This notice is being issued in coordination with the Department of Commerce and the Department of Agriculture.

DATES: Interested persons are invited to submit comments on or before August 6, 2024.

ADDRESSES: Send your comments on this information collection request (ICR) by mail to: National Environmental Policy Act and Environmental Coordination Division, Office of Environmental Policy and Compliance, U.S. Department of the Interior, MS 2629–MIB, 1849 C Street NW, Washington, DC 20240; or by email to *Environmental_Review@ios.doi.gov.* Please reference OMB Control Number 1094–0001 in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Shawn Alam, National Environmental Policy Act and Environmental Coordination Division by email at *Environmental_Review@ios.doi.gov,* or by telephone at 771–216–5846. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), all information collections require approval under the PRA. We may not conduct or sponsor, and you are not required to respond to, a collection of information unless it displays a currently valid OMB control number.

As part of our continuing effort to reduce paperwork and respondent burdens, we invite the public and other Federal agencies to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including using appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

Comments that you submit in response to this notice are a matter of public record. We will include or summarize each comment in our request to OMB to approve this ICR. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment

to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Abstract: The OMB regulations at 5 CFR part 1320, which implement the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.,* require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8 (d)).

On November 23, 2016, the Departments of Agriculture, the Interior, and Commerce published a final rule, at 7 CFR part 1, 43 CFR part 45, and 50 CFR part 221, to implement section 241 of the Energy Policy Act of 2005 (EP Act), Public Law 109–58, enacted on August 8, 2005, (81 FR 84389). Section 241 of the EP Act added a new section 33 to the Federal Power Act (FPA), 16 U.S.C. 823d, that allows the license applicant or any other party to the license proceeding to propose an alternative to a condition or prescription that one or more of the Departments develop for inclusion in a hydropower license issued by the Federal Energy Regulatory Commission (FERC) under the FPA. The final regulations require the Department of Agriculture, the Department of the Interior, and the Department of Commerce to collect the information that is covered under this ICR, 1094–0001.

Under FPA section 33, the Secretary of the Department involved must accept the proposed alternative if the Secretary determines, based on substantial evidence provided by a party to the license proceeding or otherwise available to the Secretary, (a) that the alternative condition provides for the adequate protection and utilization of the reservation, or that the alternative prescription will be no less protective than the fishway initially proposed by the Secretary, and (b) that the alternative will either cost significantly less to implement or result in improved operation of the project works for electricity production.

In order to make this determination, the regulations require that all of the following information be collected: (1) a description of the alternative, in an equivalent level of detail to the Department's preliminary condition or prescription; (2) an explanation of how the alternative: (i) if a condition, will provide for the adequate protection and utilization of the reservation; or (ii) if a prescription, will be no less protective than the fishway prescribed by the bureau; (3) an explanation of how the alternative, as compared to the preliminary condition or prescription, will: (i) cost significantly less to implement; or (ii) result in improved operation of the project works for electricity production; (4) an explanation of how the alternative or revised alternative will affect: (i) energy supply, distribution, cost, and use; (ii) flood control; (iii) navigation; (iv) water supply; (v) air quality; and (vi) other aspects of environmental quality; and (5) specific citations to any scientific studies, literature, and other documented information relied on to support the proposal.

This notice of proposed renewal of an existing information collection is being published by the Department of the Interior, on behalf of all three Departments, and the data provided below covers anticipated responses (alternative conditions/prescriptions and associated information) for all three Departments.

Title of Collection: 7 CFR part 1; 43 CFR part 45; 50 CFR part 221; The Alternatives Process in Hydropower Licensing.

OMB Control Number: 1094–0001.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Business or for-profit entities

Total Estimated Number of Annual Respondents: 5.

Total Estimated Number of Annual Responses: 5.

Estimated Completion Time per Response: 500 hours.

Total Estimated Number of Annual Burden Hours: 2,500 hours.

Respondent's Obligation: Voluntary.

Frequency of Collection: Once per alternative proposed

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Stephen G. Tryon,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 2024–12461 Filed 6–6–24; 8:45 am]

BILLING CODE 4334–63–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

[RR83530000, 234R5065C6, RX.59389832.1009676]

National Environmental Policy Act Implementing Procedures for the Bureau of Reclamation

AGENCY: Office of the Secretary, Interior.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Interior (Department), Bureau of Reclamation (Reclamation) proposes to revise seven categorical exclusions (CE) under the National Environmental Policy Act of 1969 (NEPA) in Reclamation's NEPA implementing procedures, Departmental Manual (DM) at part 516, chapter 14. The proposed revisions would clarify existing CEs on certain financial assistance funding, water-related contracting, and use authorization actions to allow for more consistent interpretation and more efficient review of appropriate actions based on Reclamation's experience implementing these CEs. The Department, on behalf of Reclamation, invites public comment on the proposed revisions.

DATES: Submit written comments on or before July 8, 2024.

ADDRESSES: Send written comments electronically to *usbr_ce@usbr.gov,* or by mail to Bureau of Reclamation, Attn: USBR CE, 1849 C Street NW, Suite 7069, Washington, DC 20240. Supporting documentation used in preparing the proposed CE revisions is available for public inspection at *www.usbr.gov/nepa.* The public can also view the CE substantiation report at *www.usbr.gov/nepa.* The web address for Reclamation's current procedures, at series 31, part 516, chapter 14, is *https://www.doi.gov/document-library/departmental-manual/516-dm-14-managing-nepa-process-bureau-reclamation.*

FOR FURTHER INFORMATION CONTACT: Shane Hunt (he/him) via phone at 916–202–7158, or via email at *usbr_ce@usbr.gov.* Individuals who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION:

Background

Reclamation was established in 1902. Its original mission was civil works construction to develop the water resources of the arid Western United States to promote the settlement and economic development of that region. Reclamation developed hundreds of projects to store and deliver water. That substantial infrastructure development contributed to making Reclamation the largest wholesale supplier of water and the second largest producer of hydropower in the United States.

Reclamation carries out numerous activities in support of its modern-day mission and authorities. NEPA requires Federal agencies to assess the potential environmental effects of proposed major Federal actions. If a major Federal action would have significant impacts on the quality of the human environment, an agency prepares an environmental impact statement (EIS) to describe the reasonably foreseeable effects associated with the proposed action, as well as a reasonable range of alternatives (*see* 42 U.S.C. 4332(2)(C)). An agency prepares an environmental assessment (EA) when a proposed action will not have a reasonably foreseeable significant effect on the quality of the human environment, or if the significance of such effect is unknown (*see* 42 U.S.C. 4336(a)(2), 40 CFR 1501.5(a)). A Federal agency also identifies in its agency NEPA implementing procedures categories of actions that normally do not significantly affect the quality of the human environment and therefore do not require the preparation of an EA or an EIS, subject to the consideration of extraordinary circumstances (*see* 42 U.S.C. 4336e(1), 40 CFR 1501.4 and 43 CFR 46.215). When appropriately established and applied, these CEs allow agencies to protect the environment while operating more efficiently by focusing their resources on proposals that may have significant environmental impacts. In the late 1970s and early 1980s, the Department established Reclamation-specific NEPA implementing procedures, including 30 CEs, which are found in chapter 14 of part 516 of the Departmental Manual (516 DM 14). The Department and Reclamation, through this notice, propose to revise seven of those CEs, as discussed below.

Since developing Reclamation's NEPA implementing procedures, several government-wide and Departmental efforts have encouraged agencies and bureaus to modernize and streamline environmental reviews and, where appropriate, establish new CEs or revise existing ones. The Council on Environmental Quality (CEQ) recommends that agencies periodically review and update, as necessary, their NEPA implementing procedures, including their CEs.[1]

Reclamation has amassed extensive knowledge and experience analyzing actions under NEPA. In 2016, Reclamation comprehensively reviewed its existing CEs at 516 DM 14, which were originally established in the early 1980s. Through the review process and based on more than 40 years of agency experience implementing these CEs, Reclamation identified several examples of actions for which new and revised CEs would improve NEPA compliance by enhancing efficiencies and ensuring clear and consistent interpretation for NEPA practitioners, project proponents, and the public. Specifically, Reclamation's NEPA practitioners and program subject matter experts (CE Working Group) reviewed the original purpose and history of the applicability and use for each of Reclamation's existing CEs. Reclamation's CE Working Group identified issues and challenges contributing to inconsistent interpretation of the actions or scope covered by the CEs, as well as opportunities to modify or add new actions to CEs when those modifications or actions would not result in significant environmental effects.

The CE Working Group found that CEs with clearly defined language and consistent application by NEPA practitioners did not require changes at this time. The CE Working Group identified seven CEs, which are covered by this notice, for revisions to promote consistent interpretation and application by eliminating confusing or outdated terminology and authorities. The CE Working Group also identified 12 existing CEs and potentially new CEs, not addressed in this notice, that required either substantial changes, additional language, or a more thorough review to promote consistent interpretation and to expand their scope to include similar actions with similar ranges of potential impacts. On May 24, 2019, Reclamation established one new CE for transfers of title. Upon completion of the title transfer CE, Reclamation determined its next priority was to revise the seven existing CEs that are the subject of this notice.

The proposed revisions to the seven CEs correct and modernize terminology and authorities, as well as clarify the scope of activities and constraints. While the effect of certain proposed CE revisions would be to broaden CE application to include additional actions, as explained more fully below, the proposed changes are consistent with the existing CEs' intent as well as the underlying activities and impact-based constraints contemplated by the existing CEs from their inception. The result of these proposed changes is that the CEs' underlying activities and the constraints used to define them remain intact. Further, Reclamation's record of CE checklists and EAs with findings of no significant impact (FONSIs) support these proposed changes for actions that normally do not have a significant effect on the human environment. This notice provides a comparison of the existing and proposed CE language and the specific history, basis, and rationale for each proposed revised CE.

[1] *See* 40 CFR 1507.3 and CEQ's 2010 guidance on Establishing, Applying, and Revising Categorical Exclusions Under the National Environmental Policy Act, *https://ceq.doe.gov/docs/ceq-regulations-and-guidance/NEPA_CE_Guidance_Nov232010.pdf.*

516 DM 14.5—OPERATION AND MAINTENANCE ACTIVITIES

[Water-related contracts]

Existing CE language	Proposed revised CE language
D4. Approval, execution, and implementation of water service contracts for minor amounts of long-term water use or temporary or interim water use where the action does not lead to long-term changes and where the impacts are expected to be localized.	D4. Approval, execution, administration, and implementation of water-related contracts and contract renewals, amendments, supplements, and assignments, and water transfers, exchanges, and replacements, for which one or more of the following apply: (a) for minor amounts of long-term water use, where impacts are expected to be localized; (b) for temporary or interim water use[2] where the action does not lead to long-term changes and where the impacts are expected to be localized; or (c) where the only result will be to implement an administrative or financial practice or change. A ''water-related'' contract is any legally binding agreement to which Reclamation becomes a party, pursuant to its authority under Federal law that (1) makes water available from or to the United States; (2) allows water to be stored, carried, or delivered in facilities Reclamation owns, manages, operates, or funds; or (3) establishes operation, maintenance, and replacement responsibilities for such facilities.
D14. Approval, renewal, transfer, and execution of an original, amendatory, or supplemental water service or repayment contract where the only result will be to implement an administrative or financial practice or change.	D14. Reserved.

Reclamation proposes to revise the current D4 and D14 CEs for clarity and to promote consistent interpretation, focused on impacts-based constraints, while ensuring that the actions potentially covered by the proposed D4 CE would not have a significant effect on the human environment. Reclamation proposes to combine the current D4 and D14 CEs into the proposed D4 CE and reserve D14 for future use if needed.

The CE Working Group review found that Reclamation routinely used the current D4 and D14 CEs and that there are extensive records of CE checklists and EAs with FONSIs to document that the water contract actions described therein did not result in significant effects. Reclamation's review also identified several challenges arising from the way CEs D4 and D14 are defined—in particular, how the water-related contract types (water service, repayment, etc.) and contract actions (approval, execution, renewal, etc.) should be read in relation to applicable impacts-based constraints.

Inconsistencies in the current D4 and D14 CEs have led to unclear expectations and varying application by NEPA practitioners. This lack of clarity has led to increased costs and resource expenditures when Reclamation prepares EAs rather than using the current D4 or D14 CEs. The current D4 and D14 CEs apply only to certain contract types and contracting actions. For instance, the current D4 CE only lists water service contracts and original contract execution. The current D14 CE omits contract implementation—Reclamation's performance of the contract once it is executed—and applies only to water service and repayment contracts. Further, the historic record establishing these current CEs does not describe the reasons for the omissions and differences regarding contract types and contract actions or provide guidance about how to interpret the differences. Nor are there now discernable, relevant reasons for the distinctions. The relevant distinctions for purposes of the current CEs are water amount, duration of the contract, and magnitude of the impact. The intention of Reclamation's proposed revisions to the current D4 and D14 CEs is to resolve these issues by simplifying contract types to include all ''water-related'' contracts and all contract actions to more clearly define the applicability of the proposed D4 CE based on an action's impacts.

The range of proposed water-related contract actions covered under the current D4 and D14 CEs are substantially the same among Reclamation's contract types. Reclamation enters into a variety of water-related contract types and carries out contract actions to amend, supplement, or renew these contracts after their original execution. Water service contracts provide project water at contractually established water rates pursuant to section 9(c)(2) or 9(e) of the Reclamation Project Act of 1939 (1939 Act),[3] section 9 of the Water Conservation and Utilization Act of 1939,[4] the Sale of Water for Miscellaneous Purposes Act of 1920,[5] or other authorities. Repayment contracts, pursuant to 9(d) of the 1939 Act, provide project water in exchange for contractors' agreement to repay a set amount of the government's project costs in a given time.

While water service and repayment contracts are core types of contracts that Reclamation holds, Reclamation also enters into a variety of other water-related contracts. These include excess capacity contracts, which allow others to store and move non-project water in Federal works; contracts to transfer Federal operation and maintenance responsibilities to water user organizations; and water exchange or replacement contracts. The current D4 and D14 do not expressly include the range of Reclamation water-related contract types. The proposed revisions to the D4 CE expand the potential application of the proposed CE to encompass the variety of water-related contracts entered into by Reclamation. Including them enhances Reclamation's ability to comply with NEPA efficiently and effectively, consistent with 40 CFR 1501.4 where they meet the impact-based constraints, rather than based on distinctions that relate instead to the legal and financial aspects of contract actions.

The potential application of the proposed D4 CE is inclusive of more types of water-related contracts as discussed above; however, the proposed D4 CE establishes meaningful limits to

[2] Reclamation policy PEC P05 defines temporary and interim as short-term meaning 10 years or less.

[3] Public Law 76–260, 9; 53 Stat. 1187, 1193; 43 U.S.C. 485h.

[4] Public Law 76–398, 9; 53 Stat 1418; 1124; 16 U.S.C. 590z–7.

[5] Public Law 66–147, 41 Stat. 451; 43 U.S.C. 521.

its application. All water-related contracts affect the delivery and use of water or the operation of related facilities and involve relatively large or small water amounts. Any water-related contract may be subject to actions that only result in implementation of an administrative or financial practice or change. Accordingly, rather than limiting CE application based on the legal or financial characteristics of contracts and contract actions, the proposed D4 CE contains impact-based constraints on its application.

To date, Reclamation has prepared numerous EAs and FONSIs for water-related contract requests, which *www.usbr.gov/nepa* provides. In this notice's supporting documentation, Reclamation includes the review of 25 water-related contract EAs and FONSIs completed between 2011 and 2022. These EAs and FONSIs demonstrate that, absent extraordinary circumstances, the types of water-related contracts that the proposed D4 CE would cover, result in no significant effects.

To inform its proposed updates to the current D4 and D14 CEs, Reclamation also analyzed the impact-based constraints in these existing CEs. The constraint limiting the scope and effects for the existing D14 CE, ''where the only result will be to implement an administrative or financial practice or change,'' is clear, easily understood, and consistently applied by NEPA practitioners. In contrast, the impact-based constraints in the current D4 CE create confusion regarding its application. Due to its grammatical construction, most notably the lack of punctuation, the current D4 CE does not clearly present the relationship between the impact-based constraints and D4 CE's application. To resolve the confusion created by the current D4 CE and provide clarity and consistency, Reclamation proposes to revise the D4 CE to distinctly list each impact-based constraint.

Reclamation determined that the application of the proposed D4 CE should continue to be determined by changes in water quantity relative to the affected project or water system. Reclamation also considered whether the absolute water-related contract water amounts, for instance, limiting application by acre-feet of water, should constrain the application of the proposed D4 CE. Ultimately, Reclamation rejected specifying water amounts because the effects to a water system resulting from a water-related contract's specified changes in water quantity are relative; effects depend on the size and unique characteristics of the water system. For example, an amount of contract water that would be minor to the Columbia River might be significant to the Middle Rio Grande River. Therefore, Reclamation proposes the continued use of ''minor'' as an appropriate constraint for water quantity under the proposed D4 CE. The current D4 CE successfully applies the constraint and based on a review of past CE use, EAs, and FONSIs, the use of the term ''minor'' when coupled with the other impact-based constraints included in the proposed CE, and absent any extraordinary circumstances, will normally not significantly affect the quality of the human environment. Likewise, system-specific characteristics, such as hydrological interconnections and local environmental sensitivities, will affect Reclamation's assessment of whether a water-related contract action's impacts would be considered minor, lead to long-term changes, or be localized. Reclamation has not quantified these impact-based constraints in the past, and for the reasons noted above, finds that these constraints do not require quantification in the proposed D4 CE.

Finally, as described above, the type of water-related contract or contract action is not an effective measure of environmental effects or means of defining a CE's application. The impact-based constraints limiting use of the CEs based on elements of water delivery (amount, duration, and area impacted) are more meaningful to determine the relationship of an action to the potential for significant impacts to the environment. Emphasis on using impact-based constraints to define those water-related contracts eligible for use of the proposed D4 CE would standardize its application across water-related contract actions as well as ensure the covered actions would not result in significant effects.

To clarify the application of CEs pertaining to water-related contract actions and to focus on impact-based constraints, Reclamation proposes to consolidate the current D4 and D14 CEs into one CE, the proposed D4 CE. Reclamation then proposes to revise the current D4 CE to replace ''water service contract'' with the more inclusive ''water-related contract,'' which is defined in the proposed D4 CE and the Reclamation Manual Policy, Water-Related Contracts and Charges—General Principles and Requirements (PEC P05), 4.R. The proposed text of D4 CE then uses a list format for each of the impact-based constraints limiting the application of the proposed D4 CE to increase clarity. This includes ''temporary or interim water use'' which PEC P05, 4.P defines as short-term meaning 10 years or less. Based on the consideration of the contract types, within the context of the impact-based constraints and absent any extraordinary circumstances, Reclamation determines that the additional contract types would not have a significant impact on the quality of the human environment.

516 DM 14.5—Operation and Maintenance Activities

[Use authorizations]

Existing CE language	Proposed revised CE language
D8. Renewal of existing grazing, recreation management, or cabin site leases which do not increase the level of use or continue unsatisfactory environmental conditions.	D8. Issuance or renewal of use authorizations (as defined in 43 CFR 429.2, including crossing agreements which provide rights-of-way) that provide right-of-use of Reclamation land, facilities, or waterbodies where one or more of the following apply: (a) work is minor and impacts are expected to be localized; (b) the action does not lead to a major public or private action; (c) the only result of the authorization will be to implement an administrative or financial practice or change; or (d) the level of use or impacts to resources is not increased.
D10. Issuance of permits, licenses, easements, and crossing agreements which provide right-of-way over Bureau lands where the action does not allow for or lead to a major public or private action.	D10. Reserved.

Reclamation's CE Working Group review found that the existing D8 and D10 CEs, as well as other Reclamation CEs for substantially similar use authorization actions, such as D9 that covers the ''issuance of permits for removal of gravel or sand by an established process from existing quarries,'' are routinely applied to use authorization activities. The extensive collection of CE checklists for the existing D8 and D10 CEs and other use authorization CEs demonstrate that these activities do not have significant effects absent extraordinary circumstances. The list of use authorization types in the current D10 CE is consistent with the use authorizations included in 43 CFR 429.2 (*i.e.,* easements, leases, licenses, permits, and consent documents). Reclamation also found confusion regarding the existing D8 and D10 CEs' applicability to use authorization renewals, issuances, and reissuances related to underlying use authorization activities. For example, the current D10 CE does not explicitly include renewal of use authorizations. As a result of this omission, NEPA practitioners interpret the current D10 CE differently with some employing the current D10 CE to reissue expiring use authorizations and others determining that the current D10 CE is not applicable in the same circumstances.

Reclamation proposes to revise the current D8 and D10 CEs to more clearly describe when a use authorization CE applies. First, Reclamation proposes to combine the existing D8 and D10 CEs into one CE, the proposed D8 CE, and reserve D10 for future use if needed. Next, Reclamation proposes to include in the proposed D8 CE the term ''use authorization.'' Similar to the scope of the current D10 CE, the proposed D8 CE covers the Reclamation use authorization activities by incorporating language from and a reference to 43 CFR 429.2, including crossing agreements which provide rights-of-way for consistency in interpretation. Finally, the proposed D8 CE specifies the terms and conditions for which Reclamation will issue a use authorization for its land, facilities, or waterbodies.

Much like the rationale supporting the use of impact-based constraints for water-related contracts and contracting actions in the proposed D4 CE, for the proposed D8 CE, the use authorization type does not as effectively identify environmental effects or define the proposed CE's application as the underlying use authorization actions and impact-based constraints. Therefore, Reclamation is proposing to revise the D8 CE to clarify the actions that fall under ''use authorizations'' and list the impact-based constraints on the application of the proposed D8 CE. In the aggregate, the forgoing revisions in the proposed D8 CE will standardize its application and will not expand the scope of actions covered under the current D8 and D10 CEs.

Reclamation has prepared numerous CE checklists and EAs analyzing use authorization proposals covering actions within the scope of the proposed D8 CE that resulted in FONSIs. Reclamation's CE substantiation report summarizes 13 use authorization EAs with FONSIs completed between 2006 and 2022. These EAs and FONSIs demonstrate that the issuance and renewal of use authorization included in the proposed D8 CE typically result in no significant impacts. The proposed D8 CE is consistent with 43 CFR part 429 and contemporary Reclamation Manual policies and directives and standards and will lead to improved, more efficient analysis of these actions.

516 DM 14.5—Financial Assistance, Loans, and Funding Activities

Existing CE language	Proposed revised CE language
E1. Rehabilitation and Betterment Act loans and contracts which involve repair, replacement, or modification of equipment in existing structures or minor repairs to existing dams, canals, laterals, drains, pipelines, and similar facilities.	E1. Financial assistance, cooperative agreements, grants, loans, contracts, or other funding, where the underlying actions being funded (a) would be covered by another Reclamation CE if Reclamation were implementing the action itself, or (b) where the work to be done is confined to areas already impacted by farming or development activities, work is considered minor, and where the impacts are expected to be localized.
E2. Small Reclamation Projects Act grants and loans where the work to be done is confined to areas already impacted by farming or development activities, work is considered minor, and where the impacts are expected to be localized.	E2. Reserved.
E3. Distribution System Loans Act loans where the work to be done is confined to areas already impacted by farming or developing activities, work is considered minor, and where the impacts are expected to be localized.	E3. Reserved.

Reclamation's CE Working Group review found that the existing E1, E2, and E3 CEs, which are the current CEs pertaining to financial assistance actions, are too narrowly defined by specific, outdated program authorities that Reclamation policy now disfavors. Reclamation has gained several authorities for financial assistance through the SECURE Water Act, Infrastructure Investment and Jobs Act, Inflation Reduction Act, and others to provide critical funding for water and energy infrastructure, restoration, drought, and conservation projects that are integral to Reclamation and Department missions.

Rather than tying the CE to particular authorities, Reclamation proposes that the revisions describe the underlying activity with impact-based constraints, allowing Reclamation to use the CE across current and future programs. The existing E1, E2, and E3 CEs too narrowly define the listed program authorities for Reclamation's contemporary program portfolio. Further, many of the actions funded by Reclamation's current financial assistance programs would qualify for these and other existing CEs because the underlying activities are either already covered by another Reclamation CE if Reclamation were implementing the action itself, or the activities (*e.g.,* ''work [. . .] confined to areas already impacted by farming or developing activities, work is considered minor, and where the impacts are expected to be localized.'') are consistent with the existing E1, E2, and E3 CEs.

Given Reclamation's inability to access existing E1, E2, and E3 CEs because of their narrow definitions of authority, Reclamation's current practice is to prepare EAs and FONSIs for many financial assistance actions. To

address the current E1, E2, and E3 CEs' obsolescence and avoid similar issues in the future, Reclamation proposes to remove all reference to specific program authorities in the proposed E1 CE. The proposed revised CE, in turn, is substantiated based on the EAs and FONSIs that Reclamation has prepared in the absence of such an existing CE, as outlined in the accompanying CE substantiation report.

Reclamation also has determined that the underlying financial assistance activities in the existing E1, E2, and E3 CEs remain relevant, and has updated the impact-based constraints in these CEs based on the analysis of these recent EAs and FONSIs. Accordingly, Reclamation proposes to include impact-based constraints from the existing E1, E2, and E3 CEs in the proposed E1 CE. The underlying financial assistance actions retained in the proposed E1 CE include funded actions that another Reclamation CE, if Reclamation were implementing the action itself, would cover. The impact-based constraints from the E2 and E3 CEs also are in the proposed E1 CE, limiting the application of the proposed E1 CE to financial actions for ''work [. . .] confined to areas already impacted by farming or developing activities, work is considered minor, and where the impacts are expected to be localized.''

These impact-based constraints limit the application of the proposed E1 CE to financial assistance activities that normally will not have significant environmental impacts.

Reclamation also proposes to expand the types of financial assistance actions covered under the proposed E1 CE to include financial assistance, cooperative agreements, grants, loans, contracts, and a catch-all ''other funding.'' This revision allows the proposed E1 CE to be potentially applicable to all financial assistance types, including grants, loans, and funding for applicant, sponsor or partner actions as long as the financial assistance action is consistent with the underlying financial assistance actions and impacts-based constraints defined in the proposed E1 CE. Because the financial assistance authorities assigned to Reclamation by law are subject to change, and Reclamation would like to avoid obsolescence, the proposed E1 CE draft focuses on the underlying financial assistance activity funded rather than the funding program authority, allowing for application consistent with current and future authorities.

Similar to the rationale for water-related contracts and contracting actions in the proposed D4 CE and use authorization actions in the proposed D8 CE, for the proposed E1 CE, the authority type does not as effectively identify environmental effects or define the proposed CE's application as the underlying financial assistance actions and impact-base constraints. Therefore, Reclamation is proposing to revise the current E1, E2, and E3 CEs to remove the specificity of funding program authorities, clarify the underlying financial assistance actions and impact constraints on their application, and combine into one proposed E1 CE, with E2 and E3 reserved for future use if needed. While Reclamation expects these proposed revisions to increase the types of financial assistance actions that qualify for the proposed E1 CE, the scope of these actions is consistent with existing definitions of underlying financial assistance activities and impact-based constraints.

Reclamation has prepared numerous CE checklists and EAs analyzing financial assistance proposals covering actions with the scope of the proposed E1 CE that resulted in FONSIs. Reclamation has summarized 33 EAs with FONSIs completed between 2016 and 2022 in its CE substantiation report included in this notice's supporting documentation, which support a determination that the proposed CE revisions would not result in significant impacts for financial assistance actions. Additional Financial Assistance EAs with FONSIs can be accessed at *www.usbr.gov/nepa* that also demonstrate that types of proposals included in the proposed E1 CE typically result in no significant effects. The proposed E1 CE is consistent with contemporary Reclamation authorities and will lead to improved, more efficient analysis of these actions.

Categorical Exclusion Determination

The Department and Reclamation find that the categories of actions described in the proposed CEs normally do not have a significant effect on the human environment absent extraordinary circumstances. This finding is based on Reclamation's comprehensive review of CEs, EAs, and FONSIs; its history and over 40 years of experience analyzing actions under NEPA and using these CEs; the rationale for the proposed revisions described above; and consistent determinations made under CE checklists and EAs with FONSIs that these actions normally do not have a significant effect on the human environment. Since establishing the existing contracting and use authorization CEs in the late 1970s and early 1980s, Reclamation estimates it has prepared thousands of CE checklists documenting that these actions did not result in significant effects. In addition, since the early 1980s, Reclamation estimates it has prepared hundreds of EAs and FONSIs for financial assistance actions similar to those actions that would be covered under the proposed E1 CE that were not included in the narrow definition of the specific authorities in the E1, E2, and E3 CEs. Further, Reclamation estimates that it has prepared hundreds of additional EAs and FONSIs for contracting and use authorization actions closely related to the D4, D8, D10, and D14 CEs that either did not meet strict interpretation of those CE definitions, or where a water-related contract or use authorization CE was not applied because of uncertainty surrounding the description of the proposal type, proposal activities, or impact-based constraints. The frequent use of these existing CEs, experience preparing EAs and FONSIs for actions covered by the proposed CEs, and Reclamation's comprehensive review of how its existing CEs are applied in practice serve to validate Reclamation's preparation of these proposed CEs. To further demonstrate the finding that actions under the proposed CEs would not normally result in significant effects to the human environment, Reclamation reviewed 71 EAs with FONSIs and summarized them in the CE substantiation report included in this notice's supporting documentation. These 71 EAs with FONSIs analyze actions that the proposed CE revisions are designed to cover in the future. Additional EAs with FONSIs are also available at *www.usbr.gov/nepa.*

Reclamation recognizes that certain proposed actions, when reviewed on a case-by-case basis, may trigger one or more extraordinary circumstances, and for those proposed actions where a normally excluded action may have a significant effect, Reclamation will prepare an EA or EIS (*see* 43 CFR 46.215). In such cases, the proposed actions could have significant environmental effects and require additional NEPA analysis (*see* 40 CFR 1501.4(b)). Thus, prior to applying any CE, Reclamation will review the proposed action to ensure it is covered by the CE and evaluate the proposed action for any extraordinary circumstances. Reclamation requires that any action for which a Reclamation CE is used must be documented with a CE checklist to demonstrate (a) the applicability of the CE, and (b) verification that no extraordinary circumstances are present such that a normally excluded action may have a significant effect. In such cases, Reclamation will conduct additional

NEPA analysis and prepare an EA or EIS, as appropriate.

The Department, on behalf of Reclamation, invites comments on these proposed CE revisions and will consider all comments received by the comment deadline. Comments should be as specific as possible and provide detail to explain the importance of the issues raised in the comment to Reclamation's proposed rulemaking.

Public Disclosure Statement

Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment including your personal identifying information may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Amended Text for the Departmental Manual

The proposed text would modify 516 DM as set forth below:

Part 516: National Environmental Policy Act of 1969

Chapter 14: Managing the NEPA Process—Bureau of Reclamation

* * * * *

14.5 Categorical Exclusions

* * * * *

D. Operation and Maintenance Activities

* * * * *

(4) Approval, execution, administration, and implementation of water-related contracts and contract renewals, amendments, supplements, and assignments, and water transfers, exchanges, and replacements, for which one or more of the following apply: (a) for minor amounts of long-term water use, where impacts are expected to be localized; (b) for temporary or interim water use where the action does not lead to long-term changes and where the impacts are expected to be localized; or (c) where the only result will be to implement an administrative or financial practice or change. A ''water-related contract'' is any legally binding agreement to which Reclamation becomes a party, pursuant to its authority under Federal law that (1) makes water available from or to the United States; (2) allows water to be stored, carried, or delivered in facilities Reclamation owns, manages, operates, or funds; or (3) establishes operation, maintenance, and replacement responsibilities for such facilities.

* * * * *

(8) Issuance or renewal of use authorizations (as defined in 43 CFR 429.2, including crossing agreements which provide rights-of-way) that provide right-of-use of Reclamation land, facilities, or waterbodies where one or more of the following apply: (a) work is minor and impacts are expected to be localized; (b) the action does not lead to a major public or private action; (c) the only result of the authorization will be to implement an administrative or financial practice or change; or (d) the level of use or impacts to resources is not increased.

* * * * *

(10) Reserved.

* * * * *

(14) Reserved.

* * * * *

E. Financial Assistance, Loans, and Funding

(1) Financial assistance, cooperative agreements, grants, loans, contracts, or other funding, where the underlying actions being funded (a) would be covered by another Reclamation CE if Reclamation were implementing the action itself; or (b) where the work to be done is confined to areas already impacted by farming or development activities, work is considered minor, and where the impacts are expected to be localized.

(2) Reserved.

(3) Reserved.

Stephen G. Tryon,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 2024–12459 Filed 6–6–24; 8:45 am]

BILLING CODE 4332–90–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_AK_FRN_MO4500180098]

Filing of Plats of Survey: Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of official filing.

SUMMARY: The plats of survey of lands described in this notice are scheduled to be officially filed in the Bureau of Land Management (BLM), Alaska State Office, Anchorage, Alaska. The surveys, which were executed at the request of the BLM, are necessary for the management of these lands.

DATES: The BLM must receive protests by July 8, 2024.

ADDRESSES: You may buy a copy of the plats from the BLM Alaska Public Information Center, 222 W 7th Avenue, Mailstop 13, Anchorage, AK 99513. Please use this address when filing written protests. You may also view the plats at the BLM Alaska Public Information Center, Fitzgerald Federal Building, 222 W 7th Avenue, Anchorage, Alaska, at no cost.

FOR FURTHER INFORMATION CONTACT: Thomas B. O'Toole, Chief, Branch of Cadastral Survey, Alaska State Office, Bureau of Land Management, 222 W 7th Avenue, Anchorage, AK 99513; 907–271–4231; *totoole@blm.gov.* People who use a telecommunications device for the deaf may call the Federal Relay Service (FRS) at 1–800–877–8339 to contact the BLM during normal business hours. The FRS is available 24 hours a day, 7 days a week, to leave a message or question with the above individual. You will receive a reply during normal business hours.

SUPPLEMENTARY INFORMATION: The lands surveyed are:

Fairbanks Meridian, Alaska

T. 15 N., R. 17 E., accepted May 14, 2024.
T. 16 N., R. 17 E., accepted May 14, 2024.
T. 17 N., R. 17 E., accepted May 14, 2024.
T. 15 N., R. 18 E., accepted May 14, 2024.
T. 16 N., R. 18 E., accepted May 14, 2024.
T. 17 N., R. 18 E., accepted May 14, 2024.
T. 15 N., R. 19 E., accepted May 14, 2024.
T. 17 N., R. 19 E., accepted May 14, 2024.
T. 13 N., R. 20 E., accepted May 14, 2024.
T. 14 N., R. 20 E., accepted May 14, 2024.
T. 15 N., R. 20 E., accepted May 14, 2024.
T. 16 N., R. 20 E., accepted May 14, 2024.
T. 17 N., R. 20 E., accepted May 14, 2024.
T. 15 N., R. 21 E., accepted May 14, 2024.
T. 16 N., R. 21 E., accepted May 14, 2024.

Kateel River Meridian, Alaska

U.S. Survey No. 14639, accepted April 29, 2024, situated in T. 18 N., R. 10 W.

Seward Meridian, Alaska

T. 21 N., R. 48 W., accepted May 13, 2024.
T. 20 N., R. 49 W., accepted May 13, 2024.
T. 17 N., R. 50 W., accepted May 13, 2024.
T. 18 N., R. 50 W., accepted May 13, 2024.
T. 19 N., R. 50 W., accepted May 13, 2024.
T. 20 N., R. 50 W., accepted May 13, 2024.
T. 19 N., R. 51 W., accepted May 13, 2024.
T. 20 N., R. 51 W., accepted May 13, 2024.
T. 19 N., R. 55 W., accepted May 13, 2024.
T. 21 N., R. 55 W., accepted May 13, 2024.
T. 22 N., R. 55 W., accepted May 13, 2024.
T. 18 N., R. 56 W., accepted May 13, 2024.
T. 19 N., R. 56 W., accepted May 13, 2024.
T. 20 N., R. 56 W., accepted May 13, 2024.
T. 21 N., R. 56 W., accepted May 13, 2024.
T. 22 N., R. 59 W., accepted May 13, 2024.

A person or party who wishes to protest one or more plats of survey identified above must file a written notice of protest with the State Director for the BLM in Alaska. The protest may be filed by mailing to BLM State

Director, Alaska State Office, Bureau of Land Management, 222 W 7th Avenue, Anchorage, AK 99513 or by delivering it in person to BLM Alaska Public Information Center, Fitzgerald Federal Building, 222 W 7th Avenue, Anchorage, Alaska. The notice of protest must identify the plat(s) of survey that the person or party wishes to protest. You must file the notice of protest before the scheduled date of official filing for the plat(s) of survey being protested. The BLM will not consider any notice of protest filed after the scheduled date of official filing. A notice of protest is considered filed on the date it is received by the State Director for the BLM in Alaska during regular business hours; if received after regular business hours, a notice of protest will be considered filed the next business day. A written statement of reasons in support of a protest, if not filed with the notice of protest, must be filed with the State Director for the BLM in Alaska within 30 calendar days after the notice of protest is filed.

If a notice of protest against a plat of survey is received prior to the scheduled date of official filing, the official filing of the plat of survey identified in the notice of protest will be stayed pending consideration of the protest. A plat of survey will not be officially filed until the dismissal or resolution of all protests of the plat.

Before including your address, phone number, email address, or other personally identifiable information in a notice of protest or statement of reasons, you should be aware that the documents you submit, including your personally identifiable information, may be made publicly available in their entirety at any time. While you can ask the BLM to withhold your personally identifiable information from public review, we cannot guarantee that we will be able to do so.

Authority: 43 U.S.C. chap. 3.

Thomas O'Toole,

Chief Cadastral Surveyor, Alaska.

[FR Doc. 2024–12569 Filed 6–6–24; 8:45 am]

BILLING CODE 4331–10–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_ID_FRN_MO4500177431]

Notice of Availability of the Final Environmental Impact Statement for the Proposed Lava Ridge Wind Project in Jerome, Lincoln, and Minidoka Counties, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) announces the availability of the final environmental impact statement (EIS) for the Lava Ridge Wind Project.

DATES: The BLM will not issue a decision on the proposal for a minimum of 30 days after the date that the Environmental Protection Agency (EPA) publishes its Notice of Availability in the **Federal Register**.

ADDRESSES: The final EIS and documents pertinent to this proposal are available for review on the BLM ePlanning project website at *https://eplanning.blm.gov/eplanning-ui/project/2013782/510* and in hardcopy at the BLM Shoshone Field Office, 400 West F Street, Shoshone, ID 83352.

FOR FURTHER INFORMATION CONTACT: Kasey Prestwich, Project Manager, telephone 208–732–7204; address BLM Shoshone Field Office, 400 West F Street, Shoshone, ID 83352; email *kprestwich@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 for contacting Mr. Prestwich. 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:

Purpose and Need for the Proposed Action

Magic Valley Energy, LLC (MVE) has applied for a right-of-way (ROW) to construct, operate, maintain, and decommission the Lava Ridge Wind Project (the project), a wind energy facility and ancillary facilities primarily on BLM-administered public lands in Jerome, Lincoln, and Minidoka Counties, Idaho. The BLM's purpose is to respond to the ROW application submitted by MVE in compliance with FLPMA, BLM regulations, and other applicable Federal laws and policies. The need for the BLM's Proposed Action arises from FLPMA, which establishes a multiple use mandate for management of Federal lands, including ''systems for generation, transmission, and distribution of electric energy'' (FLPMA title V). The BLM will decide whether to grant, grant with modifications, or deny MVE's ROW application.

Proposed Action and Alternatives

Under *Alternative A,* the BLM would deny MVE's application for construction, operation, maintenance, and decommissioning of the project. The project facilities would not be built, and existing land uses and present activities in the area would continue. The land would continue to be available for other uses that are consistent with the BLM's Monument Resource Management Plan (1986) and its amendments, including the 2015 *Idaho and Southern Montana Greater Sage-Grouse Approved Resource Management Plan Amendment.* Federal and regional renewable energy goals would have to be met using other alternative energy projects at other locations.

Under *Alternative B* (Applicant Proposed Action), the BLM would authorize the wind energy facility as proposed by MVE, subject to certain terms and conditions. Alternative B could have up to 400 3-megawatt (MW) turbines or up to 349 6–MW turbines, or a combination of 3–MW and 6–MW turbines not to exceed 400. The maximum height of the turbines would be between 390 and 740 feet, depending on their MW capacity. Siting corridors would span 84,051 acres, with the project area footprint within these corridors totaling 9,114 acres.

Alternative C (Reduced Western Corridors) would reduce the project's footprint by authorizing project development except within specific corridors. Siting corridors in Alternative C would span 65,215 acres. Project activity would disturb 6,953 acres. The intent of this alternative is to avoid and minimize potential impacts to Wilson Butte Cave and Minidoka National Historic Site (NHS). Alternative C would also aim to encourage development in areas that have already been impacted by energy infrastructure and reduce the extent of wildlife habitat fragmentation.

Like Alternative C, *Alternative D* (Centralized Corridors) would reduce the project's footprint by authorizing

project development except within specific siting corridors. Siting corridors in Alternative D would span 48,597 acres. Project activity would disturb 4,838 acres. Similar to Alternative C, Alternative D would focus on minimizing fragmentation of wildlife habitat and potential impacts to Wilson Butte Cave and Minidoka NHS. Alternative D would avoid development in areas that have higher sagebrush cover and protect functional Greater sage-grouse habitat. The reduced footprint would also avoid or minimize impacts to other resources and areas of concern.

Alternative E (Reduced Southern Corridors) would avoid and minimize potential impacts to Minidoka NHS. Alternative E builds from Alternative C but would further avoid and minimize potential impacts to Minidoka NHS by removing additional siting corridors from development. Siting corridors in Alternative E would span 50,680 acres. Project activity would disturb 5,136 acres.

The BLM has identified a Preferred Alternative based on a combination of elements of Alternatives B through E. The Preferred Alternative responds to resource impact concerns raised by Tribes, cooperating agencies, and the public through the public comments received on the draft EIS. The Preferred Alternative would reduce visual impacts to Minidoka NHS, reduce disturbance to big game migration routes and winter concentration areas, reduce impacts to Jerome County Airport and agricultural aviation uses, and reduce impacts to adjacent private landowners. The combination of Alternatives B–E for development of the Preferred Alternative included adjusting the siting corridor and infrastructure to avoid or minimize impacts while balancing development of the wind resource. The BLM considered results of the analysis of potential impacts prepared for the draft EIS; feedback from Tribes, agencies, and various interested parties; input from the BLM Idaho Resource Advisory Council's Lava Ridge Wind Project Subcommittee; new wildlife datasets provided by the Idaho Department of Fish and Game; and publicly available wind-speed information for the project area to develop the Preferred Alternative. Siting corridors in the Preferred Alternative would span 44,768 acres. Project activity would disturb 4,492 acres.

Compliance With NEPA, as Amended by the Fiscal Responsibility Act

In response to the amendments to NEPA under the Fiscal Responsibility Act of 2023 (FRA), Pub. L. 118–5, section 321(e)(1)(B), 42 U.S.C. 4336a(e), the BLM revised the organization of the final EIS so that it is under the FRA's 300-page limit for a proposed agency action of ''extraordinary complexity.'' The BLM moved the evaluation of certain environmental impacts that it determined not to be significant to an appendix.

Public Input

The BLM continues to engage in government-to-government consultation with the Shoshone-Bannock Tribes and the Shoshone-Paiute Tribes on the project. These Native American Tribes have expressed concerns focused on potential impacts to Wilson Butte Cave, wildlife, and the Shoshone-Bannock Tribes' Treaty rights. The BLM published a Notice of Availability for the draft EIS for the project in the **Federal Register** on January 20, 2023 (88 FR 3759). The notice began a 60-day public comment period, which was extended to 90 days ending on April 20, 2023. The BLM held public meetings on the draft EIS in February and March 2023. Meetings were held virtually and in person in Shoshone and Twin Falls, Idaho; Portland, Oregon; and Mercer Island, Washington. The BLM received a total of 11,179 submissions via mail, fax, email, ePlanning online comment form, and handwritten and verbal comments given to a transcriptionist at public meetings. The BLM considered comments within each submission and determined if comments were substantive or non-substantive. The BLM identified and categorized 3,303 individual substantive comments from the various submissions. Comments on the draft EIS received from the public and internal BLM review were considered and incorporated, as appropriate, into the final EIS. The final EIS includes all substantive comments with a BLM response.

The BLM conducted additional meetings in April and May 2024, with the Idaho Governor's Office; numerous Idaho state agencies; Friends of Minidoka; Minidoka Pilgrimage Planning Committee; Shoshone-Bannock Tribes; county commissioners from Jerome, Lincoln, and Minidoka counties; grazing permittees; other Federal agencies; and others, consistent with Section 441, Division E, of Public Law 118–42, the Consolidated Appropriations Act, 2024.

Public comments informed clarifying text, developing the Preferred Alternative, developing new issue statements, identifying project-specific interim Visual Resource Management classes, and refining a mitigation framework.

(Authority: 40 CFR 1506.6, 40 CFR 1506.10)

Michael Courtney,

BLM Twin Falls District Manager.

[FR Doc. 2024–12460 Filed 6–6–24; 8:45 am]

BILLING CODE 4331–21–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[BLM_OR_FRN_MO4500179562]

Notice of Availability of the Draft Resource Management Plan Amendment and Environmental Impact Statement for the Lakeview Field Office, Lakeview District, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act of 1969, as amended (NEPA), and the Federal Land Policy and Management Act of 1976, as amended (FLPMA), the Bureau of Land Management (BLM) has prepared a Draft Resource Management Plan (RMP) Amendment and Draft Environmental Impact Statement (EIS) for the Lakeview RMP and by this notice is providing information announcing the opening of the comment period on the Draft RMP Amendment and Draft EIS.

DATES: This notice announces the opening of a 90-day comment period for the Draft RMP Amendment and Draft EIS beginning with the date following the Environmental Protection Agency's (EPA) publication of its Notice of Availability (NOA) in the **Federal Register**.

To afford the BLM the opportunity to consider comments in the forthcoming Proposed RMP Amendment and Final EIS, please ensure the BLM receives your comments prior to the close of the 90-day comment period or 15 days after the last public meeting, whichever is later.

ADDRESSES: The Draft RMP Amendment and Draft EIS is available for review on the BLM ePlanning project website at *https://eplanning.blm.gov/eplanning-ui/project/114300/510.*

Written comments related to the Lakeview Draft RMP Amendment and Draft EIS may be submitted by any of the following methods:

- *website: https://eplanning.blm.gov/eplanning-ui/project/114300/510.*
- *Email: blm_or_lv_rmp_team@blm.gov.*
- *Mail:* Lakeview District, BLM, 1301 South G Street, Lakeview, OR 97630.

Documents pertinent to this proposal may be examined online at *https://eplanning.blm.gov/eplanning-ui/project/114300/510* and at the Lakeview District Office.

FOR FURTHER INFORMATION CONTACT: Michael Collins, Planning and Environmental Coordinator, 541–947–2177; 1301 South G Street, Lakeview, OR 97630; *blm_or_lv_rmp_team@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 for contacting Mr. Collins. 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: This document provides notice that the BLM Oregon/Washington State Director has prepared a Draft RMP Amendment and Draft EIS. The Draft RMP Amendment and Draft EIS analyzes alternatives that would change the existing 2003 Lakeview RMP and Record of Decision (ROD), as amended by the 2015 Oregon Greater Sage-Grouse Approved RMP Amendment and ROD.

The planning area is located in Lake and Harney counties, Oregon, and encompasses approximately 3.2 million acres of public land.

Purpose and Need

The purpose and need for this Draft RMP Amendment and Draft EIS is to comply with the provisions of a 2010 settlement agreement, which required the BLM to prepare an RMP Amendment that addresses a range of alternatives for managing lands with wilderness characteristics, off highway vehicle (OHV) use, and livestock grazing use within the Lakeview planning area. The BLM has determined that 106 inventory units contain wilderness characteristics (approximately 1,654,103 acres).

Alternatives Including the Preferred Alternative

The BLM has analyzed six alternatives in detail, including the No Action Alternative. The No Action Alternative represents the continuation of existing management direction under the 2003 Lakeview RMP/ROD (as amended), including the existing goals and management direction for OHV and livestock grazing use. In addition, the interim management provisions outlined in the 2010 Settlement Agreement would continue to prevent management actions in an inventory unit determined by the BLM to possess wilderness characteristics that would be deemed by the BLM to diminish the size or cause the entire BLM inventory unit to no longer meet the criteria for wilderness characteristics.

Alternative A would continue the BLM's management direction under the 2003 Lakeview RMP/ROD (as amended), including the existing goals and management direction for OHV and livestock grazing use. Management would emphasize resources and multiple uses other than wilderness characteristics. None of the 106 units that the BLM found to possess wilderness characteristics would receive additional protections.

Alternative B would emphasize the protection of wilderness characteristics within all 106 units. Under Alternative B, 34 units and portions of 2 units (approximately 273,680 acres) would be designated as Wilderness Study Areas (WSAs) under section 202 of FLPMA. These proposed WSAs would be managed as visual resource management class I, land tenure zone 1 (retention in the public domain), exclusion zones for all rights-of-way, and would include restrictions on minerals. The remaining 77 units and portions of 2 units (approximately 1,381,610 acres) would be managed as visual resource management class II, land tenure zone 1 (retention in the public domain), exclusion zones for major rights-of-way, and include some restrictions on minerals. OHV use would be closed in all 106 units that the BLM has found to possess wilderness characteristics (approximately 1,654,103 acres) and in all WSAs. Cross-country motorized travel and motorized travel on existing internal primitive routes in these areas would be prohibited.

Under Alternative B, grazing allocations would not be changed. However, where existing livestock grazing is found to be a significant causal factor for non-attainment of rangeland health standards, the BLM would remove grazing, either at the allotment or pasture scale, for the duration of the plan amendment. Should the BLM receive a voluntary permit relinquishment for any lands with wilderness characteristics, WSAs, Areas of Critical Environmental Concern, Research Natural Areas, or designated critical habitat for Federally listed species, the BLM would remove or reduce grazing in the area for the life of the plan amendment.

Alternatives C, D, and E would establish new management goals and additional protective management for wilderness characteristics. The units emphasized for protection of wilderness characteristics would be managed as visual resource management class II, land tenure zone 1 (retention in the public domain), exclusion zones for major rights-of-way, and include restrictions on minerals. The specific units emphasized for protection of wilderness characteristics would vary across these alternatives. In addition, a 100 to 300-foot setback would be applied along boundary roads of these units under Alternatives C, D, and E, to provide the BLM with additional management flexibility to address other resources needs, threats, and multiple uses adjacent to these areas.

Alternative C would emphasize the protection of wilderness characteristics in 26 units and portions of 4 units (approximately 411,033 acres) that the BLM found to possess wilderness characteristics. The BLM would balance the management of wilderness characteristics with other resources and multiple uses in 71 units and portions of 2 units (approximately 1,161,199 acres) and would emphasize the management of other resources and multiple uses over wilderness characteristics in 5 units and portions of 3 units (approximately 74,529 acres).

Under Alternative C, OHV use throughout the entire planning area would be limited to existing routes, unless currently limited to designated routes or closed to OHV use. Grazing allocations would not be changed. However, the BLM would temporarily remove grazing, at either the allotment or pasture scale, when existing livestock grazing is found to be a significant causal factor for non-attainment of rangeland health standards, until such time as monitoring or a subsequent assessment indicates that the pasture or allotment is meeting standards or is making significant progress towards meeting standards. Should the BLM receive a voluntary permit relinquishment for public lands in a WSA, it would remove or reduce grazing in the area for the life of the plan amendment.

Alternative D would emphasize the protection of wilderness characteristics within two units (approximately 4,671 acres) that the BLM found to possess wilderness characteristics. OHV use in these 2 units would be limited to existing routes. Management of wilderness characteristics would be balanced with other resources and multiple uses in 41 units and portions of 18 units (approximately 1,075,323 acres). The BLM would emphasize the management of other resources and multiple uses over wilderness characteristics in 46 units (approximately 583,332 acres).

Under Alternative D, the area open to cross-country OHV use would be reduced to about 70,573 acres of expressly defined areas. Most of the livestock grazing management would be the same as the No Action Alternative. However, if a rangeland health assessment and evaluation indicates one or more standards are not met in an allotment or pasture due to factors that are subject to BLM control, then the authorized officer shall consider taking action to make progress toward rangeland health standards and land use plan objectives, even if livestock grazing is not determined to be a significant causal factor for non-attainment of standard(s). Actions available to the authorized officer could include, but are not limited to, changes in livestock grazing management.

Alternative E was developed with input from individual members of the Southeastern Oregon Resource Advisory Council and would emphasize the protection of wilderness characteristics within 26 units (approximately 372,218 acres) that the BLM found to possess wilderness characteristics. Management of wilderness characteristics would be balanced with other resources and multiple uses in 68 units (approximately 1,109,160 acres). Management would emphasize other resources and multiple uses over wilderness characteristics in 12 units (approximately 168,512 acres). OHV and livestock grazing management throughout the planning area would be the same as the No Action Alternative.

The BLM further considered seven additional alternatives but chose not to analyze them in detail as explained in the Draft RMP Amendment and Draft EIS.

The BLM Oregon/Washington State Director has identified Alternative C as the preferred alternative. Alternative C was found to best meet the State Director's planning guidance and, therefore, selected as the preferred alternative because it emphasizes a high level of resource protection in portions of the planning area while providing for a sustainable level of multiple uses in other portions of the planning area. This alternative balances the need to preserve or protect specific public lands in their natural condition with the need to provide food and habitat for fish, wildlife, and domestic animals, and provide for outdoor recreation and human occupancy and use. Alternative C also recognizes the Nation's need for domestic sources of minerals, food, timber, and fiber from the public lands. This balance would be accomplished within the limits of the ecosystem's ability to provide these multiple uses on a sustainable basis and within the constraints of applicable laws, regulations, and policies, including sections 102(7), 102(8), 102(12), 103(c), and 103(h) of FLPMA.

Schedule for the Decision-Making Process

The BLM will be holding three public meetings on the Draft RMP Amendment and Draft EIS in the following locations: One in-person meeting in Lakeview, Oregon, and two virtual meetings. The specific date(s) and location(s) of these meetings will be announced at least 15 days in advance through public notices, media releases, social media, and/or mailings.

The BLM will continue to consult with Indian Tribal Nations on a government-to-government basis in accordance with Executive Order 13175, BLM Manual 1780, and other Departmental policies. Tribal concerns, including impacts on Indian trust assets and potential impacts to cultural resources, will be given due consideration.

While the BLM has identified Alternative C as the preferred alternative, this does not represent the final agency decision. For this reason, the BLM encourages reviewers to provide substantive comments on all alternatives. Substantive comments are those that raise issues or concerns that may need to be addressed, challenge the accuracy of information presented, or challenge the adequacy of the analysis, along with a supporting rationale. You may submit written comments to the BLM through any of the methods identified in the **ADDRESSES** section above. All comments must be received by the end of the comment period or 15 days after the last public meeting, whichever is later. Whenever possible, reviewers should include a reference to either the page or section in the document to which the comment applies. Following the comment period, the BLM will develop and publish the Proposed RMP Amendment and Final EIS which may reflect changes or adjustments based on the substantive comments received.

Comments submitted must include the commenter's name and street address. Before including your address, phone number, email address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

After the BLM publishes the Proposed RMP Amendment and Final EIS, it will provide additional opportunities for public participation consistent with the NEPA and land use planning processes, including a 30-day public protest period and a 60-day Governor's consistency review.

(Authority: 40 CFR 1506.6, 40 CFR 1506.10, 43 CFR 1610.2)

Barry R. Bushue,

State Director, Oregon/Washington.

[FR Doc. 2024–12463 Filed 6–6–24; 8:45 am]

BILLING CODE 4331–24–P

DEPARTMENT OF THE INTERIOR

National Park Service

[NPS–NCR–WHHO–WHHOA1–37974; PPNCWHHOA1; PPMPSPD1Z.YM0000]

Committee for the Preservation of the White House; Notice of Public Meeting

AGENCY: National Park Service, Interior.

ACTION: Meeting notice.

SUMMARY: In accordance with the Federal Advisory Committee Act of 1972, as amended, the National Park Service (NPS) is hereby giving notice that the Committee for the Preservation of the White House (Committee) will meet as indicated below.

DATES: The meeting will take place on Wednesday, June 26, 2024. The meeting will begin at 2:00 p.m. until 4:00 p.m. (Eastern).

ADDRESSES: The meeting will be held at the White House, 1600 Pennsylvania Avenue NW, Washington, DC 20500. The meeting will be open to the public, but subject to security clearance requirements.

FOR FURTHER INFORMATION CONTACT: Comments may be provided to: John Stanwich, Executive Secretary, Committee for the Preservation of the White House, 1849 C Street NW, Room #1426, Washington, DC 20240, by telephone (202) 219–0322, or by email *ncr_whho_superintendent@nps.gov*. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: The Committee was established in

accordance with Executive Order No. 11145, 3 CFR 184 (1964–1965), as amended. The Committee reports to the President of the United States and advises the Director of the NPS with respect to the discharge of responsibilities for the preservation and interpretation of the museum aspects of the White House pursuant to the Act of September 22, 1961 (Pub. L. 87–286, 75 Stat. 586). The meeting is open to the public. Detailed minutes of the meeting will be available for public inspection within 90 days of the meeting.

Purpose of the Meeting: The agenda will include discussion of policy changes and review of potential acquisition items. If you plan to attend this meeting, you must register by close of business on Monday, June 24, 2024. Please contact the Executive Secretary (see **FOR FURTHER INFORMATION CONTACT**) to register. Space is limited and requests will be accommodated in the order they are received. The meeting will be open to the public, but subject to security clearance requirements. The Executive Secretary will contact you directly with the security clearance requirements. Inquiries may be made by calling the Executive Secretary between 9:00 a.m. and 4:00 p.m. weekdays at (202) 219–0322.

Written comments may be sent to the Executive Secretary, Committee for the Preservation of the White House (see **FOR FURTHER INFORMATION CONTACT**). All written comments received will be provided to the Committee.

Please make requests in advance for sign language interpreter services, assistive listening devices, language translation services or other reasonable accommodations at least seven (7) business days prior to the meeting to give the Department of the Interior sufficient time to process your request. All reasonable accommodation requests are managed on a case-by-case basis.

Public Disclosure of Comments: Before including your address, phone number, email address, or other personal identifying information in your written comments, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

Authority: 5 U.S.C. ch. 10.

Alma Ripps,

Chief, Office of Policy.

[FR Doc. 2024–12552 Filed 6–6–24; 8:45 am]

BILLING CODE 4312–52–P

DEPARTMENT OF THE INTERIOR

Bureau of Ocean Energy Management

[Docket No. BOEM–2024–0029]

Notice of Availability of a Final Environmental Assessment for Commercial Wind Lease and Site Assessment Activities on the Atlantic Outer Continental Shelf of the Central Atlantic

AGENCY: Bureau of Ocean Energy Management, Interior.

ACTION: Notice of availability.

SUMMARY: The Bureau of Ocean Energy Management (BOEM) announces the availability of a final environmental assessment (EA) and its finding that possible wind energy-related leasing, site assessment, and site characterization activities on the U.S. Atlantic Outer Continental Shelf (OCS) (the Proposed Action) will not significantly impact the human environment. The EA analyses the potential impacts of the Proposed Action and a No Action alternative. The EA will inform BOEM's decision whether to issue leases on the OCS offshore the U.S. Central Atlantic coast and its subsequent review of site assessment plans in the lease areas.

ADDRESSES: The final EA and associated information are available on BOEM's website at: *https://www.boem.gov/renewable-energy/state-activities/central-atlantic.*

FOR FURTHER INFORMATION CONTACT: Lorena Edenfield, BOEM Office of Renewable Energy Programs, 45600 Woodland Road, Sterling, Virginia 20166, (907) 231–7679 or *Lorena.Edenfield@boem.gov.*

SUPPLEMENTARY INFORMATION:

Proposed Action: The final EA analyzes the Proposed Action, which is to approve commercial wind energy leases in the Central Atlantic Wind Energy Areas (WEAs) and grant rights-of-way (ROWs) and rights-of-use and easement (RUEs). A BOEM-issued lease provides lessees the exclusive right to submit site assessment plans and construction and operations plans to BOEM for possible approval. A site assessment plan describes how the lessee will assess the physical characteristics of the lease area, which is a prerequisite to submitting a construction and operations plan. The EA considers the reasonably foreseeable environmental consequences associated with site characterization activities (geophysical, geotechnical, archaeological, and biological surveys) and site assessment activities (including the installation and operation of meteorological buoys). BOEM prepared an EA for this proposed action in order to inform its planning and decision-making (40 CFR 1501.5(b)).

Alternative: In addition to the Proposed Action, BOEM considered a No Action Alternative. Under the No Action Alternative, BOEM would neither approve commercial wind energy leasing nor grant ROWs and RUEs in the Central Atlantic WEAs. BOEM's preferred alternative is the Proposed Action.

Finding of no significant impact: After carefully considering the alternatives and comments from the public and cooperating and consulting agencies on the draft EA, BOEM finds that approval of commercial wind energy leasing and granting ROWs and RUEs in the lease area would not significantly impact the environment.

Availability of the final EA: The final EA and associated information are available on BOEM's website at: *https://www.boem.gov/renewable-energy/state-activities/central-atlantic.*

Authority: 42 U.S.C. 4231 *et seq.* (National Environmental Policy Act, as amended) and 40 CFR 1506.6.

Karen Baker,

Chief, Office of Renewable Energy Programs, Bureau of Ocean Energy Management.

[FR Doc. 2024–12563 Filed 6–6–24; 8:45 am]

BILLING CODE 4340–98–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1343]

Certain Video Processing Devices and Components Thereof; Notice of Request for Submissions on the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that on May 29, 2024, the presiding administrative law judge (''ALJ'') issued an Initial Determination on Violation of Section 337. On May 29, 2024, the ALJ also issued a Recommended Determination on remedy and bonding should a violation be found in the above-captioned investigation. The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation. This notice is soliciting comments from the public and interested government agencies only.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3115. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: Section 337 of the Tariff Act of 1930 provides that, if the Commission finds a violation, it shall exclude the articles concerned from the United States unless, after considering the effect of such exclusion upon the public health and welfare, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, and United States consumers, it finds that such articles should not be excluded from entry. (19 U.S.C. 1337(d)(1)). A similar provision applies to cease and desist orders. (19 U.S.C. 1337(f)(1)).

The Commission is soliciting submissions on public interest issues raised by the recommended relief should the Commission find a violation, specifically: a limited exclusion order and a cease and desist order directed to certain video processing devices and components thereof imported, sold for importation, and/or sold after importation by respondent Amazon.com, Inc. of Seattle, Washington. Parties are to file public interest submissions pursuant to 19 CFR 210.50(a)(4).

The Commission is interested in further development of the record on the public interest in this investigation. Accordingly, members of the public and interested government agencies are invited to file submissions of no more than five (5) pages, inclusive of attachments, concerning the public interest in light of the ALJ's Recommended Determination on Remedy and Bonding issued in this investigation on May 29, 2024. Comments should address whether issuance of the recommended remedial orders in this investigation, should the Commission find a violation, would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the recommended remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the recommended orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third-party suppliers have the capacity to replace the volume of articles potentially subject to the recommended orders within a commercially reasonable time; and

(v) explain how the recommended orders would impact consumers in the United States.

Written submissions must be filed no later than by close of business on July 3, 2024.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. The Commission's paper filing requirements in 19 CFR 210.4(f) are currently waived. 85 FR 15798 (Mar. 19, 2020). Submissions should refer to the investigation number (''Inv. No. 337–TA–1343'') in a prominent place on the cover page and/or the first page. (*See Handbook for Electronic Filing Procedures, https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*). Persons with questions regarding filing should contact the Secretary (202–205–2000).

Any person desiring to submit a document to the Commission in confidence must request confidential treatment by marking each document with a header indicating that the document contains confidential information. This marking will be deemed to satisfy the request procedure set forth in Rules 201.6(b) and 210.5(e)(2) (19 CFR 201.6(b) & 210.5(e)(2)). Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. Any non-party wishing to submit comments containing confidential information must serve those comments on the parties to the investigation pursuant to the applicable Administrative Protective Order. A redacted non-confidential version of the document must also be filed simultaneously with any confidential filing and must be served in accordance with Commission Rule 210.4(f)(7)(ii)(A) (19 CFR 210.4(f)(7)(ii)(A)). All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. Government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements. All nonconfidential written submissions will be available for public inspection on EDIS.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

Issued: June 4, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–12561 Filed 6–6–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–1398]

Certain Smart Wearable Devices, Systems, and Components Thereof; Notice of a Commission Determination Not To Review an Initial Determination Granting Complainants' Motion To Amend the Complaint and Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission (''Commission'') has determined not to review an initial determination (''ID'') (Order No. 8) of the presiding administrative law judge (''ALJ'') granting complainants' motion to amend the complaint and notice of investigation.

FOR FURTHER INFORMATION CONTACT: Michael Liberman, Esq., Office of the

General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–3115. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal, telephone (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on April 17, 2024, based on a complaint filed on behalf of Ouraring, Inc. of San Francisco, California, and Ōura Health Oy of Finland (collectively, ''Quraring,'' or ''Complainants''). 89 FR 27452–53 (Apr. 17, 2024). The complaint, as amended, alleges violations of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain smart wearable devices, systems, and components thereof by reason of the infringement of certain claims of U.S. Patent Nos. 11,868,178; 11,868,179; and 10,842,429. The Commission's notice of investigation named as respondents Ultrahuman Healthcare Pvt. Ltd. of Karnataka, India; Ultrahuman Healthcare SP LLC of Abu Dhabi, UAE; Ultrahuman Healthcare Ltd. of London, United Kingdom; Guangdong Jiu Zhi Technology Co. Ltd. of Guangdong, China; RingConn LLC of Wilmington, Delaware; and Circular SAS of Paris, France. The Office of Unfair Import Investigations (''OUII'') is also a party in this investigation.

On April 26, 2024, Quraring moved to amend its first amended complaint and the notice of investigation to change the name of respondent Guangdong Jiu Zhi Technology Co. Ltd. to Shenzhen Ninenovo Technology Limited because of a corporate name change. Motion Docket No. 1398–004 (''Mot.'') at 1 (EDIS Doc. ID 819859). Quraring also moved to amend the address for RingConn LLC. *Id.* The motion states that it is unopposed by respondents RingConn, Circular SAS, Ultrahuman Healthcare Pvt. Ltd., Ultrahuman Healthcare Ltd., and Ultrahuman Healthcare SP LLC. *Id.* at 1–2. On May 1, 2024, OUII filed a response supporting the motion. EDIS Doc. ID 820164.

On May 3, 2024, the ALJ issued an ID (Order No. 8) granting the subject motion. The ID considered Quraring's statement that Ouraring originally believed that Guangdong Jiu Zhi Technology Co. Ltd. was the parent company of RingConn LLC based on publicly available information, including RingConn's website. *See* ID at 2 (citing Mot. at 2). The ID noted that RingConn notified Ouraring on April 19, 2024, that Guangdong Jiu Zhi Technology Co. Ltd. had changed its name to Shenzhen Ninenovo Technology Limited. *Id.* (citing Mot. at 2–3, and Mot. Ex. A). The ID further noted that Ouraring states that on April 23, 2024, it learned the complete address for RingConn LLC. *Id.* (citing Mot. at 2–3, and Mot. Ex. B).

The ID found that Ouraring showed good cause to amend the complaint and notice of investigation to change the name of respondent Guangdong Jiu Zhi Technology Co. Ltd. to Shenzhen Ninenovo Technology Limited and to update the address for respondent RingConn LLC. *Id.* The ID further found that the above changes will not prejudice the rights of any parties to the investigation and reflect current and correct information. *Id.* No party petitioned for review of the ID.

The Commission has determined not to review the ID. The Commission vote for this determination took place on June 4, 2024.

By order of the Commission.

Issued: June 4, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–12550 Filed 6–6–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–720 and 731–TA–1688 (Preliminary)]

Ceramic Tile From India; Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission (''Commission'') determines, pursuant to the Tariff Act of 1930 (''the Act''), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of ceramic tile from India, provided for in subheadings 6907.21.10, 6907.21.20, 6907.21.30, 6907.21.40, 6907.21.90, 6907.22.10, 6907.22.20, 6907.22.30, 6907.22.40, 6907.22.90, 6907.23.10, 6907.23.20, 6907.23.30, 6907.23.40, 6907.23.90, 6907.30.10, 6907.30.20, 6907.30.30, 6907.30.40, 6907.30.90, 6907.40.10, 6907.40.20, 6907.40.30, 6907.40.40, and 6907.40.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (''LTFV'') and imports of the subject merchandise from India that are alleged to be subsidized by the government of India.[2] [3]

Commencement of Final Phase Investigations

Pursuant to section 207.18 of the Commission's rules, the Commission also gives notice of the commencement of the final phase of its investigations. The Commission will issue a final phase notice of scheduling, which will be published in the **Federal Register** as provided in § 207.21 of the Commission's rules, upon notice from the U.S. Department of Commerce (''Commerce'') of affirmative preliminary determinations in the investigations under §§ 703(b) or 733(b) of the Act, or, if the preliminary determinations are negative, upon notice of affirmative final determinations in those investigations under §§ 705(a) or 735(a) of the Act. Parties that filed entries of appearance in the preliminary phase of the investigations need not enter a separate appearance for the final phase of the investigations. Any other party may file an entry of appearance for the final phase of the investigations after publication of the final phase notice of scheduling. Industrial users, and, if the merchandise under investigation is sold at the retail level, representative consumer organizations have the right to appear as parties in Commission antidumping and countervailing duty investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to the investigations. As provided in section 207.20 of the Commission's rules, the Director of the Office of Investigations will circulate draft questionnaires for the final phase of the investigations to parties to the investigations, placing copies on the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*), for comment.

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] 89 FR 42836, 89 FR 42841 (May 16, 2024).

[3] Chairman David S. Johanson determined that there is a reasonable indication that a U.S. industry is threatened with material injury by reason of subject imports from India.

Background

On April 19, 2024, by the Coalition for Fair Trade in Ceramic Tile [4] filed petitions with the Commission and Commerce, alleging that an industry in the United States is materially injured or threatened with material injury by reason of subsidized imports of ceramic tile from India and LTFV imports of ceramic tile from India. Accordingly, effective April 19, 2024, the Commission instituted countervailing duty investigation No. 701–TA–720 and antidumping duty investigation No. 731–TA–1688 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of April 25, 2024 (89 FR 31770). The Commission conducted its conference on May 10, 2024. All persons who requested the opportunity were permitted to participate.

The Commission made these determinations pursuant to §§ 703(a) and 733(a) of the Act (19 U.S.C. 1671b(a) and 1673b(a)). It completed and filed its determinations in these investigations on May 31, 2024. The views of the Commission are contained in USITC Publication 5515 (June 2024), entitled *Ceramic Tile from India: Investigation Nos. 701–TA–720 and 731–TA–1688 (Preliminary).*

By order of the Commission.

Issued: June 3, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–12476 Filed 6–6–24; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has received a complaint *Certain Memory Devices and Electronic Devices Containing the Same,* DN 3751; the Commission is soliciting comments on any public interest issues raised by the complaint or complainant's filing pursuant to the Commission's Rules of Practice and Procedure.

FOR FURTHER INFORMATION CONTACT: Lisa R. Barton, Secretary to the Commission, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 205–2000. The public version of the complaint can be accessed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov*. For help accessing EDIS, please email *EDIS3Help@usitc.gov*.

General information concerning the Commission may also be obtained by accessing its internet server at United States International Trade Commission (USITC) at *https://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's Electronic Document Information System (EDIS) at *https://edis.usitc.gov*. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

SUPPLEMENTARY INFORMATION: The Commission has received a complaint and a submission pursuant to § 210.8(b) of the Commission's Rules of Practice and Procedure filed on behalf of MimirIP LLC on June 3, 2024. The complaint alleges violations of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain memory devices and electronic devices containing the same. The complaint names as a respondent: Micron Technology Inc. of Boise, ID; Dell, Inc. of Round Rock, TX; Hewlett Packard Enterprise Co. of Spring, TX; HP, Inc. of Palo Alto, CA; Kingston Technology Company, Inc. of Fountain Valley, CA; Lenovo Group Limited of China; Lenovo (United States) Inc. of Morrisville, NC; and Tesla Inc. of Austin, TX. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondent alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, and members of the public are invited to file comments on any public interest issues raised by the complaint or § 210.8(b) filing. Comments should address whether issuance of the relief specifically requested by the complainant in this investigation would affect the public health and welfare in the United States, competitive conditions in the United States economy, the production of like or directly competitive articles in the United States, or United States consumers.

In particular, the Commission is interested in comments that:

(i) explain how the articles potentially subject to the requested remedial orders are used in the United States;

(ii) identify any public health, safety, or welfare concerns in the United States relating to the requested remedial orders;

(iii) identify like or directly competitive articles that complainant, its licensees, or third parties make in the United States which could replace the subject articles if they were to be excluded;

(iv) indicate whether complainant, complainant's licensees, and/or third party suppliers have the capacity to replace the volume of articles potentially subject to the requested exclusion order and/or a cease and desist order within a commercially reasonable time; and

(v) explain how the requested remedial orders would impact United States consumers.

Written submissions on the public interest must be filed no later than by close of business, eight calendar days after the date of publication of this notice in the **Federal Register**. There will be further opportunities for comment on the public interest after the issuance of any final initial determination in this investigation. Any written submissions on other issues must also be filed by no later than the close of business, eight calendar days after publication of this notice in the **Federal Register**. Complainant may file replies to any written submissions no later than three calendar days after the date on which any initial submissions were due, notwithstanding § 201.14(a) of the Commission's Rules of Practice and Procedure. No other submissions will be accepted, unless requested by the Commission. Any submissions and replies filed in response to this Notice are limited to five (5) pages in length, inclusive of attachments.

Persons filing written submissions must file the original document electronically on or before the deadlines stated above. Submissions should refer to the docket number (''Docket No. 3751'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing

[4] The Coalition for Fair Trade in Ceramic Tile is comprised of Crossville, Inc., Crossville, TN; Dal-Tile Corporation, Dallas, TX; Del Conca USA, Inc., Loudon, TN; Wonder Porcelain, Lebanon, TN; Landmark Ceramics—UST, Inc., Mount Pleasant, TN; Florim USA, Clarksville, TN; Florida Tile, Lexington, KY; Portobello America Manufacturing LLC, Pompano Beach, FL; and StonePeak Ceramics Inc., Chicago, IL.

Procedures, Electronic Filing Procedures [1]).

Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov*.) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov*.

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. Government employees and contract personnel,[2] solely for cybersecurity purposes. All nonconfidential written submissions will be available for public inspection at the Office of the Secretary and on EDIS.[3]

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and of §§ 201.10 and 210.8(c) of the Commission's Rules of Practice and Procedure (19 CFR 201.10, 210.8(c)).

By order of the Commission.

Issued: June 4, 2024.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2024–12538 Filed 6–6–24; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1382]

Bulk Manufacturer of Controlled Substances Application: American Radiolabeled Chem

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: American Radiolabeled Chem has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before August 6, 2024. Such persons may also file a written request for a hearing on the application on or before August 6, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on May 8, 2024, American Radiolabeled Chem, 101 Arc Drive, Saint Louis, Missouri 63146–3502, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Gamma Hydroxybutyric Acid	2010	I
Ibogaine	7260	I
Lysergic acid diethylamide	7315	I
Tetrahydrocannabinols	7370	I
Dimethyltryptamine	7435	I
1-[1-(2-Thienyl)cyclohexyl]piperidine	7470	I
Noroxymorphone	9145	I
Heroin	9200	I
Normorphine	9313	I
Amphetamine	1100	II
Methamphetamine	1105	II
Amobarbital	2125	II
Phencyclidine	7471	II
Phenylacetone	8501	II
Cocaine	9041	II
Codeine	9050	II
Dihydrocodeine	9120	II
Oxycodone	9143	II
Hydromorphone	9150	II
Ecgonine	9180	II
Hydrocodone	9193	II
Meperidine	9230	II
Metazocine	9240	II
Methadone	9250	II
Dextropropoxyphene, bulk (non-dosage forms)	9273	II

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

Controlled substance	Drug code	Schedule
Morphine	9300	II
Oripavine	9330	II
Thebaine	9333	II
Oxymorphone	9652	II
Phenazocine	9715	II
Carfentanil	9743	II
Fentanyl	9801	II

The company plans to bulk manufacture the listed controlled substances for internal use as intermediates or for sale to its customers. The company plans to manufacture small quantities of the above listed controlled substances as radiolabeled compounds for biochemical research. In reference to drug code 7370 (Tetrahydrocannabinols), the company plans to bulk manufacture these drugs as synthetic. No other activities for these drug codes are authorized for this registration.

Matthew J. Strait,

Deputy Assistant Administrator.

[FR Doc. 2024–12567 Filed 6–6–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1383]

Importer of Controlled Substances Application: Usona Institute

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Usona Institute has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to Supplementary Information listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before July 8, 2024. Such persons may also file a written request for a hearing on the application on or before July 8, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on May 13, 2024, Usona Institute, 2780 Woods Hollow Road, Room 2412, Fitchburg, Wisconsin 53711–5370, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
5-Methoxy-N-N-dimethyltryptamine.	7431	I
Dimethyltryptamine	7435	I
Psilocybin	7437	I
Psilocyn	7438	I

The company plans to import the listed controlled substances for research and analytical purposes. The materials will not be used for clinical trials or human consumption. No other activities for these drug codes are authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew J. Strait,

Deputy Assistant Administrator.

[FR Doc. 2024–12575 Filed 6–6–24; 8:45 am]

BILLING CODE P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1384]

Bulk Manufacturer of Controlled Substances Application: Veranova, L.P.

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Veranova, L.P., has applied to be registered as a bulk manufacturer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before August 6, 2024. Such persons may also file a written request for a hearing on the application on or before August 6, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.33(a), this is notice that on May 9, 2024, Veranova, L.P., 25 Patton Road, Pharmaceutical Service, Devens, Massachusetts 01434–3803, applied to be registered as a bulk manufacturer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Amphetamine	1100	II
Methylphenidate	1724	II
Nabilone	7379	II
Hydrocodone	9193	II
Levorphanol	9220	II
Thebaine	9333	II
Alfentanil	9737	II
Remifentanil	9739	II
Sufentanil	9740	II

The company plans to bulk manufacture the listed controlled substances in order to support the manufacturing and analytical testing activities at its other Drug Enforcement Administration-registered manufacturing facility. No other activities for these drug codes are authorized for this registration.

Matthew J. Strait,

Acting Deputy Assistant Administrator.

[FR Doc. 2024–12576 Filed 6–6–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. DEA–1372]

Importer of Controlled Substances Application: Unither Manufacturing LLC

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Notice of application.

SUMMARY: Unither Manufacturing LLC has applied to be registered as an importer of basic class(es) of controlled substance(s). Refer to **SUPPLEMENTARY INFORMATION** listed below for further drug information.

DATES: Registered bulk manufacturers of the affected basic class(es), and applicants therefore, may submit electronic comments on or objections to the issuance of the proposed registration on or before July 8, 2024. Such persons may also file a written request for a hearing on the application on or before July 8, 2024.

ADDRESSES: The Drug Enforcement Administration requires that all comments be submitted electronically through the Federal eRulemaking Portal, which provides the ability to type short comments directly into the comment field on the web page or attach a file for lengthier comments. Please go to *https://www.regulations.gov* and follow the online instructions at that site for submitting comments. Upon submission of your comment, you will receive a Comment Tracking Number. Please be aware that submitted comments are not instantaneously available for public view on *https://www.regulations.gov.* If you have received a Comment Tracking Number, your comment has been successfully submitted and there is no need to resubmit the same comment. All requests for a hearing must be sent to: (1) Drug Enforcement Administration, Attn: Hearing Clerk/OALJ, 8701 Morrissette Drive, Springfield, Virginia 22152; and (2) Drug Enforcement Administration, Attn: DEA Federal Register Representative/DPW, 8701 Morrissette Drive, Springfield, Virginia 22152. All requests for a hearing should also be sent to: Drug Enforcement Administration, Attn: Administrator, 8701 Morrissette Drive, Springfield, Virginia 22152.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 1301.34(a), this is notice that on April 8, 2024, Unither Manufacturing LLC, 331 Clay Road, Rochester, New York 14623–3226, applied to be registered as an importer of the following basic class(es) of controlled substance(s):

Controlled substance	Drug code	Schedule
Methylphenidate	1724	II

The company plans to import the listed controlled substances solely for updated analytical testing purposes to meet European Union requirements for their finished dosage form product. This analysis is required to allow the company to export domestically manufactured finished dosage forms to foreign markets. No other activity for this drug code is authorized for this registration.

Approval of permit applications will occur only when the registrant's business activity is consistent with what is authorized under 21 U.S.C. 952(a)(2). Authorization will not extend to the import of Food and Drug Administration-approved or non-approved finished dosage forms for commercial sale.

Matthew J. Strait,

Deputy Assistant Administrator.

[FR Doc. 2024–12562 Filed 6–6–24; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. OSHA–2012–0017]

Reports of Injuries to Employees Operating Mechanical Power Presses; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Request for public comments.

SUMMARY: OSHA solicits public comments concerning the proposal to extend the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Reports of Injuries to Employees Operating Mechanical Power Presses.

DATES: Comments must be submitted (postmarked, sent, or received) by August 6, 2024.

ADDRESSES:

Electronically: You may submit comments and attachments electronically at *https://www.regulations.gov,* which is the Federal eRulemaking Portal. Follow the instructions online for submitting comments.

Docket: To read or download comments or other material in the docket, go to *https://www.regulations.gov.* Documents in the

docket are listed in the *https://www.regulations.gov* index; however, some information (*e.g.,* copyrighted material) is not publicly available to read or download through the websites. All submissions, including copyrighted material, are available for 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 (OSHA–2012–0017) for the Information Collection Request (ICR). OSHA will place all comments, including any personal information, in the public docket, which may be made available online. Therefore, OSHA cautions interested parties about submitting personal information such as social security numbers and birthdates.

For further information on submitting comments, see the ''Public Participation'' heading in the section of this notice titled **SUPPLEMENTARY INFORMATION**.

FOR FURTHER INFORMATION CONTACT: Seleda Perryman, Directorate of Standards and Guidance, OSHA, U.S. Department of Labor; telephone (202) 693–2222.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of the continuing effort to reduce paperwork and respondent (*i.e.,* employer) burden, conducts a preclearance consultation program to provide the public with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, the collection instruments are clearly understood, and OSHA's estimate of the information collection burden is accurate. The Occupational Safety and Health Act of 1970 (OSH Act) (29 U.S.C. 651 *et seq.*) authorizes information collection by employers as necessary or appropriate for enforcement of the OSH Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657). The OSH Act also requires that OSHA obtain such information with minimum burden upon employers, especially those operating small businesses, and to reduce to the maximum extent feasible unnecessary duplication of effort in obtaining information (29 U.S.C. 657).

The following sections describe who uses the information collected under each requirement, as well as how they use it. In the event that a worker is injured while operating a mechanical power press, 29 CFR 1910.217(g) requires the employer to report, within 30 days of the occurrence, all point-of-operation injuries to the operators or other employees to either the Director of the Directorate of Standards and Guidance at OSHA, U.S. Department of Labor, Washington, DC 20210 or electronically at *http://www.osha.gov/pls/oshaweb/mechanical.html*; or to the State agency administering a plan approved by the Assistant Secretary of Labor for Occupational Safety and Health. This information includes the employer's and worker's name(s), workplace address and location; injury sustained; task being performed when the injury occurred; number of operators required for the operation and the number of operators provided with controls and safeguards; cause of the incident; type of clutch, safeguard(s), and feeding method(s) used; and means used to actuate the press stroke. These reports are a source of up-to-date information on power press machines. Specifically, this information identifies the equipment used and conditions associated with these injuries.

OSHA's Mechanical Power Press injury reporting requirement at 1910.217(g) is a separate injury reporting requirement from OSHA's severe injury reporting requirements which are part of 1904.39. Under 1904.39, employers must, within 24 hours, report to OSHA any work-related injury requiring hospitalization as well as work-related incidents resulting in an amputation or loss of an eye. The Mechanical Power Press Standard requires employers to report all injuries involving operation of a power press to OSHA or an appropriate state agency within 30 days. Injuries that must be reported under 1910.217(g) include those that are also reportable under 1904.39 as well as those that are recordable under the recordkeeping standard (29 CFR 1904).

II. Special Issues for Comment

OSHA has a particular interest in comments on the following issues:

- Whether the proposed information collection requirements are necessary for the proper performance of the agency's functions to protect workers, including whether the information is useful;
- The accuracy of OSHA's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information, and transmission techniques.

III. Proposed Actions

OSHA is requesting that OMB extend the approval of the information collection requirements contained in Reports of Injuries to Employees Operating Mechanical Power Presses. The agency is requesting an adjustment decrease in burden hours amount from 390 to 320, a total reduction of 70 burden hours because there is a decrease in the estimated number of injury reports caused by mechanical power presses (from 1,170 to 960).

OSHA will summarize the comments submitted in response to this notice and will include this summary in the request to OMB to extend the approval of the information collection requirements.

Type of Review: Extension of a currently approved collection.

Title: Reports of Injuries to Employees Operating Mechanical Power Presses.

OMB Control Number: 1218–0070.

Affected Public: Business or other for-profits.

Number of Respondents: 960.

Number of Responses: 1,920.

Frequency of Responses: On occasion.

Average Time per Response: Varies.

Estimated Total Burden Hours: 320.

Estimated Cost (Operation and Maintenance): $0.

IV. Public Participation—Submission of Comments on this Notice and Internet Access to Comments and Submissions

You may submit comments in response to this document as follows: (1) electronically at *https://www.regulations.gov,* which is the Federal eRulemaking Portal; or (2) by facsimile (fax), if your comments, including attachments, are not longer than 10 pages you may fax them to the OSHA Docket Office at 202–693–1648. All comments, attachments, and other material must identify the agency name and the OSHA docket number for the ICR (OSHA–2012–0017). You may supplement electronic submission by uploading document files electronically.

Comments and submissions are posted without change at *https://www.regulations.gov.* Therefore, OSHA cautions commenters about submitting personal information such as social security numbers and dates of birth.

Although all submissions are listed in the *https://www.regulations.gov* index, some information (*e.g.,* copyrighted material) is not publicly available to read or download from this website. All submission, including copyrighted material, are available for inspection and copying at the OSHA Docket Office. Information on using the *https://www.regulations.gov* website to submit comments and access the docket is available at the website's ''User Tips'' link.

Contact the OSHA Docket Office at (202) 693–2350, (TTY (877) 889–5627) for information about materials not available from the website, and for assistance in using the internet to locate docket submissions.

V. Authority and Signature

James S. Frederick, Deputy Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506 *et seq.*) and Secretary of Labor's Order No. 8–2020 (85 FR 58393).

Signed at Washington, DC, on June 3, 2024.

James S. Frederick,

Deputy Assistant Secretary of Labor for Occupational Safety and Health.

[FR Doc. 2024–12464 Filed 6–6–24; 8:45 am]

BILLING CODE 4510–26–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Systematics Scientists Community Survey

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995. This is the second notice for public comment; the first was published in the **Federal Register**, and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAmain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 2415 Eisenhower Avenue, Alexandria, Virginia 22314; telephone (703) 292–7556; or send email to *splimpto@nsf.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339, which is accessible 24 hours a day, 7 days a week, 365 days a year (including Federal holidays).

Comments: Comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the NSF, including whether the information shall have practical utility; (b) the accuracy of the NSF's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, use, and clarity of the information on respondents; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to the points of contact in the **FOR FURTHER INFORMATION CONTACT** section. The first request for public comment was published on December 5, 2023, at 88 FR 84364.

Copies of the submission may be obtained by calling 703–292–7556. NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number, and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: Systematics Scientists Community Survey.

OMB Number: 3145–NEW.

Type of Request: Intent to seek approval to establish an information collection.

Abstract: The Systematics and Biodiversity Science Cluster (SBS) of the Division of Environmental Biology (DEB) at the National Science Foundation (NSF) supports research and methods development that advances understanding of the diversity, systematics, distribution and evolutionary history of extant and extinct organisms. SBS has a longstanding commitment to support research and taxonomic capacity building across the breadth of life on earth.

SBS requests the Office of Management and Budget (OMB) approval to initiate a new survey that will capture the current state of systematic research in the U.S. across subdisciplines, taxonomic groups, and scientific training and ranks.

Use of the Information: Individual survey responses will not be identifiable to the respondent. Aggregate results from the survey will be analyzed and summarized for internal SBS use. The data collected and analyzed will be used for program planning, management, and evaluation purposes. Analyzed data in aggregate may be used in a white paper reporting on the state of systematics science in the U.S. These data are needed for effective administration, program monitoring, evaluation, and for strategic planning within SBS.

Expected Respondents: The respondents will be scientists that self-identify as systematists.

Estimate of Burden:

Estimates of Annualized Cost to Respondents for the Hour Burdens: The overall annualized cost to the respondents is estimated to be $6,730. The following table shows the estimated burden and costs to respondents, who are generally biologists at the postsecondary level. This estimated hourly rate is based on a report from the Bureau of Labor Statistics' Occupational Employment and Wages, May 2021).[1] According to this report, the median hourly rate is $33.65.

Collection title	Total number of respondents	Burden hours per respondent	Total hour burden	Average hourly rate	Estimated cost
Survey of Systematists	800	.25	200	$33.65	$6,730

[1] *https://www.bls.gov/oes/current/oes251021.htm.*

Collection title	Total number of respondents	Burden hours per respondent	Total hour burden	Average hourly rate	Estimated cost
Total	800		200		6,730

Estimated Number of Responses per Report: Survey requests will be sent to members of all North American scientific societies to which systematists belong. The total number of systematists employed in the U.S. is not known but estimated that ca. 800 will respond.

Dated: June 4, 2024.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 2024–12558 Filed 6–6–24; 8:45 am]

BILLING CODE 7555–01–P

POSTAL REGULATORY COMMISSION

[Docket Nos. MC2024–338 and CP2024–346; MC2024–339 and CP2024–347; MC2024–340 and CP2024–348; MC2024–341 and CP2024–349; MC2024–342 and CP2024–350]

New Postal Products

AGENCY: Postal Regulatory Commission.

ACTION: Notice.

SUMMARY: The Commission is noticing a recent Postal Service filing for the Commission's consideration concerning a negotiated service agreement. This notice informs the public of the filing, invites public comment, and takes other administrative steps.

DATES: *Comments are due:* June 11, 2024.

ADDRESSES: Submit comments electronically via the Commission's Filing Online system at *http://www.prc.gov.* Those who cannot submit comments electronically should contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section by telephone for advice on filing alternatives.

FOR FURTHER INFORMATION CONTACT: David A. Trissell, General Counsel, at 202–789–6820.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction

The Commission gives notice that the Postal Service filed request(s) for the Commission to consider matters related to negotiated service agreement(s). The request(s) may propose the addition or removal of a negotiated service agreement from the Market Dominant or the Competitive product list, or the modification of an existing product currently appearing on the Market Dominant or the Competitive product list.

Section II identifies the docket number(s) associated with each Postal Service request, the title of each Postal Service request, the request's acceptance date, and the authority cited by the Postal Service for each request. For each request, the Commission appoints an officer of the Commission to represent the interests of the general public in the proceeding, pursuant to 39 U.S.C. 505 (Public Representative). Section II also establishes comment deadline(s) pertaining to each request.

The public portions of the Postal Service's request(s) can be accessed via the Commission's website (*http://www.prc.gov*). Non-public portions of the Postal Service's request(s), if any, can be accessed through compliance with the requirements of 39 CFR 3011.301.[1]

The Commission invites comments on whether the Postal Service's request(s) in the captioned docket(s) are consistent with the policies of title 39. For request(s) that the Postal Service states concern Market Dominant product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3622, 39 U.S.C. 3642, 39 CFR part 3030, and 39 CFR part 3040, subpart B. For request(s) that the Postal Service states concern Competitive product(s), applicable statutory and regulatory requirements include 39 U.S.C. 3632, 39 U.S.C. 3633, 39 U.S.C. 3642, 39 CFR part 3035, and 39 CFR part 3040, subpart B. Comment deadline(s) for each request appear in section II.

II. Docketed Proceeding(s)

1. *Docket No(s).:* MC2024–338 and CP2024–346; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 94 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 3, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* June 11, 2024.

2. *Docket No(s).:* MC2024–339 and CP2024–347; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage contract 270 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 3, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* June 11, 2024.

3. *Docket No(s).: Docket No(s).:* MC2024–340 and CP2024–348; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 95 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 3, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Kenneth R. Moeller; *Comments Due:* June 11, 2024.

4. *Docket No(s).:* MC2024–341 and CP2024–349; *Filing Title:* USPS Request to Add Priority Mail Express, Priority Mail & USPS Ground Advantage Contract 96 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 3, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Almaroof Agoro; *Comments Due:* June 11, 2024..

5. *Docket No(s).:* MC2024–342 and CP2024–350; *Filing Title:* USPS Request to Add Priority Mail & USPS Ground Advantage contract 271 to Competitive Product List and Notice of Filing Materials Under Seal; *Filing Acceptance Date:* June 3, 2024; *Filing Authority:* 39 U.S.C. 3642, 39 CFR 3040.130 through 3040.135, and 39 CFR 3035.105; *Public Representative:* Almaroof Agoro; *Comments Due:* June 11, 2024.

This Notice will be published in the **Federal Register**.

Erica A. Barker,

Secretary.

[FR Doc. 2024–12537 Filed 6–6–24; 8:45 am]

BILLING CODE 7710–FW–P

[1] *See* Docket No. RM2018–3, Order Adopting Final Rules Relating to Non-Public Information, June 27, 2018, Attachment A at 19–22 (Order No. 4679).

SECURITIES AND EXCHANGE COMMISSION

[Release No.: 34–100264]

Public Availability of the Securities and Exchange Commission's Fiscal Year (FY) 2021 Service Contract Inventory

AGENCY: Securities and Exchange Commission.

ACTION: Notice.

SUMMARY: In accordance with section 743 of division C of the Consolidated Appropriations Act of 2010, the SEC is publishing this notice to advise the public of the availability of the FY2021 Service Contract Inventory (SCI) along with the FY2022 SCI Planned Analysis.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding the service contract inventory to Vance Cathell, Director Office of Acquisitions 202.551.8385 or *CathellV@sec.gov.*

SUPPLEMENTARY INFORMATION:

The SCI provides information on FY2021 actions over $150,000 for service contracts. The inventory organizes the information by function to show how SEC distributes contracted resources throughout the agency. The SEC developed the inventory per guidance issued by the Office of Management and Budget's Office of Federal Procurement Policy (OFPP).

The SCI Analysis for FY2021 provides information based on the FY 2021 Inventory. Please note that the SEC's FY 2021 Service Contract Inventory data is now included in government-wide inventory available on *https://www.acquisition.gov.* The government-wide inventory can be filtered to display the inventory data for the SEC. The SEC has posted the FY 2021 SCI Analysis and its FY 2022 plans for analyzing data on the SEC's homepage at *https://www.sec.gov/about/secreports.shtml* and *https://www.sec.gov/open.*

Dated: June 4, 2024.

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–12527 Filed 6–6–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100260; File No. SR–CboeEDGX–2024–031]

Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Delay Implementation of a New Connectivity Offering Through Dedicated Cores

June 3, 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 May 31, 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 Exchange filed the proposal as a ''non-controversial'' proposed rule change pursuant to Section 19(b)(3)(A)(iii) of the Act[3] and Rule 19b–4(f)(6) thereunder.[4] 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'') proposes to delay implementation of a new connectivity offering.

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.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(iii).

[4] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to delay the implementation of Dedicated Cores. The Exchange previously filed SR–CboeEDGX–2024–026 to establish Dedicated Cores effective June 3, 2024.[5]

By way of background, SR–CboeEDGX–2024–026 proposed to introduce a new connectivity offering relating to the use of Dedicated Cores. Historically, Central Processing Units (''CPU Cores'') have been shared by logical order entry ports (*i.e.,* multiple logical ports from multiple firms may connect to a single CPU Core). The introduction of Dedicated Cores would allow Users[6] to assign a single Binary Order Entry (''BOE'') logical order entry port[7] to a single dedicated CPU Core (''Dedicated Core'').[8] Use of Dedicated Cores can provide reduced latency, enhanced throughput, and improved performance since a firm using a Dedicated Core is utilizing the full processing power of a CPU Core instead of sharing that power with other firms. This offering is completely voluntary and will be available to all Users.[9] Users will also continue to have the option to utilize BOE logical order entry ports on shared CPU Cores as they do today, either in lieu of, or in addition to, their use of Dedicated Core(s). As such, Users will be able to operate across a mix of shared and dedicated CPU Cores which the Exchange believes provides additional risk and capacity

[5] *See* Securities Exchange Act Release No. 97658 (May 20, 2024), 89 FR 45930 (May 24, 2024) (SR–CboeEDGX–2024–026) (Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Introduce a New Connectivity Offering Through Dedicated Cores) (''SR–CboeEDGX–2024–026'').

[6] A User may be either a Member or Sponsored Participant. The term ''Member'' shall mean any registered broker or dealer that has been admitted to membership in the Exchange, limited liability company or other organization which is a registered broker or dealer pursuant to Section 15 of the Act, and which has been approved by the Exchange. A Sponsored Participant may be a Member or non-Member of the Exchange whose direct electronic access to the Exchange is authorized by a Sponsoring Member subject to certain conditions. *See* Exchange Rule 11.3.

[7] Users may currently connect to the Exchange using a logical port available through an application programming interface (''API''), such as the Binary Order Entry (''BOE'') protocol. A BOE logical order entry port is used for order entry.

[8] The Exchange notes that firms will not have physical access to their Dedicated Core and thus cannot make any modifications to the Dedicated Core or server. All Dedicated Cores (including servers used for this service) are owned and operated by the Exchange.

[9] The Exchange intends to submit a separate rule filing to adopt monthly fees related to the use of Dedicated Cores.

management, especially during times of market volatility and high message traffic. Further, Dedicated Cores are not required nor necessary to participate on the Exchange and as such Users may opt not to use Dedicated Cores at all.

SR–CboeEDGX–2024–026 stated that the rule change would be implemented on June 3, 2024. At this time, the Exchange proposes to delay the implementation of SR–CboeEDGX–2023–026 [sic] to on or after July 1, 2024 to permit the Exchange additional time to implement Dedicated Cores in the Exchange's data center. The Exchange would issue a Trade Desk Notice announcing the exact implementation date to members and member organizations.

2. Statutory Basis

The Exchange believes that its proposal is consistent with Section 6(b) of the Act,[10] in general, and furthers the objectives of Section 6(b)(5) of the Act,[11] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Exchange's proposal to delay the implementation of SR–CboeEDGX–2024–026 to on or after July 1, 2024 is consistent with the Act and the protection of investors and the general public as it will permit the Exchange additional time to ensure the Exchange's data center can accommodate the proposed Dedicated Cores. As noted, the Exchange would issue a Trade Desk Notice announcing the exact implementation date to members and member organizations.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange's proposal to delay the implementation of SR–CboeEDGX–2024–026 to on or after July 1, 2024 does not impose any burden on competition as it will permit the Exchange additional time to implement Dedicated Cores.

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

Because the foregoing proposed rule change does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; and (iii) become operative prior to 30 days from the date on which it was filed, or such shorter time as the Commission may designate, if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)(iii) of the Act[12] and Rule 19b–4(f)(6) thereunder.[13]

A proposed rule change filed under Rule 19b–4(f)(6)[14] normally does not become operative prior to 30 days after the date of the filing. However, pursuant to Rule 19b–4(f)(6)(iii),[15] the Commission may designate a shorter time if such action is consistent with the protection of investors and the public interest.

The Exchange has asked the Commission to waive the 30-day operative delay so that the proposal may become operative immediately upon filing. Waiver of the operative delay would allow the Exchange to immediately delay the implementation of SR–CboeEDGX–2024–026 to establish Dedicated Cores and provide the Exchange additional time to ensure readiness at the Exchange's data center for implementation of Dedicated Cores on or after July 1, 2024. The Commission believes that the proposed rule change presents no novel legal or regulatory issues, and that waiver of the 30-day operative delay is consistent with the protection of investors and the public interest. Accordingly, the Commission hereby waives the 30-day operative delay and designates the proposed rule change operative upon filing.[16]

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings under Section 19(b)(2)(B) of the Act[17] 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–2024–031 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–2024–031. 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

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78s(b)(3)(A)(iii).

[13] 17 CFR 240.19b–4(f)(6). In addition, Rule 19b–4(f)(6) requires a self-regulatory organization to give the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, or such shorter time as designated by the Commission. The Exchange has satisfied this requirement.

[14] 17 CFR 240.19b–4(f)(6).

[15] 17 CFR 240.19b–4(f)(6)(iii).

[16] For purposes only of waiving the 30-day operative delay, the Commission has also considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[17] 15 U.S.C. 78s(b)(2)(B).

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–2024–031 and should be submitted on or before June 28, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

Sherry R. Haywood,

Assistant Secretary.

[FR Doc. 2024–12465 Filed 6–6–24; 8:45 am]

BILLING CODE 8011–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–100261; File No. SR–OCC–2024–007]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change To Update the Options Clearing Corporation's Schedule of Fees

June 3, 2024.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'' or ''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 29, 2024, The Options Clearing Corporation (''OCC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by OCC. OCC filed the proposed rule change pursuant to Section 19(b)(3)(A)(ii)[3] of the Act and Rule 19b–4(f)(2)[4] thereunder so that the proposal was effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Clearing Agency's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would revise OCC's schedule of fees. Specifically, OCC proposes to update the Options Disclosure Document (''ODD'')[5] fee and make certain other changes, including allowing OCC to charge applicable taxes and removing language related to authorization stamp fees, which are no longer in use. Proposed changes to OCC's schedule of fees are included as Exhibit 5 to File Number SR–OCC–2024–007. Material proposed to be added to OCC's schedule of fees as currently in effect is underlined and material proposed to be deleted is marked in strikethrough text. All capitalized terms not defined herein have the same meaning as set forth in the OCC By-Laws and Rules.[6]

II. Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC 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. OCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.

(A) Clearing Agency's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(1) Purpose

The purpose of this filing is to revise OCC's schedule of fees. As the sole clearing agency for standardized equity options listed on national securities exchanges registered with the Commission, and with respect to OCC's clearance and settlement of futures and stock loan transactions, OCC maintains policies and procedures to manage the risks borne by OCC as a central counterparty. One such risk that OCC manages is general business risk—that is, the risk of potential impairment to OCC's financial position resulting from a decline in revenues or an increase in expenses. To manage this risk and help to ensure that OCC can continue operations and services as a going concern if general business losses materialize, OCC has filed, and the Commission has approved, OCC's Capital Management Policy,[7] which provides the framework by which OCC manages its capital. Amending OCC's schedule of fees is one action used by OCC to manage its capital.

In accordance with the Capital Management Policy, OCC management reviews the fee schedule at regularly scheduled meetings and, considering factors including, but not limited to, projected operating expenses, projected volumes, anticipated cashflows, and capital needs, recommends to the Board (or a committee to which the Board has delegated authority), whether a fee change should be made. In accordance with such procedures, OCC management recommended, and the Compensation and Performance Committee of OCC's Board approved certain fee changes. As further described below, these proposed changes are intended to promote cost management by facilitating OCC's ability to break even on certain costs. Additional proposed changes are intended to ensure OCC's schedule of fees remains current and clear.

ODD Fee Changes

OCC proposes to update the fee charged for a printed version of the ODD to industry participants, including both Clearing Members and non-Clearing Members. The Characteristics and Risks of Standardized Options, also known as the ODD, explains the characteristics and risks of exchange traded options. Broker-dealers are required to distribute the ODD to customers pursuant to Rule 9b–1 under the Exchange Act.[8] Prior to

[18] 17 CFR 200.30–3(a)(12), (59).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A)(ii).

[4] 17 CFR 240.19b–4(f)(2).

[5] The ODD is written to meet the requirements of Rule 9b–1 under the Exchange Act that requires the U.S. options markets to prepare, and brokerage firms to distribute, a document that describes the characteristics of options and the risks to investors of maintaining positions in options. More specifically, such document will include information pertaining to the mechanics of exercising the options, the risks of being a holder or writer of the options, and the market or markets in which the options are traded, among other items identified in Rule 9b–1(c). *See* 17 CFR 240.9b–1.

[6] OCC's By-Laws and Rules can be found on OCC's public website: *https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules.*

[7] *See* Order Approving Proposed Rule Change to Establish OCC's Persistent Minimum Skin-In-The-Game, Exchange Act Release No. 92038 (May 27, 2021), 86 FR 29861 (June 3, 2021) (SR–OCC–2021–003); Order Approving Proposed Rule Change, as Modified by Partial Amendment No. 1, Concerning a Proposed Capital Management Policy That Would Support the Option Clearing Corporation's Function as a Systemically Important Financial Market Utility, Exchange Act Release No. 88029 (Jan. 24, 2020), 85 FR 5500 (Jan. 30, 2020) (SR–OCC–2019–007); see also Notice of Filing of Partial Amendment No. 1 and Notice of No Objection to Advance Notice, as Modified by Partial Amendment No. 1, Concerning a Proposed Capital Management Policy That Would Support the Option Clearing Corporation's Function as a Systemically Important Financial Market Utility, Exchange Act Release No. 87257 (Oct. 8, 2019), 84 FR 55194 (Oct. 15, 2019) (SR–OCC–2019–805).

[8] 17 CFR 240.9b–1.

buying or selling an option, investors must be given a copy of the ODD. Investors may also obtain a printed version of the ODD from any exchange on which options are traded or by placing an order on OCC's website. Additionally, OCC provides an option to electronically download the full version of the ODD on its website for no charge.[9] OCC advises broker-dealers to consult with their legal and compliance resources to determine the appropriate means of delivery of the ODD to investors.[10] Electronic delivery of the ODD is permissible if the requirements for electronic delivery as established by the Commission are met.[11] Additionally, OCC makes available a print-ready PDF version of the ODD to Clearing Members and non-Clearing Members so that firms who wish to print the ODD through their own printing services may do so.[12]

OCC proposes to update the fee charged for a printed copy of the ODD from $0.45 to $0.95. The current fee is charged when the order is placed with OCC. OCC has not increased this fee since 1994 and it is out of sync with the current environment. There has been notable inflation over the past 30 years. For instance, the dollar had an average inflation rate of 2.52% per year between 1994 and 2023, producing a cumulative price increase of approximately 106%.[13] The proposed fee constitutes a 111% increase from the fee adopted in 1994, which deviates only slightly from the cumulative rate. OCC believes the proposed fee increase is reasonable given that the costs and expenses associated with the ODD (*e.g.,* printing, preparation, and labor costs), as well as the form of the ODD itself,[14] have changed since 1994.

ODD costs are difficult to predict. New versions of the ODD may be issued at various times as needed to address new products or industry changes, and it may be necessary to distribute multiple new versions of the ODD within a year.[15] OCC proposes to increase the current fee to $0.95 per copy, which reflects the current cost to print and distribute the ODD.[16] OCC does not intend to generate a profit through this change. This proposal is designed to facilitate OCC's ability to break even on the costs of printing and distributing the ODD. Additionally, as a clarification, OCC proposes to update the current reference to the ODD in the fee schedule from ''Disclosure Documents'' to ''Options Disclosure Document.'' The proposed changes to the fee schedule are set out below.

Current fee schedule	Proposed fee schedule
Disclosure Documents—$0.45.	Options Disclosure Document—$0.95.

The proposed changes are designed to promote cost management in compliance with Rule 17Ad–22(e)(15) under the Exchange Act that, among other things, requires OCC to identify, monitor, and manage its general business risk,[17] which includes the risk of potential impairment to OCC's financial position resulting from a decline in revenues or an increase in expenses. The proposed increase in the ODD fee is designed to facilitate OCC's ability to break even on the costs of printing and distributing the ODD. OCC does not intend to make a profit with this increase and as discussed above, OCC makes available additional options for ODD distribution at no charge, including an electronic version and a print-ready PDF version. Implementation of the proposed fee increase is designed to bring the ODD fee in sync with the current environment as well as the current form of the ODD.

Additional Fee Changes

Additional proposed changes allow OCC to charge applicable taxes. OCC currently does not charge sales tax. For example, in connection with the ODD, OCC pays the sales tax and absorbs the cost. OCC believes it is reasonable to allocate rather than absorb the cost of applicable taxes because it will facilitate OCC's ability to break even on these types of required costs. Under the amended fee schedule, OCC may charge state sales or use tax when due in connection with any of its listed fees. OCC does not believe such change would create a financial burden as it is limited to the cost of applicable taxes, which OCC does not control. Moreover, OCC believes charging sales or use tax where applicable is reasonable because it is similar to a practice currently employed by another self-regulatory organization.[18]

Finally, OCC proposes to remove an outdated fee for authorization stamps because authorization stamps are no longer used by OCC. OCC previously used authorization stamps as a security measure for authentication. OCC removed provisions in its Rules related to such stamps in 2023.[19] Such change is intended to ensure that the fee schedule remains current and accurate.

Implementation Timeframe

OCC proposes to implement the fee changes within 60 days from the date that OCC receives all necessary regulatory approvals for the filing. OCC will announce the implementation date of the proposed fee changes by an Information Memorandum posted to its public website at least seven days prior to implementation. Such implementation is proposed to provide notice to industry participants and to allow OCC to complete any necessary steps in its order system to effect the fee changes. Additionally, OCC would not make the fee changes operative until after the time required to self-certify the proposed change with the Commodity Futures Trading Commission (''CFTC'').

(2) Statutory Basis

OCC believes the proposed rule change is consistent with the Act[20] and the rules and regulations thereunder. In particular, OCC believes that the proposed fee changes are also consistent with Section 17A(b)(3)(D) of the Act,[21] which requires that the rules of a clearing agency provide for the equitable allocation of reasonable dues,

[9] The ODD is available electronically at *https://www.theocc.com/company-information/documents-and-archives/publications.*

[10] *See* OCC's website for additional information regarding electronic delivery and print copies at *https://www.theocc.com/company-information/documents-and-archives/options-disclosure-document.*

[11] *See* Exchange Act Release No. 37183 (May 9, 1996), 61 FR 24652 (May 15, 1996) (adopting technical amendments to the Commission's rules that are premised on the distribution of paper documents).

[12] Firms may contact OCC to request the print-ready PDF version. *See supra* note 10.

[13] *See* the inflation calculator at *https://www.officialdata.org/us/inflation/1994?endyear=2023.*

[14] For example, in 2021, OCC integrated all prior ODD supplements into one document and eliminated the distribution of supplements. While the integration of the supplements created a more digestible document for investors, the change increased the printing costs for OCC.

[15] Because it is difficult to forecast the number of printed versions that OCC needs to purchase to fulfill orders, OCC may place several orders of different quantities throughout the year. OCC's printing costs generally depend on the quantity ordered.

[16] This fee is the sum of current per copy printing and distribution costs. Current per copy printing costs were derived through a weighted average based on the volume of ODD copies that OCC purchased at different price points from 2020 through 2023 from its printer. Current per copy distribution costs were derived using estimated yearly costs incurred by OCC in distributing the ODD, such as maintenance and storage, accounting, legal, waste, and growth.

[17] *See* 17 CFR 240.17Ad–22(e)(15).

[18] *See* New York Stock Exchange (''NYSE'') Fee Schedule at *https://www.nyse.com/publicdocs/nyse/markets/nyse/nyse_price_list.pdf.* NYSE charges sales tax for various products where applicable.

[19] *See* Exchange Act Release No. 97439 (May 5, 2023), 88 FR 30373 (May 11, 2023) (SR–OCC–2023–002) (removing provisions related to authorization stamps in then-existing Rule 212).

[20] 15 U.S.C. 78a *et seq.*

[21] 15 U.S.C. 78q–1(b)(3)(D).

fees, and other charges among its participants.

OCC believes that the proposed fee changes are reasonable. The current ODD fee has not increased since 1994 and is out of sync with the current environment. As discussed above, there has been notable inflation over the past 30 years. OCC believes the proposed fee increase is reasonable given that the costs and expenses associated with the ODD (*e.g.,* printing, preparation, and labor costs), as well as the form of the ODD itself, have changed since 1994. The proposed fee is designed to reflect the current cost to print and distribute the ODD to facilitate OCC's ability to break even on these costs. In addition, OCC believes it is reasonable to allocate rather than absorb the cost of applicable taxes because it will facilitate OCC's ability to break even on these types of required costs. OCC does not believe such change would create a financial burden as it is limited to the cost of applicable taxes, which OCC does not control. Moreover, OCC believes charging appropriate sales or use tax is reasonable because it is similar to a practice currently employed by another self-regulatory organization.[22] Furthermore, OCC believes it is reasonable to remove the fee for authorization stamps, as OCC no longer uses authorization stamps. This change would ensure that the fee schedule remains current and accurate.

OCC also believes that the proposed fee changes would result in an equitable allocation of fees. The ODD fee increase would apply equally to all industry participants that order printed copies of the ODD. Moreover, OCC makes available additional options for ODD distribution at no charge, including an electronic version and a print-ready PDF version. The additional changes, including allowing OCC to charge applicable taxes and removing outdated language, would also be applied equally to industry participants that utilize OCC's services. As a result, OCC believes that the proposed changes to OCC's fee schedule provide for the equitable allocation of reasonable fees in accordance with Section 17A(b)(3)(D) of the Act.[23]

In addition, OCC believes that the proposed rule change is consistent with Rule 17Ad–22(e)(15), which requires that OCC establish, implement, maintain and enforce written policies and procedures reasonably designed to identify, monitor, and manage OCC's general business risk.[24] The proposed fee changes are designed to promote cost management by facilitating OCC's ability to break even on certain costs, which would promote OCC's ability to manage its general business risk or the risk of potential impairment to OCC's financial position resulting from a decline in revenues or an increase in expense. Therefore, OCC believes that the proposed changes to OCC's schedule of fees are consistent with Rule 17Ad–22(e)(15).[25]

(B) Clearing Agency's Statement on Burden on Competition

Section 17A(b)(3)(I) of the Act[26] requires that the rules of a clearing agency not impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. OCC does not believe that the proposed rule change would have any impact or impose a burden on competition. OCC believes that the proposed rule change would not disadvantage or favor any particular user of OCC's services in relationship to another user because the proposed changes would equally apply to all industry participants. In addition, OCC does not believe the fee changes impose a significant burden, as the changes are intended to reflect current costs incurred by OCC rather than generate a profit. Accordingly, OCC does not believe that the proposed rule change would have any impact or impose a burden on competition.

(C) Clearing Agency's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were not and are not intended to be solicited with respect to the proposed rule change and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Pursuant to Section 19(b)(3)(A)(ii)[27] of the Act, and Rule 19b–4(f)(2) thereunder,[28] the proposed rule change is filed for immediate effectiveness as it constitutes a change in fees. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. The proposal shall not take effect until all regulatory actions required with respect to the proposal are completed.[29]

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–OCC–2024–007 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–OCC–2024–007. 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 such filing also will be available for inspection and copying at the principal office of OCC and on OCC's website at *https://www.theocc.com/Company-Information/Documents-and-Archives/By-Laws-and-Rules.* Do not include personal identifiable information in submissions; you should submit only information that you wish to make

[22] *See supra* note 18.

[23] 15 U.S.C. 78q–1(b)(3)(D).

[24] 17 CFR 240.17Ad–22(e)(15).

[25] *Id.*

[26] 15 U.S.C. 78q–1(b)(3)(I).

[27] 15 U.S.C. 78s(b)(3)(A)(ii).

[28] 17 CFR 240.19b–4(f)(2).

[29] Notwithstanding its immediate effectiveness, implementation of this rule change will be delayed until this change is deemed certified under CFTC Regulation 40.6.

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–OCC–2024–007 and should be submitted on or before June 28, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

Vanessa A. Countryman,

Secretary.

[FR Doc. 2024–12466 Filed 6–6–24; 8:45 am]

BILLING CODE 8011–01–P

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: U.S. Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act and OMB procedures, SBA is publishing this notice to allow all interested member of the public an additional 30 days to provide comments on the proposed collection of information.

DATES: Submit comments on or before July 8, 2024.

ADDRESSES: Written comments and recommendations for this information collection request should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Small Business Administration''; ''Currently Under Review,'' then select the ''Only Show ICR for Public Comment'' checkbox. This information collection can be identified by title and/or OMB Control Number.

FOR FURTHER INFORMATION CONTACT: Specific 7(a) WCP policy questions should be directed to *7aWCP@sba.gov.* For further information, contact Ginger Allen, Chief, 7(a) Loan Policy Division, Office of Financial Assistance, Office of Capital Access, Small Business Administration, at (202) 205–7110 or *Ginger.Allen@sba.gov*, or Daniel Pische, Director, International Trade Finance, Office of International Trade, Small Business Administration, at (202) 205–7119 or *Daniel.Pische@sba.gov.* The phone numbers above may also be reached by individuals who are deaf or hard of hearing, or who have speech disabilities, through the Federal Communications Commission's TTY-Based Telecommunications Relay Service teletype service at 711. Curtis B. Rich, Agency Clearance Officer *curtis.rich@sba.gov* 202–205–7030.

SUPPLEMENTARY INFORMATION: SBA is contemplating a new 7(a) Working Capital Pilot (WCP) Program within SBA's 7(a) Loan Programs. As part of the implementation plan for this program SBA has created a new addendum to SBA Form 1919, SBA Form 2534, ''7(a) Working Capital Pilot Program Addendum to SBA Form 1919'', to collect specific Applicant business information for the 7(a) WCP Program when a Lender submits a 7(a) WCP application for guaranty. The collection of this information assists in identifying Applicant businesses applying for the 7(a) WCP Program and pertinent information applicable to the pilot program. The form is comprised of questions that help identify the delivery method(s) of the 7(a) WCP loan, gather data for asset-based 7(a) WCP loans regarding initial advance rates for accounts receivable and inventory, and whether 7(a) WCP loan proceeds will be used to refinance the Lender's same institution SBA Express loan(s). SBA Form 2534 must be completed by the Lender and the information from the form will be submitted to SBA electronically via SBA's electronic transmission (E-Tran) platform. Only one form will be submitted as part of an application. SBA expects most Lenders to collect the data through internal or third-party software platforms. Lenders must retain the form in the respective loan file.

Solicitation of Public Comments

Comments may be submitted 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

PRA Number: 3245–.

Title: SBA Form 2534 ''7(a) Working Capital Pilot Program Addendum to SBA Form 1919.''

Description of Respondents: SBA 7(a) Lenders processing WCP Program Loans.

Form Number: 2534.

Estimated Number of Respondents: 214.

Total Estimated Annual Responses: 214.

Total Estimated Annual Hour Burden: 17.83.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2024–12467 Filed 6–6–24; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

[Disaster Declaration #20303 and #20304; OKLAHOMA Disaster Number OK–20001]

Presidential Declaration Amendment of a Major Disaster for the State of Oklahoma

AGENCY: U.S. Small Business Administration.

ACTION: Amendment 7.

SUMMARY: This is an amendment of the Presidential declaration of a major disaster for the State of Oklahoma (FEMA–4776–DR), dated 04/30/2024.

Incident: Severe Storms, Straight-line Winds, Tornadoes, and Flooding.

Incident Period: 04/25/2024 through 05/09/2024.

DATES: Issued on 05/30/2024.

Physical Loan Application Deadline Date: 07/01/2024.

Economic Injury (EIDL) Loan Application Deadline Date: 01/30/2025.

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 OKLAHOMA, dated 04/30/2024, is hereby amended to include the following areas as adversely affected by the disaster:

Primary Counties (Physical Damage and Economic Injury Loans): Craig, Johnston, McClain, Nowata, Ottawa

Contiguous Counties (Economic Injury Loans Only):

Oklahoma: Atoka, Bryan, Canadian, Delaware, Grady, Mayes

Kansas: Cherokee, Labette

Missouri: McDonald, Newton

All other information in the original declaration remains unchanged.

[30] 17 CFR 200.30–3(a)(12).

(Catalog of Federal Domestic Assistance Number 59008)

Francisco Sánchez, Jr.,

Associate Administrator, Office of Disaster Recovery & Resilience.

[FR Doc. 2024–12488 Filed 6–6–24; 8:45 am]

BILLING CODE 8026–09–P

DEPARTMENT OF STATE

[Public Notice: 12424]

30-Day Notice of Proposed Information Collection: Global Community Liaison Office (GCLO) Professional Development Fellowship (PDF) Application

ACTION: Notice of request for public comment and submission to OMB of proposed collection of information.

SUMMARY: The Department of State has submitted the information collection described below to the Office of Management and Budget (OMB) for approval. In accordance with the Paperwork Reduction Act of 1995 we are requesting comments on this collection from all interested individuals and organizations. The purpose of this Notice is to allow 30 days for public comment.

DATES: Submit comments up to July 8, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

SUPPLEMENTARY INFORMATION:

- *Title of Information Collection:* GCLO Professional Development Fellowship (PDF) Application.
- *OMB Control Number:* 1405–0229.
- *Type of Request:* Renewal of a Currently Approved Collection.
- *Originating Office:* Bureau of Global Talent Management, Global Community Liaison Office (GTM/GCLO).
- *Form Number:* DS–4297.
- *Respondents:* The PDF program is open to spouses and partners of direct-hire U.S. Government employees from all agencies serving overseas under Chief of Mission authority.
- *Estimated Number of Responses:* 255.
- *Average Time per Response:* 2.75 hours.
- *Total Estimated Burden Time:* 701 hours.
- *Frequency:* Annually.
- *Obligation to Respond:* Required to Obtain a Fellowship.

We are soliciting public comments to permit the Department to:

- Evaluate whether the proposed information collection is necessary for the proper functions of the Department.
- Evaluate the accuracy of our estimate of the time and cost burden for this proposed collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Please note that comments submitted in response to this Notice are public record. Before including any detailed personal information, you should be aware that your comments as submitted, including your personal information, will be available for public review.

Abstract of Proposed Collection

The GCLO needs the information collected in the PDF application to determine who will receive a Professional Development Fellowship. The information is provided to selection committees that use a set of criteria to score the applications. Respondents are spouses and partners of direct-hire U.S. Government employees from all agencies serving overseas under Chief of Mission who want to develop, maintain, and/or refresh their professional skills while overseas. The information is sought pursuant to 22 U.S.C. 2651a—Organization of Department of State, 22 U.S.C. 3921—Management of the Foreign Service, 22 U.S.C. 4026(b) Establishment of Family Liaison Office.

Methodology

Applicants will email the completed application to GCLO's PDF program manager.

Ramona M. Sandoval,

Acting Director, Global Community Liaison Office, Bureau of Global Talent Management, Department of State.

[FR Doc. 2024–12543 Filed 6–6–24; 8:45 am]

BILLING CODE 4710–15–P

DEPARTMENT OF STATE

[Public Notice: 12423]

Determinations Regarding Use of Chemical Weapons by Russia Under the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991

ACTION: Notice.

SUMMARY: The Acting Under Secretary of State for Political Affairs, acting under authority delegated pursuant to an Executive order, has determined pursuant to section 306(a) of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (the Act), that the Government of the Russian Federation has used chemical weapons in violation of international law. In addition, the Acting Under Secretary of State for Political Affairs has determined and certified to Congress pursuant to section 307(d) of the Act that it is essential to the national security interests of the United States to partially waive the application of the sanctions required under section 307(a) of the Act with respect to foreign assistance, licenses for the export of items on the U.S. Munitions List (USML), and the licensing of national security-sensitive goods and technology. The following is a notice of the sanctions to be imposed pursuant to section 307(a) of the Act, subject to these waivers.

DATES: June 7, 2024.

FOR FURTHER INFORMATION CONTACT: Pamela K. Durham, Office of Missile, Biological, and Chemical Nonproliferation, Bureau of International Security and Nonproliferation, Department of State, Telephone (202) 647–4930.

SUPPLEMENTARY INFORMATION: Pursuant to sections 306(a), 307(a), and 307(d) of the Chemical and Biological Weapons Control and Warfare Elimination Act of 1991 (22 U.S.C. 5604(a), 5605(a), and 5605(d)), on April 25, 2024 the Acting Under Secretary of State for Political Affairs determined that the Government of the Russian Federation has used chemical or biological weapons in violation of international law or lethal chemical or biological weapons against its own nationals. As a result, the following sanctions are hereby imposed:

1. *Foreign Assistance:* Termination of assistance to Russia under the Foreign Assistance Act of 1961, except for urgent humanitarian assistance and food or other agricultural commodities or products.

The Acting Under Secretary of State for Political Affairs has determined that

it is essential to the national security interests of the United States to waive the application of this restriction.

2. *Arms Sales:* Termination of (a) sales to Russia under the Arms Export Control Act of any defense articles, defense services, or design and construction services, and (b) licenses for the export to Russia of any item on the United States Munitions List.

The Acting Under Secretary of State for Political Affairs has determined that it is essential to the national security interests of the United States to waive the application of this sanction with respect to the issuance of licenses in support of government space cooperation, provided that applications for such licenses shall be reviewed on a case-by-case basis and consistent with export licensing policy for Russia prior to the date of the determination. Licenses in support of commercial space launches, shall be reviewed subject to a policy of denial.

3. *Arms Sales Financing:* Termination of all foreign military financing for Russia under the Arms Export Control Act.

4. *Denial of United States Government Credit or Other Financial Assistance:* Denial to Russia of any credit, credit guarantees, or other financial assistance by any department, agency, or instrumentality of the United States Government, including the Export-Import Bank of the United States.

5. *Exports of National Security-Sensitive Goods and Technology:* Prohibition on the export to Russia of any goods or technology controlled for National Security reasons on the control list established under 50 U.S.C. 4813(a)(1).

The Secretary of State has determined that it is essential to the national security interests of the United States to waive the application of this sanction and replace it with the following policies:

License Exceptions: Exports and re-exports of goods or technology eligible under License Exceptions GOV, ENC, BAG, TMP, and AVS.

Safety Of Flight: Exports and re-exports of goods or technology pursuant to new licenses necessary for the safety of flight of civil fixed-wing passenger aviation, provided that applications for such licenses shall be reviewed on a case-by-case basis, consistent with export licensing policy for Russia prior to the date of the determination.

Deemed Exports/Reexports: Exports and re-exports of goods or technology pursuant to new licenses for deemed exports and re-exports to Russian nationals, provided that applications for such licenses shall be reviewed on a case-by-case basis, consistent with export licensing policy for Russia prior to the date of the determination.

Wholly-Owned U.S. and Other Foreign Subsidiaries: Exports and re-exports of goods or technology pursuant to new licenses for exports and re-exports to wholly-owned U.S. and other foreign subsidiaries in Russia, provided that applications for such licenses shall be reviewed on a case-by-case basis, consistent with export licensing policy for Russia prior to the date of the determination.

Government Space Cooperation: Exports and re-exports of goods or technology pursuant to new licenses in support of government space cooperation, provided that applications for such licenses shall be reviewed on a case-by-case basis, consistent with export licensing policy for Russia prior to the date of the determination.

Commercial Space Launches: Exports and re-exports of goods or technology pursuant to new licenses in support of commercial space launches, will be reviewed subject to a policy of denial.

Commercial End-Users: Exports and re-exports of goods or technology pursuant to new licenses for commercial end-users for civil end-uses in Russia unless they are wholly-owned U.S. or other foreign subsidiaries in Russia, provided that applications for such licenses will be reviewed on case-by-case basis and subject to a ''presumption of denial'' policy.

The Department of Commerce has implemented additional restrictions against Russia in response to its invasion of Ukraine. For the most current information about these restrictions, please see the Export Administration Regulations, *e.g.,* 15 CFR parts 744 and 746. Also see *https://www.bis.gov.*

These measures shall be implemented by the responsible departments and agencies of the United States government and will remain in place for at least one year and until further notice.

Choo S. Kang,

Assistant Secretary, Bureau of International Security and Nonproliferation, Department of State.

[FR Doc. 2024–12481 Filed 6–6–24; 8:45 am]

BILLING CODE 4710–27–P

SURFACE TRANSPORTATION BOARD

[Docket No. EP 682 (Sub-No. 15)]

2023 Tax Information for Use in The Revenue Shortfall Allocation Method

The Board is publishing, and providing the public an opportunity to comment on, the 2023 weighted average State tax rates for each Class I railroad, as calculated by the Association of American Railroads (AAR), for use in the Revenue Shortfall Allocation Method (RSAM).

The RSAM figure is one of three benchmarks that together are used to determine the reasonableness of a challenged rate under the Board's *Simplified Standards for Rail Rate Cases,* EP 646 (Sub-No. 1), slip op. at 10 (STB served Sept. 5, 2007),[1] as further revised in *Simplified Standards for Rail Rate Cases—Taxes in Revenue Shortfall Allocation Method (Simplified Standards—Taxes in RSAM*), EP 646 (Sub-No. 2) (STB served Nov. 21, 2008). RSAM is intended to measure the average markup that the railroad would need to collect from all of its ''potentially captive traffic'' (traffic with a revenue-to-variable-cost ratio above 180%) to earn adequate revenues as measured by the Board under 49 U.S.C. 10704(a)(2) (*i.e.,* earn a return on investment equal to the railroad industry cost of capital). *Simplified Standards—Taxes in RSAM,* EP 646 (Sub-No. 2), slip op. at 1. In *Simplified Standards—Taxes in RSAM,* EP 646 (Sub-No. 2), slip op. at 3, 5, the Board modified its RSAM formula to account for taxes, as the prior formula mistakenly compared pre-tax and after-tax revenues. In that decision, the Board stated that it would institute a separate proceeding in which Class I railroads would be required to submit the annual tax information necessary for the Board's annual RSAM calculation. *Id.* at 5–6.

Pursuant to 49 CFR 1135.2, AAR is required to annually calculate and submit to the Board the weighted average State tax rate for each Class I railroad for the previous year. On May 30, 2024, AAR filed its calculation of the weighted average State tax rates for 2023, listed below for each Class I railroad:

[1] *Aff'd sub nom. CSX Transp., Inc.* v. *STB,* 568 F.3d 236 (D.C. Cir. 2009), *vacated in part on reh'g,* 584 F.3d 1076 (D.C. Cir. 2009).

WEIGHTED AVERAGE STATE TAX RATES

Railroad	2023 (%)	2022 (%)	% Change
BNSF Railway Company	4.894	4.960	−0.066
CSX Transportation, Inc.	5.172	5.242	−0.070
Grand Trunk Corporation	7.728	7.906	−0.178
The Kansas City Southern Railway Company	5.120	4.897	0.223
Norfolk Southern Combined Railroad Subsidiaries	5.368	5.620	−0.252
Soo Line Corporation	7.617	7.802	−0.185
Union Pacific Railroad Company	5.241	5.337	−0.096

Pursuant to 49 CFR 1135.2(b), notice of AAR's submission will be published in the **Federal Register**. Any party wishing to comment on AAR's calculation of the 2023 weighted average State tax rates should file a comment by July 8, 2024. *See* 49 CFR 1135.2(c). If any comments opposing AAR's calculations are filed, AAR's reply will be due within 20 days of the filing date of the comments. *Id.* If any comments are filed, the Board will review AAR's submission, together with the comments, and serve a decision within 60 days of the close of the record that either accepts, rejects, or modifies AAR's railroad-specific tax information. *Id.* If no comments are filed by July 8, 2024, AAR's submitted weighted average State tax rates will be automatically adopted by the Board, effective July 9, 2024. *Id.*

It is ordered:

1. Comments on AAR's calculation of the 2023 weighted average State tax rates for the Class I railroads are due by July 8, 2024. If any comments opposing AAR's calculations are filed, AAR's reply is due within 20 days of the filing of the comments.

2. If no comments are filed, AAR's calculation of the 2023 weighted average State tax rates for each Class I railroad will be automatically adopted by the Board, effective July 9, 2024.

3. Notice will be published in the **Federal Register**.

By the Board, Mai T. Dinh, Director, Office of Proceedings.

Stefan Rice,

Clearance Clerk.

[FR Doc. 2024–12517 Filed 6–6–24; 8:45 am]

BILLING CODE 4915–01–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2022–0003]

Safety Fitness Determinations; Public Listening Session

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

ACTION: Notice of public listening session.

SUMMARY: FMCSA announces that it will host a listening session pertaining to development of an updated methodology to determine when a motor carrier is not fit to operate commercial motor vehicles in or affecting interstate commerce. Specifically, the Agency would like to hear from members of the public on issues of concern relating to the current Safety Fitness Determination (SFD), including, for example, the three-tiered rating system (Satisfactory, Unsatisfactory, Conditional) versus changing to a proposed single rating only when a carrier is found to be Unfit; utilizing inspection data and FMCSA's Safety Measurement System (SMS); incorporating driver behavior into SFD ratings; and revising the list of safety violations used to calculate the rating, and adjusting the weights allocated to particular violations including increasing the weight for unsafe driving violations. This FMCSA-hosted listening session will be open to all interested persons and will take place concurrently with the Texas Trucking Show in Houston, TX. All comments will be transcribed and placed in the public docket for the regulatory action. Individuals with diverse experiences and perspectives are encouraged to attend. In a separate notice, FMCSA will formally announce and provide separate registration information for two related virtual-only listening sessions on the same topics to be held in June and July, 2024.

DATES: The public listening session will be held on Saturday, June 29, 2024, from 1:00 p.m. to 2:30 p.m. CT. The session will be held in person. The listening session may end early if all participants wishing to express their views have done so.

Public Comment: The in-person session will allow members of the public to make brief statements to the panel. FMCSA will accept written comments to the docket through August 7, 2024.

ADDRESSES: The meeting will be held at the NRG Center, 1 NRG Parkway, Houston, TX 77054, in the Seminar Area next to the Trucking Exhibition. Please arrive early to allow time to check in and arrive at the room. Attendees do not need to preregister for the listening session but are required to register for the Texas Trucking Show using this link: *https://texastruckingshow.com/register.*

FOR FURTHER INFORMATION CONTACT: Stacy Ropp, (609) 661–2062, *SafetyFitnessDetermination@dot.gov.*

Services for Individuals with Disabilities: FMCSA is committed to providing equal access to the listening session. For accommodations for persons with disabilities, please email *FMCSA.OUTREACH@dot.gov* at least 2 weeks in advance of the meeting to allow time to make appropriate arrangements.

SUPPLEMENTARY INFORMATION:

I. Public Participation and Request for Comments

FMCSA encourages participation in the session and providing of comments. Members of the public may submit written comments to the public dockets for this action using any of the following methods:

A. Submitting Comments

If you submit a comment, please include the docket number for this notice (FMCSA–2022–0003). You may submit your comments and material online or by mail or hand delivery, but please use only one of these methods. FMCSA recommends that you include

your name, email address, or a phone number in the body of your document.

To submit your comment online, go to *www.regulations.gov.* Insert the docket number (FMCSA–2022–0003) in the keyword box and click ''Search.'' Choose the document you want to comment on and click the ''Comment'' button. Follow the online instructions for submitting comments.

FMCSA will consider all comments and material received during the comment period for this notice, as described in the **DATES** section.

B. Viewing Comments and Documents

To view comments, go to *www.regulations.gov* and insert the docket number (FMCSA–2022–0003) in the keyword box and click ''Search.'' Choose this notice and click ''Browse Comments.'' If you have questions on viewing or submitting material to the docket, contact Dockets Operations at (202) 366–9826. Business hours are from 8:00 a.m. to 4:30 p.m. ET, Monday through Friday, except Federal holidays. You may also submit or view docket entries in person or by mail: U.S. Department of Transportation, 1200 New Jersey Avenue SE, West Building, Ground Floor, Washington, DC 20590–0001. To be sure someone is there to help you, please call (202) 366–9317 or (202) 366–9826 before visiting Dockets Operations.

C. 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, 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 *https://www.transportation.gov/individuals/privacy/privacy-act-system-records-notices.* The comments are posted without edits and are searchable by the name of the submitter.

II. Background

FMCSA believes it is in the public interest to host a public listening session to receive additional comments on matters within FMCSA's jurisdiction, including its SFD process. Accordingly, FMCSA is announcing this listening session, being held at 1:00 p.m. on June 29, 2024, in Houston, TX, concurrently with the 2024 Texas Trucking Show. The listening session will be held in the Seminar Area next to the Trucking Exhibition. You may view a floorplan of the event at *https://texastruckingshow.com/floorplan.* FMCSA will also publish another notice formally announcing, and providing separate registration information for, two related virtual-only listening sessions on the same topics to be held in June and July, 2024.

FMCSA's listening session is open to the public. Registration with the Texas Trucking Show is required to attend FMCSA's listening session. Registration is free and may be completed online at *https://texastruckingshow.com/register.*

FMCSA is currently contemplating changes to its SFD process. To that end, the Agency published an ANPRM soliciting public input on the potential use of the SMS methodology to issue SFDs (88 FR 59489, Aug. 29, 2023). This public listening session is intended to gain additional feedback on issues of concern relating to the current SFD, including, for example:

- Continuing the current SFD three-tiered rating system (Satisfactory, Unsatisfactory, Conditional) versus changing to a proposed single rating, issued only when a carrier is found to be Unfit;
- Utilizing inspection data and FMCSA's SMS;
- Incorporating driver behavior into SFD ratings; and
- Revising the list of safety violations used to calculate the rating, and adjusting the weights allocated to particular violations, including increasing the weight for 49 CFR 392.2 (unsafe driving) violations.

III. Meeting Participation

The listening session is open to the public. Speakers' remarks will be limited to 3 minutes each.

Sue Lawless,

Acting Deputy Administrator.

[FR Doc. 2024–12530 Filed 6–6–24; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–2023–0005; Notice 2]

Forest River Bus, LLC, Denial of Petition for Decision of Inconsequential Noncompliance

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Denial of petition.

SUMMARY: Forest River Bus, LLC (Forest River) has determined that certain model year (MY) 2009–2022 Starcraft school buses do not fully comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 222, *School Bus Passenger Seating And Crash Protection.* Forest River filed a noncompliance report dated December 21, 2022, and subsequently petitioned NHTSA (the ''Agency'') on January 17, 2023, for a decision that the subject noncompliance is inconsequential as it relates to motor vehicle safety. This document announces the denial of Forest River's petition.

FOR FURTHER INFORMATION CONTACT: Daniel Lind, General Engineer, NHTSA, Office of Vehicle Safety Compliance, (202) 366–7235.

SUPPLEMENTARY INFORMATION:

I. Overview

Forest River determined that certain MY 2009–2022 Starcraft school buses do not fully comply with paragraph S5.2.3 of FMVSS No. 222, *School Bus Passenger Seating And Crash Protection* (49 CFR 571.222).

Forest River filed a noncompliance report dated December 21, 2022, pursuant to 49 CFR part 573, *Defect and Noncompliance Responsibility and Reports.* Forest River petitioned NHTSA on January 17, 2023, for an exemption from the notification and remedy requirements of 49 U.S.C. chapter 301 on the basis that this noncompliance is inconsequential as it relates to motor vehicle safety, pursuant to 49 U.S.C. 30118(d) and 30120(h) and 49 CFR part 556, *Exemption for Inconsequential Defect or Noncompliance.*

Notice of receipt of Forest River's petition was published with a 30-day public comment period, on July 12, 2023, in the **Federal Register** (88 FR 44459). No comments were received. To view the petition and all supporting documents log onto the Federal Docket Management System (FDMS) website at *https://www.regulations.gov/.* Then follow the online search instructions to locate docket number ''NHTSA–2023–0005.''

II. Vehicles Involved

Approximately 3,192 of the following Starcraft school buses manufactured between April 3, 2009, and May 20, 2020, are potentially involved:

1. MY 2013–2016 Starcraft Allstar MVP
2. MY 2016 Starcraft Allstar XL
3. MY 2019 Starcraft Allstar XL
4. MY 2016–2018 Starcraft Allstar XL MVP
5. MY 2009–2010 Starcraft MFSAB/Prodigy
6. MY 2012–2018 Starcraft MFSAB/Prodigy
7. MY 2013 Starcraft MPV/Prodigy
8. MY 2015–2018 Starcraft MPV/Prodigy

9. MY 2009–2010 Starcraft Prodigy
10. MY 2009–2022 Starcraft Quest
11. MY 2011 Starcraft Quest XL
12. MY 2014–2016 Starcraft Quest XL

III. Noncompliance

Forest River explains that the noncompliance is that the subject school buses are equipped with a restraining barrier that does not meet the barrier forward performance requirements in paragraph S5.2.3 of FMVSS No. 222.

IV. Rule Requirements

Paragraph S5.2.3 of FMVSS No. 222 includes the requirements relevant to this petition. When force is applied to the restraining barrier as specified in S5.1.3.1 through S5.1.3.4 for seating performance tests, the barrier must meet the following criteria:

(a) The force/deflection curve of the restraining barrier must align with the specified zone in Figure 1;

(b) Deflection of the restraining barrier shall not exceed 356 mm. This measurement considers only the force applied through the upper loading bar, and the forward travel of the pivot attachment point of the loading bar, starting from the point where the initial application of 44 N of force is attained;

(c) Deflection of the restraining barrier deflection shall not hinder normal door operation;

(d) The restraining barrier must not separate from the vehicle at any attachment point; and

(e) Components of the restraining barrier must not separate at any attachment point.

V. Summary of Forest River's Petition

The following views and arguments presented in this section are the views and arguments provided by Forest River and do not reflect the views of the Agency. Forest River describes the subject noncompliance and contends that the noncompliance is inconsequential as it relates to motor vehicle safety.

Forest River begins by stating that since the subject frontal barrier was first certified in 2008, Forest River (and predecessor Starcraft Bus) has used the same school bus frontal barrier design and supplier. Forest River states since the frontal barrier was certified to comply with the FMVSS No. 222 performance requirements, it ''has not changed in any material respect.'' Furthermore, Forest River contends that NHTSA has previously conducted confirmatory compliance testing on the subject frontal barriers and found them to be compliant with the S5.2.3 requirements.

In September of 2020, a third-party contractor for NHTSA, Applus IDIADA KARCO Engineering, LLC (KARCO), conducted compliance testing for the performance of MY 2019 Starcraft Quest school bus in accordance with the requirements of S5.2.3 of FMVSS No. 222. The KARCO testing showed that the force/deflection curve of the passenger side restraining barrier did not comply with S5.2.3(a) resulting in a formal inquiry by NHTSA. In June 2021, Forest River responded to NHTSA's inquiry and contended that KARCO did not conduct the September 2020 compliance testing in accordance with the test procedure required by FMVSS No. 222. Specifically, Forest River believed that KARCO's setup of the test apparatus ''caused it not to be sufficiently rigid and this caused the apparatus to inappropriately contort and change direction during testing.''

Forest River claims that NHTSA ''has not accounted for the deviations in the test procedure utilized by its own testing contractor.'' Forest River states that S5.2.3 of FMVSS No. 222 requires the barrier performance forward testing to be conducted in accordance with the conditions stated in S5.1.3.1–S5.1.3.4 of FMVSS No. 222. Forest River contends that KARCO did not set up the test apparatus in accordance with FMVSS No. 222 when evaluating the subject frontal barrier on behalf of NHTSA since KARCO's setup caused the test apparatus ''to not be sufficiently rigid or stable and thus allowed it to inappropriately contort during testing.'' According to Forest River, the test setup allowed the upper loading bar ''to change course dramatically by veering to the left and pushing the force of the loading bar on the left side of the barrier.'' Therefore, Forest River says the loading bar ''did not remain laterally centered against the barrier as required by S5.1.3.1 and S5.1.3.3 and deflected more than the 25 mm allowable by S6.5.1.'' which ''prevented the upper loading bar's longitudinal axis from maintaining a transverse plane as required S5.1.3.1 and S5.1.3.3.''

Forest River contends that in the video of KARCO's testing provided by NHTSA, the ''movement of the test apparatus can clearly be seen.'' Forest River notes that NHTSA provided videos of KARCO's testing, but did not provide a requested a copy of KARCO's test report. Without the test report, Forest River argues it is unable to evaluate how KARCO documented its findings.

In November 2021, Forest River retained an external testing facility to reevaluate the subject frontal barriers. Forest River states that this testing indicated that the subject frontal barriers complied with the S5.2.3 requirements and Forest River provided the test report and videos to NHTSA. NHTSA requested additional information from Forest River in March 2022 and Forest River responded in part in April 2022 and provided the remainder in May 2022. Forest River maintained its position that the KARCO testing was not conducted in accordance with the FMVSS No. 222 test procedures ''due to insufficient rigidity of the testing apparatus that allowed for inappropriate movement of the upper loading bar.'' Forest River argued that this movement, seen in the video provided by KARCO, invalidated the test.

Forest River states that it met with NHTSA on December 2, 2022, at the Agency's request. At the meeting, NHTSA informed Forest River that the frontal barrier tested by the external facility retained by Forest River was not the same size as the frontal barrier that was tested by KARCO. Forest River states that its external testing facility unintentionally evaluated the incorrect size frontal barrier. The external testing facility evaluated a 34-inch frontal barrier when it intended to evaluate a 30-inch frontal barrier. Forest River says, ''NHTSA indicated that a recall of vehicles equipped with the 30-inch frontal barrier would be necessary'' because, at the time, Forest River did not have test data to show that the 30-inch frontal barrier was compliant. As a result, Forest River says it ''acquiesced to NHTSA's demand'' and filed a noncompliance report on December 21, 2022.

Forest River arranged to evaluate a 30-inch frontal barrier, and testing took place in early January 2023. Forest River states that the test results indicate that the 30-inch frontal barrier complied with the FMVSS No. 222 performance requirements and showed the barrier absorbed nearly 125 percent of the energy required to be dissipated in this test. Forest River provided a copy of the test report with its petition which can be found in the docket. Forest River states that video of the testing is available to NHTSA to view.

Forest River notes that no production changes are necessary because it ceased manufacturing the subject school buses in June 2020.

According to Forest River, the purpose of S5.2.3 of FMVSS No. 222, ''is to mitigate against the effects of injury if an occupant is thrown against the restraining barrier in a crash.'' Forest River contends that its January 2023 test demonstrates that the subject frontal barrier complies with the relevant

performance requirements and indicates that the 30-inch frontal barrier ''substantially exceeds'' the S5.2.3 performance requirement. Forest River argues the January 2023 testing was conducted in accordance with S5.2.3, ''thus any noncompliance in this product (to the extent one actually exists) is inconsequential to motor vehicle safety.'' Further, Forest River maintains that the testing apparatus used to conduct the testing ''was sufficiently robust so that it remained stable during operation.'' Forest River's position is that because the testing apparatus was sufficiently rigid, ''the path of each of the loading bars remained laterally centered and maintained a straight path to the barrier and with minimal deflection, as the test procedure requires.'' Thus, Forest River claims that the January 2023 testing demonstrates that the 30-inch barrier is compliant and, to the extent it may be material, that the test can be performed without deflection of the test apparatus.

Forest River notes that NHTSA has previously stated that one of its considerations when evaluating inconsequentiality petitions is the safety risk to individuals who experience the type of event against which the recall would otherwise protect.[1] According to Forest River, the subject noncompliance does not cause an enhanced risk to an occupant of an affected school bus because ''the data clearly and unambiguously demonstrates that the frontal barriers meet the performance requirements of S5.2.3.'' Forest River contends that its petition is unlike other inconsequential noncompliance petitions that involve a noncompliance with a performance requirement because Forest River's January 2023 test report indicates there is no performance-related concern for the subject noncompliance.

Forest River adds that no complaints, reports, or claims of any type have been received concerning the performance of the subject frontal barriers. Forest River acknowledges that NHTSA does not consider the absence of injuries or complaints when determining the inconsequentiality of a noncompliance, however, Forest River believes that ''this dearth of data in this case, when coupled with all of the other relevant data and information is instructive given the long field history of the subject barriers.''

Forest River concludes by stating its belief that the subject noncompliance is inconsequential as it relates to motor vehicle safety and petitions for exemption from providing notification and remedy of the noncompliance, as required by 49 U.S.C. 30118 and 30120.

VI. NHTSA's Analysis

Forest River provided minimal data, views, or arguments supporting its belief that this noncompliance is inconsequential to safety, as required by 49 CFR 556.4. It is the petitioner's burden to establish the inconsequentiality of a failure to comply with a FMVSS. Instead, the focus of Forest River's petition is to argue that no noncompliance exists, which is in conflict with Forest River's acknowledgement of the noncompliance in its December 21, 2022, noncompliance report pursuant to 49 CFR part 573. *Cf. Synder Comp. Sys.* v. *U.S. Dep't of Transp.,* 13 F. Supp. 3d 848, 865 (S.D. Ohio 2014) (''The Safety Act does not permit [a manufacturer] to recall vehicles and then ignore the remedy requirements which flow from that decision.''). This was not a case where NHTSA ordered a recall. *See id.* Instead, Forest River ''decide[d] in good faith'' that the buses did not comply. *See* 49 U.S.C. 30118(c)(2). Given that legal determination Forest River made pursuant to the Safety Act, the Agency will not consider the arguments that no noncompliance exists when evaluating whether the noncompliance is inconsequential to safety.

The Agency has found very few noncompliances with performance requirements to be inconsequential. Potential performance failures of safety-critical equipment, like seat belts or air bags, are rarely, if ever, found to be inconsequential.

An important issue to consider in determining inconsequentiality based upon NHTSA's prior decisions on noncompliance petitions is the safety risk to individuals who experience the type of event against which the recall would otherwise protect.[2] NHTSA also does not consider the absence of complaints or injuries to be demonstrative on the issue of whether the noncompliance is inconsequential to safety. Arguments that only a small number of vehicles or items of motor vehicle equipment are affected also have not resulted in granting an inconsequentiality petition.[3] Similarly, NHTSA has rejected petitions based on the assertion that only a small percentage of vehicles or items of equipment are likely to actually exhibit a noncompliance. The percentage of potential occupants that could be adversely affected by a noncompliance does not determine the question of inconsequentiality. Rather, the issue to consider for noncompliances with occupant protection standards is the outcome to an occupant who is exposed to the consequence of that noncompliance.[4]

The purpose of FMVSS No. 222 is to reduce the number of deaths and the severity of injuries that result from the impact of school bus occupants against structures within the vehicle during crashes and sudden driving maneuvers (49 CFR 571.222 S2).[5] The requirements at S5.2.3 *Barrier Performance Forward* of FMVSS No. 222, at issue here, are specific to the energy a barrier can absorb during an emergency event, and the rate at which such energy can be absorbed. These requirements are threefold: (1) a barrier must be able to absorb a minimum amount of energy within the first 356 mm of deflection,[6] (2) the rate of energy absorption must fall within a specified Force vs Deflection Zone,[7] and (3) the barrier,

[1] *See Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance;* 78 FR 35355 (June 12, 2013).

[2] *See Gen. Motors, LLC; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 35355 (June 12, 2013) (finding noncompliance had no effect on occupant safety because it had no effect on the proper operation of the occupant classification system and the correct deployment of an air bag); *Osram Sylvania Prods. Inc.; Grant of Petition for Decision of Inconsequential Noncompliance,* 78 FR 46000 (July 30, 2013) (finding occupant using noncompliant light source would not be exposed to significantly greater risk than occupant using similar compliant light source).

[3] *See Mercedes-Benz, U.S.A., L.L.C.; Denial of Application for Decision of Inconsequential Noncompliance,* 66 FR 38342 (July 23, 2001) (rejecting argument that noncompliance was inconsequential because of the small number of vehicles affected); *Aston Martin Lagonda Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 41370 (June 24, 2016) (noting that situations involving individuals trapped in motor vehicles—while infrequent—are consequential to safety); *Morgan 3 Wheeler Ltd.; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 21663, 21664 (Apr. 12, 2016) (rejecting argument that petition should be granted because the vehicle was produced in very low numbers and likely to be operated on a limited basis).

[4] *See Gen. Motors Corp.; Ruling on Petition for Determination of Inconsequential Noncompliance,* 69 FR 19897, 19900 (Apr. 14, 2004); *Cosco, Inc.; Denial of Application for Decision of Inconsequential Noncompliance,* 64 FR 29408, 29409 (June 1, 1999).

[5] FMVSS are adopted to ''meet the need for motor vehicle safety.'' 49 U.S.C. 30111(a). ''[M]otor vehicle safety'' is ''the performance of a motor vehicle or motor vehicle equipment in a way that protects the public against unreasonable risk of accidents occurring because of the design, construction, or performance of a motor vehicle, and against unreasonable risk of death or injury in an accident, and includes nonoperational safety of a motor vehicle.'' 49 U.S.C. 30102(a)(9).

[6] The minimum energy required to be absorbed by the barrier is based on the number of designated seating positions, W, of the seat immediately behind the barrier. *See* 49 CFR 571.222, S5.1.3.4, S4.1(a).

[7] *See* 49 CFR 571.222, Figure 1.

and its components, must not separate at any attachment point from the vehicle, nor interfere with normal door operation. In the present case, during NHTSA's compliance test of the barrier in question, the rate of energy absorption exceeded the upper limit of the Force vs Deflection Zone before absorbing the minimum required energy, thereby leading to a compliance test failure. Rather than providing data, views, or arguments supporting its belief that this noncompliance is inconsequential to safety, as required by 49 CFR 556.4, Forest River used the instant petition largely to refute the existence of the reported noncompliance. Thus, Forest River's petition failed to include a sufficient basis to support a petition pursuant to 49 CFR 556.4. The petition described the noncompliance, but only minimally included reasoning for why the noncompliance is inconsequential to safety. A petition is required to: ''Set forth all data, views, and arguments of the petitioner supporting [the] petition.'' 49 CFR 556.4. Absent sufficient reasoning, a petitioner cannot meet its burden of persuasion that a noncompliance is inconsequential to safety.

Here, Forest River's arguments that the noncompliance is inconsequential centered on the lack of known field incidents, which Forest River acknowledged the Agency does not consider persuasive. The Agency has explained that ''the absence of a complaint does not mean there have not been any safety issues, nor does it mean that there will not be safety issues in the future.'' [8] Likewise, ''the fact that in past reported cases good luck and swift reaction have prevented many serious injuries does not mean that good luck will continue to work.'' [9] In addition, to the extent that Forest River is arguing that the noncompliance was an anomaly, that is also not persuasive. As described above, the agency considers the outcome to an occupant who is exposed to the noncompliance, regardless of whether or not only a small percentage of vehicles may be actually likely to exhibit a noncompliance. The consequences of the noncompliance at issue here with the school bus frontal barrier requirement could be severe since the requirement is to reduce death and the severity of injury in the event of an emergency event. Given this safety need for the FMVSS, Forest River's petition, focused on arguing that no noncompliance exists in contradiction to the noncompliance report it filed, fails to provide sufficient justification that the noncompliance is inconsequential to motor vehicle safety.

VII. NHTSA's Decision

In consideration of the foregoing, NHTSA has decided that Forest River has not met its burden of persuasion that the subject FMVSS No. 222 noncompliance is inconsequential to motor vehicle safety. Accordingly, Forest River's petition is hereby denied and Forest River is consequently obligated to provide notification of and free remedy for that noncompliance under 49 U.S.C. 30118 and 30120.

(Authority: 49 U.S.C. 30118, 30120; 49 CFR part 556; delegations of authority at 49 CFR 1.95 and 501.8)

Eileen Sullivan,

Associate Administrator for Enforcement.

[FR Doc. 2024–12515 Filed 6–6–24; 8:45 am]

BILLING CODE 4910–59–P

[8] *Morgan 3 Wheeler Limited; Denial of Petition for Decision of Inconsequential Noncompliance,* 81 FR 21663, 21666 (Apr. 12, 2016).

[9] *United States* v. *Gen. Motors Corp.,* 565 F.2d 754, 759 (D.C. Cir. 1977) (finding defect poses an unreasonable risk when it ''results in hazards as potentially dangerous as sudden engine fire, and where there is no dispute that at least some such hazards, in this case fires, can definitely be expected to occur in the future'').

DEPARTMENT OF THE TREASURY

United States Mint

Notification of Citizens Coinage Advisory Committee Public Meeting—June 18, 2024

ACTION: Notice of meeting.

Pursuant to United States Code, title 31, section 5135(b)(8)(C), the United States Mint announces the Citizens Coinage Advisory Committee (CCAC) public meeting scheduled for June 18, 2024.

Date: June 18, 2024.

Time: 2:00 p.m. to 4:00 p.m. (EST).

Location: Remote via Videoconference.

Subject: Review and discussion of candidate designs for the Iran Hostages Congressional Gold Medal, and the 2026 Native American $1 Coin.

Interested members of the public may watch the meeting live stream on the United States Mint's YouTube Channel at *https://www.youtube.com/user/usmint.* To watch the meeting live, members of the public may click on the ''June 18 meeting'' icon under the Live Tab.

Members of the public should call the CCAC HOTLINE at (202) 354–7502 for the latest updates on meeting time and access information.

The CCAC advises the Secretary of the Treasury on any theme or design proposals relating to circulating coinage, bullion coinage, Congressional Gold Medals, and national and other medals; advises the Secretary of the Treasury with regard to the events, persons, or places to be commemorated by the issuance of commemorative coins in each of the five calendar years succeeding the year in which a commemorative coin designation is made; and makes recommendations with respect to the mintage level for any commemorative coin recommended.

For members of the public interested in watching on-line, this is a reminder that the remote access is for observation purposes only. Members of the public may submit matters for the CCAC's consideration by email to *info@ccac.gov.*

For Accommodation Request: If you require an accommodation to watch the CCAC meeting, please contact the Office of Equal Employment Opportunity by June 12, 2024. You may submit an email request to *Reasonable.Accommodations@usmint.treas.gov* or call 202–354–7260 or 1–888–646–8369 (TTY).

FOR FURTHER INFORMATION CONTACT: Jennifer Warren, United States Mint Liaison to the CCAC; 801 9th Street NW, Washington, DC 20220; or call 202–354–7208.

(Authority: 31 U.S.C. 5135(b)(8)(C))

Eric Anderson,

Executive Secretary, United States Mint.

[FR Doc. 2024–12470 Filed 6–6–24; 8:45 am]

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FEDERAL REGISTER

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Part II

Department of Homeland Security

Department of Justice

Executive Office for Immigration Review

8 CFR Parts 208, 235, and 1208
Securing the Border; Interim Final Rule

DEPARTMENT OF HOMELAND SECURITY

8 CFR Parts 208 and 235

[USCIS Docket No. USCIS–2024–0006]

RIN 1615–AC92

DEPARTMENT OF JUSTICE

Executive Office for Immigration Review

8 CFR Part 1208

[A.G. Order No. 5943–2024]

RIN 1125–AB32

Securing the Border

AGENCY: U.S. Citizenship and Immigration Services (''USCIS''), Department of Homeland Security (''DHS''); Executive Office for Immigration Review (''EOIR''), Department of Justice (''DOJ'').

ACTION: Interim final rule (''IFR'') with request for comments.

SUMMARY: On June 3, 2024, the President signed a Proclamation under sections 212(f) and 215(a) of the Immigration and Nationality Act (''INA''), finding that the entry into the United States of certain noncitizens during emergency border circumstances would be detrimental to the interests of the United States, and suspending and limiting the entry of those noncitizens. The Proclamation directed DHS and DOJ to promptly consider issuing regulations addressing the circumstances at the southern border, including any warranted limitations and conditions on asylum eligibility. The Departments are now issuing this IFR.

DATES:

Effective date: This IFR is effective at 12:01 a.m. eastern daylight time on June 5, 2024.

Submission of public comments: Comments must be submitted on or before July 8, 2024.

The electronic Federal Docket Management System will accept comments prior to midnight eastern time at the end of that day.

ADDRESSES: You may submit comments on this IFR, identified by USCIS Docket No. USCIS–2024–0006, through the Federal eRulemaking Portal: *https://www.regulations.gov.* Follow the website instructions for submitting comments.

Comments submitted in a manner other than the one listed above, including emails or letters sent to the Departments' officials, will not be considered comments on the IFR and may not receive a response from the Departments. Please note that the Departments cannot accept any comments that are hand-delivered or couriered. In addition, the Departments cannot accept comments contained on any form of digital media storage devices, such as CDs/DVDs and USB drives. The Departments are not accepting mailed comments at this time. If you cannot submit your comment by using *https://www.regulations.gov,* please contact the Regulatory Coordination Division, Office of Policy and Strategy, U.S. Citizenship and Immigration Services, Department of Homeland Security, by telephone at (240) 721–3000 for alternate instructions.

FOR FURTHER INFORMATION CONTACT:

For DHS: Daniel Delgado, Acting Deputy Assistant Secretary for Immigration Policy, Office of Strategy, Policy, and Plans, U.S. Department of Homeland Security; telephone (202) 447–3459 (not a toll-free call).

For the Executive Office for Immigration Review: Lauren Alder Reid, Assistant Director, Office of Policy, EOIR, Department of Justice, 5107 Leesburg Pike, Falls Church, VA 22041; telephone (703) 305–0289 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Table of Contents

List of Abbreviations

AO Asylum Officer
APA Administrative Procedure Act
BIA Board of Immigration Appeals (DOJ, EOIR)
CAT Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBP U.S. Customs and Border Protection
CBP One app CBP One mobile application
CDC Centers for Disease Control and Prevention
CHNV Cuba, Haiti, Nicaragua, and Venezuela
DHS Department of Homeland Security
DOD Department of Defense
DOJ Department of Justice
EOIR Executive Office for Immigration Review
FARRA Foreign Affairs Reform and Restructuring Act of 1998
FRP Family Reunification Parole
FY Fiscal Year
HSA Homeland Security Act of 2002
ICE U.S. Immigration and Customs Enforcement
IFR Interim Final Rule
IIRIRA Illegal Immigration Reform and Immigrant Responsibility Act of 1996
IJ Immigration Judge
INA or the Act Immigration and Nationality Act
INS Immigration and Naturalization Service
MPP Migrant Protection Protocols
NGO Non-Governmental Organization
NEPA National Environmental Policy Act
NTA Notice to Appear
OHSS Office of Homeland Security Statistics
OIS Office of Immigration Statistics
OMB Office of Management and Budget
POE Port of Entry
RFA Regulatory Flexibility Act
SWB Southwest Land Border
TCO Transnational Criminal Organization
UC Unaccompanied Child, having the same meaning as Unaccompanied Alien Child as defined at 6 U.S.C. 279(g)(2)
UIP U.S. Customs and Border Protection Unified Immigration Portal
UMRA Unfunded Mandates Reform Act of 1995
UNHCR United Nations High Commissioner for Refugees
USBP U.S. Border Patrol
USCIS U.S. Citizenship and Immigration Services

I. Public Participation

The Departments invite all interested parties to participate in this rulemaking by submitting written data, views, comments, and arguments on all aspects of this IFR by the deadline stated above. The Departments also invite comments

that relate to the economic, environmental, or federalism effects that might result from this IFR. Comments that will provide the most assistance to the Departments in implementing these changes will reference a specific portion of the IFR, explain the reason for any recommended change, and include data, information, or authority that supports such recommended change. Comments must be submitted in English, or an English translation must be provided. Comments submitted in a manner other than pursuant to the instructions, including emails or letters sent to the Departments' officials, will not be considered comments on the IFR and may not receive a response from the Departments.

Instructions: If you submit a comment, you must include the USCIS Docket No. USCIS–2024–0006 for this rulemaking. All submissions may be posted, without change, to the Federal eRulemaking Portal at *https://www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to consider limiting the amount of personal information that you provide in any voluntary public comment submission you make to the Departments. The Departments may withhold information provided in comments from public viewing that they determine may impact the privacy of an individual or is offensive. For additional information, please read the Privacy and Security Notice available at *https://www.regulations.gov*.

Docket: For access to the docket and to read background documents or comments received, go to *https://www.regulations.gov,* referencing USCIS Docket No. USCIS–2024–0006. You may also sign up for email alerts on the online docket to be notified when comments are posted, or a final rule is published.

II. Executive Summary

A. Background and Purpose

On June 3, 2024, the President signed a Proclamation under sections 212(f) and 215(a) of the INA, 8 U.S.C. 1182(f) and 1185(a), finding that because the border security and immigration systems of the United States are unduly strained at this time, the entry into the United States of certain categories of noncitizens [1] is detrimental to the interests of the United States, and suspending and limiting the entry of such noncitizens. The Proclamation explicitly excepts from its terms certain persons who are not subject to the suspension and limitation. This rule is necessary to respond to the emergency border circumstances discussed in the Proclamation.

The Departments use the term ''emergency border circumstances'' in this preamble to generally refer to situations in which high levels of encounters at the southern border exceed DHS's capacity to deliver timely consequences to most individuals who cross irregularly into the United States and cannot establish a legal basis to remain in the United States. As the preamble elsewhere explains, the periods during which the Proclamation is intended to be in effect, when encounters exceed certain thresholds, identify such situations. Hence, the Departments in this preamble use the term ''emergency border circumstances'' to refer more specifically to the period of time after the date that the Proclamation's suspension and limitation on entry would commence (as described in section 1 of the Proclamation) until the discontinuation date referenced in section 2(a) of the Proclamation or the date the President revokes the Proclamation (whichever comes first), as well as any subsequent period during which the Proclamation's suspension and limitation on entry would apply as described in section 2(b) of the Proclamation.[2] As the Proclamation and this preamble explain, these circumstances exist despite the Departments' efforts to address substantial levels of migration, and such circumstances are a direct result of Congress's failure to update outdated immigration laws and provide needed funding and resources for the efficient operation of the border security and immigration systems.

The Proclamation explains that since 2021, as a result of political and economic conditions globally, there have been substantial levels of migration throughout the Western Hemisphere,[3] including record levels at the southwest land border (''SWB'').[4] In

[1] For purposes of this preamble, the Departments use the term ''noncitizen'' to be synonymous with the term ''alien'' as it is used in the INA. *See* INA 101(a)(3), 8 U.S.C. 1101(a)(3); *Barton* v. *Barr,* 590 U.S. 222, 226 n.2 (2020).

[2] The Departments have sought to avoid describing ''emergency border circumstances'' as the time period during which the Proclamation is in effect, because the Departments intend for certain provisions of this rule to remain in effect in the event a court enjoins or otherwise renders inoperable the Proclamation or this rule's limitation on asylum eligibility.

[3] According to OHSS analysis of the United Nations High Commissioner for Refugees (''UNHCR'') data from 1969 to 2022, there were more than 8.5 million displaced persons in the Western Hemisphere in 2022, including approximately 6.6 million Venezuelans, 300,000 Nicaraguans, 260,000 Hondurans, 250,000 Cubans, 250,000 Colombians, 210,000 Haitians, and 210,000 Salvadorans, among others. By comparison, prior to 2018 there were never more than 1 million displaced persons in the hemisphere, and prior to 2007 there were never more than 300,000. Nearly 1 in every 100 people in the Western Hemisphere was displaced in 2022, compared to less than 1 in 1,000 displaced in the region each year prior to 2018. *See* UNHCR, *Refugee Data Finder, unhcr.org/refugee-statistics/download/?url=PhV1Xc* (last visited May 27, 2024); *see also* UNHCR, *Global Trends: Forced Displacement in 2022,* at 2, 8, 9, 12 (June 14, 2023), *https://www.unhcr.org/global-trends-report-2022* (showing rapid global increases in forcibly displaced persons and other persons in need of international protection in 2021 and 2022, and projecting significant future increases); UNHCR, *Venezuela Situation, https://www.unhcr.org/emergencies/venezuela-situation* (last updated Aug. 2023).

[4] United States Government sources refer to the U.S. border with Mexico by various terms, including ''SWB'' and ''the southern border.'' In some instances, these differences can be substantive, referring only to portions of the border, while in others they simply reflect different word choices. As defined in section 4(d) of the Proclamation, the term ''southern border'' includes both the southwest land border (''SWB'') and the southern coastal borders. As defined in section 4(c) of the Proclamation, the term ''southwest land border'' means the entirety of the United States land border with Mexico. And as defined in section 4(b) of the Proclamation, the term ''southern coastal borders'' means all maritime borders in Texas, Louisiana, Mississippi, Alabama, and Florida; all maritime borders proximate to the SWB, the Gulf of Mexico, and the southern Pacific coast in California; and all maritime borders of the United States Virgin Islands and Puerto Rico. The Departments believe that the factual circumstances described herein support applying this IFR to both the SWB and the southern coastal borders, although they recognize that occasionally different variations of this terminology may be used. The Departments further note there are sound reasons for the Proclamation and rule to include maritime borders of the United States Virgin Islands and Puerto Rico; this aspect of the Proclamation and rule help avoid any incentive for maritime migration to such locations. The dangers of such migration, and the operational challenges associated with responding to such maritime migration, are well documented. *See Securing America's Maritime Border: Challenges and Solutions for U.S. National Security: Hearing Before the Subcomm. on Transp. & Mar. Sec. of the H. Comm. on Homeland Sec.,* 108th Cong. 10–11 (prepared statement of Rear Admiral Jo-Ann F. Burdian, Assistant Commandant for Response Policy, U.S. Coast Guard) (describing an increasingly challenging operational environment and noting that most ''Cuban and Haitian migrants use transit routes into Florida, either directly or via the Bahamas. Alternatively, Dominican and some Haitian migrants use shorter transit routes across the Mona Passage to Puerto Rico and the U.S. Virgin Islands. Common conveyances used in this region range from fishing vessels, coastal freighters, sail freighters, go-fast type vessels, and 'rusticas.' ''); PBS, *More Than 100 Migrants Stranded Near Puerto Rico Await Help During Human Smuggling Operation* (Oct. 18, 2022), *https://www.pbs.org/newshour/world/more-than-100-migrants-stranded-near-puerto-rico-await-help-during-human-smuggling-operation* (''Mona Island is located in the treacherous waters between Dominican Republic and Puerto Rico and has long been a dropping off point for human smugglers promising to ferry Haitian and Dominican migrants to the U.S. territory aboard rickety boats. Dozens of them have died in recent months in an attempt to flee their countries amid a spike in poverty and

Continued

response to record levels of encounters at the SWB,[5] the United States Government has taken a series of significant steps to strengthen consequences for unlawful or unauthorized entry at the border, while at the same time overseeing the largest expansion of lawful, safe, and orderly pathways and processes for individuals to come to the United States for protection in decades.[6] These steps include:

- Promulgating and implementing the rule titled Circumvention of Lawful Pathways, 88 FR 31314 (May 16, 2023) (''Circumvention of Lawful Pathways rule'');
- Deploying more than 500 additional DHS personnel at a time to the SWB to support U.S. Customs and Border Protection (''CBP'') operations and refocusing a significant portion of DHS's SWB workforce to prioritize migration management above other border security missions;[7]
- Deploying over 1,000 additional Department of Defense (''DOD'') personnel on top of the 2,500 steady state presence to the SWB in May 2023 to further enhance border security;[8]
- Processing record numbers of individuals through expedited removal;[9]
- Implementing a historic expansion of lawful pathways and processes to come to the United States, including: the Cuba, Haiti, Nicaragua, and Venezuela (''CHNV'') parole processes, which allow individuals with U.S.-based supporters to seek parole on a case-by-case basis for urgent humanitarian reasons or significant public benefit; the Safe Mobility Offices in Colombia, Costa Rica, Ecuador, and Guatemala, which provide access to expedited refugee processing for eligible individuals; and the expansion of country-specific family reunification parole processes for individuals in the region who have U.S. citizen relatives in the United States;[10]
- Expanding opportunities to enter the United States for seasonal employment;[11]
- Establishing a mechanism for over 1,400 migrants per day to schedule a time and place to arrive in a safe, orderly, and lawful manner at ports of entry (''POEs'') through the CBP One mobile application (''CBP One app'');[12]
- Increasing proposed refugee admissions from the Western Hemisphere from 5,000 in Fiscal Year (''FY'') 2021 to up to 50,000 in FY 2024;[13]

violence.''); United States Coast Guard, *Coast Guard Repatriates 38 Migrants to Dominican Republic Following 2 Interdictions Near Puerto Rico* (Apr. 25, 2024), *https://www.news.uscg.mil/Press-Releases/Article/3755880/coast-guard-repatriates-38-migrants-to-dominican-republic-following-2-interdict/*; United States Coast Guard, *Coast Guard Repatriates 101 Migrants to Dominican Republic Following 3 Interdictions Near Puerto Rico* (Apr. 9, 2024), *https://www.news.uscg.mil/Press-Releases/Article/3734747/coast-guard-repatriates-101-migrants-to-dominican-republic-following-3-interdic/*; United States Coast Guard, *Coast Guard, Federal, Local Interagency Responders Search for Possible Survivors of Capsized Migrant Vessel in Camuy, Puerto Rico* (Feb. 1, 2024), *https://www.news.uscg.mil/Press-Releases/Article/3663106/coast-guard-federal-local-interagency-responders-search-for-possible-survivors/*; United States Coast Guard, *Coast Guard Repatriates 28 Migrants to Dominican Republic, Following Interdiction of Unlawful Migration Voyage in the Mona Passage* (Jan. 31, 2024), *https://www.news.uscg.mil/Press-Releases/Article/3661517/coast-guard-repatriates-28-migrants-to-dominican-republic-following-interdictio/*. There were 35,100 encounters of Dominicans between POEs at the SWB in Fiscal Year (''FY'') 2023 and 14,100 in the first six months of FY 2024 (on pace for 28,200), up from an average of 400 such encounters per year in FY 2014 through FY 2019—roughly a 90-fold increase. Office of Homeland Security Statistics (''OHSS'') analysis of March 2024 OHSS Persist Dataset.

[5] At the SWB, U.S. Customs and Border Protection (''CBP'') completed approximately 1.7 million encounters at and between POEs in FY 2021, 2.4 million in FY 2022, and 2.5 million in FY 2023, with each year exceeding the previous record high of 1.68 million in FY 2000. *Compare* OHSS, *2022 Yearbook of Immigration Statistics* 89 tbl. 33 (Nov. 2023), *https://www.dhs.gov/sites/default/files/2023-11/2023_0818_plcy_yearbook_immigration_statistics_fy2022.pdf* (total apprehensions and Title 42 expulsions from 1925 to 2022), *and id.* at 94–96 tbl. 35 (apprehensions from FY 2013 to FY 2022), *with* OHSS, *2012 Yearbook of Immigration Statistics* 96 tbl. 35 (July 2013), *https://www.dhs.gov/sites/default/files/publications/Yearbook_Immigration_Statistics_2012.pdf* (apprehensions from FY 2003 to FY 2012), *and* OHSS, *2002 Yearbook of Immigration Statistics* 184 tbl. 40 (Oct. 2003), *https://www.dhs.gov/sites/default/files/publications/Yearbook_Immigration_Statistics_2002.pdf* (apprehensions from FY 1996 to FY 2002). In December 2023, CBP also completed a single-month record of approximately 302,000 encounters at and between POEs, almost one and a half times as many as the highest monthly number recorded prior to 2021 (approximately 209,000 in March 2000) based on records available in the OHSS Persist Dataset from FY 2000 to the present. Although some of the increase in encounters is explained by higher-than-normal numbers of repeat encounters of the same individuals during the period in which noncitizens were expelled pursuant to the Centers for Disease Control and Prevention's (''CDC's'') Title 42 public health Order, OHSS analysis of the March 2024 OHSS Persist Dataset indicates that unique encounters were also at record high levels. *See* OHSS analysis of March 2024 OHSS Persist Dataset.

DHS data in this IFR are current through March 31, 2024, the most recent month for which DHS has data that have gone through its full validation process. DHS primarily relies on two separate datasets for most of the data in this IFR. Most DHS data are pulled from OHSS's official statistical system of record data, known as the OHSS Persist Dataset, which is typically released by OHSS on a 90-day delay. Other data in this IFR are pulled from OHSS's Enforcement Lifecycle dataset, which combines 23 separate DHS and DOJ datasets to report on the end-to-end immigration enforcement process. Due to this greater complexity, Lifecycle data generally become available for reporting 90 to 120 days after the end of each quarter.

CBP also publishes preliminary data pulled from its operational systems more quickly as part of its regular Monthly Operational Updates. The data in these updates reflect operational realities but change over time as transactional records in the systems of record are cleaned and validated; they are best viewed as initial estimates rather than as final historical records. CBP released an operational update on May 15, 2024, that includes the Component's official reporting for encounters through the end of April. Based on these data, SWB encounters between POEs fell slightly by six percent between March and April. OHSS analysis of data obtained from CBP, *Southwest Land Border Encounters, https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters* (last accessed May 24, 2024). The preliminary April data are best understood to reflect a continuation of the general pattern described elsewhere in this IFR. Excluding March through April 2020, which was an unusual case because of the onset of the COVID–19 pandemic, the average month-over-month change between March and April for 2013 through 2024 is a 2.3 percent increase, with 4 out of those 11 years experiencing decreases in April and 7 years experiencing increases.

[6] *See* DHS, *Fact Sheet: Department of State and Department of Homeland Security Announce Additional Sweeping Measures to Humanely Manage Border through Deterrence, Enforcement, and Diplomacy* (May 10, 2023), *https://www.dhs.gov/news/2023/05/10/fact-sheet-additional-sweeping-measures-humanely-manage-border*.

[7] DHS, *Fact Sheet: The Biden-Harris Administration Takes New Actions to Increase Border Enforcement and Accelerate Processing for Work Authorizations, While Continuing to Call on Congress to Act* (Sept. 20, 2023), *https://www.dhs.gov/news/2023/09/20/fact-sheet-biden-harris-administration-takes-new-actions-increase-border*.

[8] *Id.; see also* DOD, *Austin Approves Homeland Security Request for Troops at Border* (May 2, 2023), *https://www.defense.gov/News/News-Stories/Article/Article/3382272/austin-approves-homeland-security-request-for-troops-at-border/*.

[9] In the months between May 12, 2023, and March 31, 2024, CBP processed roughly 316,000 noncitizens encountered at and between SWB POEs for expedited removal, more than in any prior full fiscal year. OHSS analysis of data pulled from CBP Unified Immigration Portal (''UIP'') on April 2, 2024.

[10] DHS, *Fact Sheet: U.S. Government Announces Sweeping New Actions to Manage Regional Migration* (Apr. 27, 2023), *https://www.dhs.gov/news/2023/04/27/fact-sheet-us-government-announces-sweeping-new-actions-manage-regional-migration*.

[11] DHS, *DHS to Supplement H–2B Cap with Nearly 65,000 Additional Visas for FY 2024, Department of Homeland Security* (Nov. 3, 2023), *https://www.dhs.gov/news/2023/11/03/dhs-supplement-h-2b-cap-nearly-65000-additional-visas-fiscal-year-2024*.

[12] DHS, *Fact Sheet: U.S. Government Announces Sweeping New Actions to Manage Regional Migration* (Apr. 27, 2023), *https://www.dhs.gov/news/2023/04/27/fact-sheet-us-government-announces-sweeping-new-actions-manage-regional-migration*; CBP, *CBP One™ Appointments Increased to 1,450 Per Day* (June 30, 2023), *https://www.cbp.gov/newsroom/national-media-release/cbp-one-appointments-increased-1450-day*.

[13] U.S. State Dep't, *Report to Congress on Proposed Refugee Admissions for Fiscal Year 2024* (Nov. 3, 2023) *https://www.state.gov/report-to-congress-on-proposed-refugee-admissions-for-fiscal-year-2024/*.

• Completing approximately 89 percent more immigration court cases in FY 2023 as compared to FY 2019; [14] and

• Increasing the immigration judge (''IJ'') corps by 66 percent from FY 2019 to FY 2023, including maximizing the congressionally authorized number in FY 2023 for a total corps of 734.[15]

The Proclamation further states that although these efforts and other complementary measures are having their intended effect—DHS is processing noncitizens for removal in record numbers and with record efficiency [16]—the border security and immigration systems have not been able to keep pace with the number of individuals arriving at the southern border.[17] Simply put, the Departments do not have adequate resources and tools to deliver timely decisions and consequences to individuals who cross unlawfully and cannot establish a legal basis to remain in the United States, or to provide timely protection to those ultimately found eligible for protection when individuals are arriving at such elevated, historic volumes.[18]

This became even more clear in the months following the lifting of the Title 42 public health Order.[19] As the Departments resumed widespread processing under title 8 authorities, the insufficiency of both the available statutorily authorized tools and the resources provided to implement them came into stark focus. Despite the expanded ability to impose consequences at the SWB through the Circumvention of Lawful Pathways rule and complementary measures, which led to the highest numbers of returns and removals in more than a decade,[20] encounter levels have remained elevated well above historical levels, with December 2023 logging the highest monthly total on record.[21] While encounter levels in calendar year 2024 have decreased from these record numbers, there is still a substantial and elevated level of migration, and historically high percentages of migrants are claiming fear and are challenging to remove, as discussed in more detail in Section III.B.1 of this preamble.[22] This

[14] *See* EOIR, *Adjudication Statistics: New Cases and Total Completions—Historical* 1–2 (Oct. 12, 2023), *https://www.justice.gov/d9/pages/attachments/2022/09/01/3_new_cases_and_total_completions_-_historical.pdf.*

[15] *See* EOIR, *Adjudication Statistics: Immigration Judge (IJ) Hiring* 1 (Jan. 2024), *https://www.justice.gov/eoir/media/1344911/dl?inline* (showing 734 total IJs on board in FY 2023); Executive Office for Immigration Review (''EOIR'') Strategic Plan 2024, Current Operating Environment, *https://www.justice.gov/eoir/strategic-plan/strategic-context/current-operating-enviroment* (last visited May 27, 2024) (''The agency's streamlining efforts also enabled EOIR, by the close of FY 2023, to fill all 734 appropriated IJ positions, thus creating the largest judge corps in the agency's history.'').

[16] *See supra* note 9. Since May 12, 2023, the median time to refer noncitizens encountered by CBP at the SWB who claim a fear for credible fear interviews decreased by 77 percent from its historical average, from 13 days in the FY 2014 to FY 2019 pre-pandemic period to 3 days in the four weeks ending March 31, 2024; for those who receive negative credible fear determinations, the median time from encounter to removal, over the same time frames, decreased 85 percent from 73 days to 11 days. Pre-May 12, 2023, data from OHSS Lifecycle Dataset as of December 31, 2023; post-May 11, 2023, data from OHSS analysis of data downloaded from UIP on April 2, 2024.

DHS removed or returned over 662,000 noncitizens between May 12, 2023, and March 31, 2024, or an average of over 61,300 per month (excluding crew members detained on board their vessels and other administrative returns); this represents the highest average monthly count of removals and returns since FY 2010. Post-May 12, 2023, repatriations from OHSS analysis of data downloaded from UIP on April 2, 2024; *see also* OHSS, *Immigration Enforcement and Legal Processes Monthly Tables, https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables* (last updated May 10, 2024) (providing historic data on repatriations); OHSS, *2022 Yearbook of Immigration Statistics* 103–04 tbl. 39 (Nov. 2023), *https://www.dhs.gov/sites/default/files/2023-11/2023_0818_plcy_yearbook_immigration_statistics_fy2022.pdf* (noncitizen removals, returns, and expulsions for FY 1892 to FY 2022).

[17] *See* Letter for Kevin McCarthy, Speaker of the House of Representatives, from Shalanda D. Young, Director, Office of Management and Budget (''OMB'') (Aug. 10, 2023), *https://www.whitehouse.gov/wp-content/uploads/2023/08/Final-Supplemental-Funding-Request-Letter-and-Technical-Materials.pdf.*

[18] *Id.; see also* Ariel G. Ruiz-Soto et al., Migration Pol'y Inst., *Shifting Realities at the U.S.-Mexico Border: Immigration Enforcement and Control in a Fast-Evolving Landscape* 20 (Jan. 2024), *https://www.migrationpolicy.org/sites/default/files/publications/mpi-contemporary-border-policy-2024_final.pdf* (''Across the border, interviewed agents expressed frustration with low staffing levels and resource allocations compared to the challenge of managing the border.''). DHS acknowledges that the enacted FY 2024 DHS budget does appropriate funding sufficient to pay for approximately 2,000 additional Border Patrol agents, bringing the total level indicated by Congress up to 22,000 agents, compared with 19,855 agents for FY 2023. 170 Cong Rec. H1809–10 (daily ed. Mar. 22, 2024) (Explanatory Statement Regarding H.R. 2882, Further Consolidated Appropriations Act, 2024) (''The agreement includes . . . [funding] to hire 22,000 Border Patrol Agents.''); 168 Cong Rec. S8557 (daily ed. Dec. 20, 2022) (Explanatory Statement Regarding H.R. 2617, Consolidated Appropriations Act, 2023) (''The agreement provides funding for 19,855 Border Patrol agents.''). However, the FY 2024 appropriations do not fully fund CBP's existing operational and staffing requirements. Additionally, CBP estimates that it will likely be unable to implement a hiring surge to meaningfully grow its overall staffing levels towards the staffing levels funded by the FY 2024 budget before the end of the current fiscal year. The hiring process requires time and resources to bring additional agents on board. For example, it generally takes more than six months for an applicant to complete the hiring process and report to the U.S. Border Patrol (''USBP'') Academy to receive necessary training. *See* DHS, *Statement from Secretary Mayorkas on the President's Fiscal Year 2025 Budget for the U.S. Department of Homeland Security* (Mar. 11, 2024), *https://www.dhs.gov/news/2024/03/11/statement-secretary-mayorkas-presidents-fiscal-year-2025-budget-us-department* (''However, DHS's border security and immigration enforcement efforts along the Southwest border desperately require the additional funds requested by the Administration and included in the Senate's bipartisan border security legislation, which would provide DHS with approximately $19 billion to fund additional personnel, facilities, repatriation capabilities, and other enforcement resources.'').

[19] *See* Public Health Determination and Order Regarding Suspending the Right To Introduce Certain Persons From Countries Where a Quarantinable Communicable Disease Exists, 87 FR 19941, 19941–42 (Apr. 6, 2022) (describing the CDC's recent Title 42 public health Orders, which ''suspend[ed] the right to introduce certain persons into the United States from countries or places where the quarantinable communicable disease exists in order to protect the public health from an increased risk of the introduction of COVID–19''). Although the CDC indicated its intention to lift the order on May 23, 2022, ongoing litigation prevented the order from being lifted until it ultimately expired on May 11, 2023. *See* 88 FR at 31319.

[20] In the ten and a half months between May 12, 2023, and March 31, 2024, DHS completed over 662,000 removals and enforcement returns, more than in any full fiscal year since FY 2011, and the highest monthly average of enforcement repatriations since FY 2010. Post-May 12, 2023, repatriations from OHSS analysis of data downloaded from UIP on April 2, 2024; *see also* OHSS, *Immigration Enforcement and Legal Processes Monthly Tables, https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables* (last updated May 10, 2024) (providing historic data on repatriations); OHSS, *2022 Yearbook of Immigration Statistics* 103–04 tbl. 39 (Nov. 2023), *https://www.dhs.gov/sites/default/files/2023-11/2023_0818_plcy_yearbook_immigration_statistics_fy2022.pdf* (noncitizen removals, returns, and expulsions for FY 1892 to FY 2022).

[21] There were nearly 302,000 CBP encounters at and between POEs along the SWB in December 2023, higher than any previous month on record. OHSS analysis of March 2024 OHSS Persist Dataset and historic CBP data for encounters prior to FY 2000; *see also* OHSS, *2022 Yearbook of Immigration Statistics* 89 tbl. 33 (Nov. 2023) (total apprehensions and Title 42 expulsions from 1925 to 2022), *https://www.dhs.gov/sites/default/files/2023-11/2023_0818_plcy_yearbook_immigration_statistics_fy2022.pdf; id.* at 94–96 tbl. 35 (apprehensions from FY 2013 to FY 2022); OHSS, *Immigration Enforcement and Legal Processes Monthly Tables, https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables* (last updated May 10, 2024) (SWB encounters from FY 2014 through December 2023).

[22] After peaking at nearly 302,000 in December 2023, encounters at and between POEs along the SWB fell to approximately 176,000 in January 2024, 190,000 in February 2024, and 189,000 in March 2024. At an average of 185,000 for the first three months of 2024, monthly encounters levels were almost 4 times higher than the pre-pandemic (FY 2014 through 2019) average of 48,000 encounters at and between POEs per month and—with the exceptions of FY 2022 and FY 2023—represented the highest second quarter count of encounters in any year since FY 2001. March 2024 OHSS Persist Dataset; *see also* OHSS, *2022 Yearbook of Immigration Statistics* 89 tbl. 33 (Nov. 2023), *https://www.dhs.gov/sites/default/files/2023-11/2023_0818_plcy_yearbook_immigration_statistics_fy2022.pdf* (total apprehensions and title 42 expulsions from 1925 to 2022); *id.* at 94–96 tbl. 35 (apprehensions from FY 2013 to FY 2022); OHSS, *Immigration Enforcement and Legal Processes Monthly Tables, https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-*

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substantial migration throughout the hemisphere, combined with inadequate resources and tools to keep pace, limits DHS's ability to impose timely consequences through expedited removal, the main consequence available at the border under title 8 authorities.

The sustained, high encounter rates the Departments have experienced over the past year have outstripped the Departments' abilities—based on available resources—to process noncitizens through expedited removal in significant numbers. Due to its funding shortfall, DHS simply lacks sufficient resources, such as sufficient USCIS asylum officers (''AOs'') to conduct fear screenings and sufficient temporary processing facilities, often called ''soft-sides,'' which limits DHS's ability to conduct credible fear interviews for individuals in CBP custody and to process and hold individuals in U.S. Immigration and Customs Enforcement (''ICE'') custody during the expedited removal process.[23] This mismatch in available resources and encounters creates stress on the border and immigration systems and forces DHS to rely on processing pathways outside of expedited removal—limiting the Departments' ability to deliver timely consequences to individuals who do not have a legal basis to remain in the United States.[24] Individuals who are subject to but cannot be processed under expedited removal due to resource constraints are instead released pending removal proceedings under section 240 of the INA, 8 U.S.C. 1229a (''section 240 removal proceedings''), before an IJ, a process that can take several years to conclude.[25] These immigration court proceedings can be less resource intensive for processing upon initial encounter, because individuals can be released from custody fairly quickly, but are also far less likely to result in swift decisions and swift consequences, and generally require more IJ and ICE attorney time to resolve. *Compare* INA 235(b)(1), 8 U.S.C. 1225(b)(1), *with* INA 240, 8 U.S.C. 1229a. Notably, in FY 2023, when the immigration courts had a historic high number of case completions, the number of new cases far outnumbered those completions and led to a larger backlog—likely extending the length of time it will take individuals encountered and referred into section 240 removal proceedings to finish their immigration court process.[26]

Said another way, at the current levels of encounters and with current resources, the Departments cannot predictably and swiftly deliver consequences to most noncitizens who cross the border without a lawful basis to remain. This inability to predictably deliver timely decisions and consequences further compounds incentives for migrants to make the dangerous journey to the SWB, regardless of any individual noncitizen's ultimate likelihood of success on an asylum or protection application.[27] Smugglers and transnational criminal organizations (''TCOs'') have exploited this mismatch, further fueling migration by actively advertising to migrants that they are likely to be able to remain in the United States.[28]

The Departments' ability to refer and process noncitizens through expedited removal thus continues to be overwhelmed, creating a vicious cycle in which the border security and immigration systems cannot deliver timely decisions and consequences to all the people who are encountered at the SWB and lack a lawful basis to remain in the United States. This, in turn, forces DHS to release individuals into the backlogged immigration court system; for the many cases in that system initiated just prior to or during the COVID–19 pandemic, the process can take several years to result in a final decision or consequence,[29] which then incentivizes more people to make the dangerous journey north to take their chances at the SWB.[30] The status quo of the broken immigration and asylum system has become a driver for unlawful migration throughout the region and an increasingly lucrative source of income for dangerous TCOs.[31] Without countermeasures, those TCOs will continue to grow in strength, likely resulting in even more smuggling operations and undermining democratic governance in the countries where they operate.[32] All of these factors, taken together, pose significant threats to the

monthly-tables (last updated May 10, 2024) (SWB encounters from FY 2014 through December 2023).

[23] ''Because ICE has very limited detention capacity and appropriated bedspace has remained relatively static, the agency must carefully prioritize whom it detains. Similar to FY 2022, during FY 2023, Enforcement and Removal Operations' limited detention capacity was primarily used to house two populations: noncitizens CBP arrested at the Southwest Border and noncitizens with criminal histories [Enforcement and Removal Operations] arrested in the interior.'' Fiscal Year 2023 ICE Annual Report 18 (Dec. 29, 2023), *https://www.ice.gov/doclib/eoy/iceAnnualReportFY2023.pdf*. In FY 2024, ICE was appropriated $5,082,218,000.00 ''for enforcement, detention and removal operations.'' Consolidated Appropriations Act, 2024, Public Law 118–47, 138 Stat. 460, 598 (2024). The joint explanatory statement states that the bill provides ''$5,082,218,000 for Enforcement and Removal Operations (ERO)'' and ''$355,700,000 for 41,500 beds for the full fiscal year and inflationary adjustments to support current detention facility operations.'' 170 Cong. Rec. H1807, 1812 (daily ed. Mar. 22, 2024).

[24] *See* CBP, *Custody and Transfer Statistics, https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics* (last updated Apr. 12, 2024) (table showing that, under current constraints, the number of individuals processed for expedited removal makes up only a fraction of total processing dispositions, including section 240 proceedings).

[25] EOIR decisions completed in December 2023 were, on average, initiated in December 2020, during the significant operational disruptions caused by the COVID–19 pandemic (with encounters several months earlier than that), but 50 percent of EOIR cases initiated during that time were still pending as of December 2023, so the final mean processing time (once all such cases are complete) will be longer. OHSS analysis of EOIR data as of February 12, 2024; EOIR Strategic Plan 2024, Current Operating Environment, *https://www.justice.gov/eoir/strategic-plan/strategic-context/current-operating-enviroment* (last visited May 26, 2024) (''EOIR [ ] suffered operational setbacks during the COVID–19 pandemic years of FY 2020 through FY 2022, including declining case completions due to health closures and scheduling complications and delays in agency efforts to transition to electronic records and the efficiencies they represent. While the challenges of the pandemic were overcome by adaptive measures taken during those years, the pandemic's impact on the pending caseload is still being felt.''). While EOIR does not report statistics on pending median completion times for removal proceedings in general, it does report median completion times for certain types of cases, such as detained cases and cases involving UCs. *See, e.g.,* EOIR, *Median Unaccompanied Noncitizen Child (UAC) Case Completion and Case Pending Time* (Jan. 18, 2024), *https://www.justice.gov/eoir/media/1344951/dl?inline* (median completion time of 1,346 days); EOIR, *Median Completion Times for Detained Cases* (Jan. 18, 2024), *https://www.justice.gov/eoir/media/1344866/dl?inline* (median completion time of 47 days in the first quarter of 2024 for removal, deportation, exclusion, asylum-only, and withholding-only cases); EOIR, *Percentage of DHS-Detained Cases Completed within Six Months* (Jan. 18, 2024), *https://www.justice.gov/eoir/media/1344886/dl?inline* (reporting seven percent of detained cases not completed within six months).

[26] EOIR completed more than 520,000 cases in FY 2023 (a record number), but also had almost 1.2 million case receipts, resulting in a net increase of nearly 700,000 cases in its backlog. *See* EOIR, *Adjudication Statistics: Pending Cases, New Cases, and Total Completions* 1 (Oct. 12, 2023), *https://www.justice.gov/d9/pages/attachments/2020/01/31/1_pending_new_receipts_and_total_completions.pdf*; EOIR, *Adjudication Statistics: New Cases and Total Completions—Historical* (Oct. 12, 2023), *https://www.justice.gov/d9/pages/attachments/2022/09/01/3_new_cases_and_total_completions_-_historical.pdf*. OHSS estimates that 1.1 million of the nearly 1.2 million case receipts (95 percent) resulted from SWB encounters. OHSS analysis of March 2024 OHSS Persist Dataset.

[27] Miriam Jordan, *One Big Reason Migrants Are Coming in Droves: They Believe They Can Stay,* N.Y. Times (Jan. 31, 2024), *https://www.nytimes.com/2024/01/31/us/us-immigration-asylum-border.html.*

[28] *See* Parker Asmann & Steven Dudley, *How US Policy Foments Organized Crime on US-Mexico Border,* Insight Crime (June 28, 2023), *https://insightcrime.org/investigations/how-us-policy-foments-organized-crime-us-mexico-border/.*

[29] *See supra* note 25.

[30] *See, e.g.,* Jordan, *supra* note 27.

[31] *See* Asmann & Dudley, *supra* note 28.

[32] *See* Jordan, *supra* note 27.

safety and security of migrants exploited into making the dangerous journey to the SWB and the U.S. communities through which many such migrants transit.

In the absence of congressional action to appropriately resource DHS and EOIR and to reform the outdated statutory framework, the Proclamation and the changes made by this rule are intended to substantially improve the Departments' ability to deliver timely decisions and consequences to noncitizens who lack a lawful basis to remain. By suspending and limiting entries until 12:01 a.m. eastern time on the date that is 14 calendar days after the Secretary makes a factual determination that there has been a 7-consecutive-calendar-day average of less than 1,500 encounters, as defined by the Proclamation, but excluding noncitizens determined to be inadmissible at a SWB POE, and by imposing a limitation on asylum eligibility and making other policy changes, the Proclamation and IFR will realign incentives at the southern border.[33] The Proclamation and IFR will do this by improving DHS's ability to place into expedited removal the majority of noncitizens who are amenable to such processing; to avoid large-scale releases of such individuals pending section 240 removal proceedings; and to allow for swift resolution of their cases and, where appropriate, removal.

The Proclamation imposes a suspension and limitation on entry upon certain classes of noncitizens who are encountered while the suspension and limitation is in effect. The Proclamation provides that the suspension and limitation on entry applies beginning at 12:01 a.m. eastern daylight time on June 5, 2024. The suspension and limitation on entry will be discontinued 14 calendar days after the Secretary makes a factual determination that there has been a 7-consecutive-calendar-day average of less than 1,500 encounters, as defined by the Proclamation, but excluding noncitizens determined to be inadmissible at a SWB POE. Unaccompanied children (''UCs'')[34] from non-contiguous countries are not included in calculating the number of encounters. If at any time after such a factual determination the Secretary makes a factual determination that there has been a 7-consecutive-calendar-day average of 2,500 encounters or more, the suspension and limitation on entry will apply at 12:01 a.m. eastern time on the next calendar day (or will continue to apply, if the 14-calendar-day period has yet to elapse) until 14 days after the Secretary makes another factual determination that there has been a 7-consecutive-calendar-day average of less than 1,500 encounters or the President revokes the Proclamation, at which time its application will be discontinued once again.

The Proclamation does not apply to the following persons:

(i) any noncitizen national of the United States;

(ii) any lawful permanent resident of the United States;

(iii) any unaccompanied child as defined in section 279(g)(2) of title 6, United States Code;

(iv) any noncitizen who is determined to be a victim of a severe form of trafficking in persons, as defined in section 7102(16) of title 22, United States Code;

(v) any noncitizen who has a valid visa or other lawful permission to seek entry or admission into the United States, or presents at a port of entry pursuant to a pre-scheduled time and place, including:

(A) members of the United States Armed Forces and associated personnel, United States Government employees or contractors on orders abroad, or their accompanying family members who are on their orders or are members of their household;

(B) noncitizens who hold a valid visa or who have all necessary documents required for admission consistent with the requirements of section 1182(a)(7) of title 8, United States Code, upon arrival at a port of entry;

(C) noncitizens traveling pursuant to the visa waiver program as described in section 217 of the INA, 8 U.S.C. 1187; and

(D) noncitizens who arrive in the United States at a southwest land border port of entry pursuant to a process the Secretary of Homeland Security determines is appropriate to allow for the safe and orderly entry of noncitizens into the United States;

(vi) any noncitizen who is permitted to enter by the Secretary of Homeland Security, acting through a U.S. Customs and Border Protection immigration officer, based on the totality of the circumstances, including consideration of significant law enforcement, officer and public safety, urgent humanitarian, and public health interests at the time of the entry or encounter that warranted permitting the noncitizen to enter; and

(vii) any noncitizen who is permitted to enter by the Secretary of Homeland Security, acting through a U.S. Customs and Border Protection immigration officer, due to operational considerations at the time of the entry or encounter that warranted permitting the noncitizen to enter.

The President authorized the Secretary of Homeland Security and the Attorney General to issue any instructions, orders, or regulations as may be necessary to implement the Proclamation, including the determination of the exceptions in section 3(b), and directed them to promptly consider issuing any instructions, orders, or regulations as may be necessary to address the circumstances at the southern border, including any additional limitations and conditions on asylum eligibility that they determine are warranted, subject to any exceptions that they determine are warranted.

Consistent with the President's direction, the Departments have determined that this IFR is necessary to address the situation at the southern border. This IFR aligns the Departments' border operations and applicable authorities with the Proclamation's policy and objectives. Specifically, this IFR establishes a limitation on asylum eligibility that applies to certain individuals who enter during emergency border circumstances and revises certain procedures applicable to the expedited removal process to more swiftly apply consequences for irregular migration[35] and remove noncitizens who do not have a legal basis to remain in the United States. Although the Departments are adopting these measures to respond to the emergency situation at the southern border, they are not a substitute for congressional action—which remains the only long-term solution to the challenges the Departments have confronted on the border for more than a decade.

[33] Under the Proclamation, the term ''encounter'' refers to a noncitizen who (i) is physically apprehended by CBP immigration officers within 100 miles of the United States SWB during the 14-day period immediately after entry between POEs; (ii) is physically apprehended by DHS personnel at the southern coastal borders during the 14-day period immediately after entry between POEs; or (iii) is determined to be inadmissible at a SWB POE. But the 1,500 and 2,500 encounter thresholds in the Proclamation and this rule exclude the third category of encounters—individuals determined to be inadmissible at a SWB POE. When describing historical data in this preamble, the Departments have generally sought to distinguish between encounters between POEs (also referred to as ''USBP encounters'') and encounters at and between the POEs (also referred to as ''total CBP encounters'' or ''encounters,'' depending on the context).

[34] In this rulemaking, as in the Proclamation, the term ''unaccompanied children'' or ''UCs'' has the same meaning as the term ''unaccompanied alien child[ren]'' under 6 U.S.C. 279(g)(2).

[35] In this preamble, ''irregular migration'' refers to the movement of people into another country without authorization.

B. Legal Authority

The Secretary and the Attorney General jointly issue this rule pursuant to their shared and respective authorities concerning consideration of claims for asylum, statutory withholding of removal, and protection under regulations implemented pursuant to U.S. obligations under Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (''CAT'').[36] The Homeland Security Act of 2002 (''HSA''), Public Law 107–296, 116 Stat. 2135, as amended, created DHS and transferred to the Secretary of Homeland Security many functions related to the administration and enforcement of Federal immigration law while maintaining some functions and authorities with the Attorney General, including some shared concurrently with the Secretary.

The INA, as amended by the HSA, charges the Secretary ''with the administration and enforcement of [the INA] and all other laws relating to the immigration and naturalization of aliens,'' except insofar as those laws assign functions to other agencies. INA 103(a)(1), 8 U.S.C. 1103(a)(1). The INA also grants the Secretary the authority to establish regulations and take other actions ''necessary for carrying out'' the Secretary's authority under the immigration laws, INA 103(a)(3), 8 U.S.C. 1103(a)(3); *see also* 6 U.S.C. 202.

The HSA provides the Attorney General with ''such authorities and functions under [the INA] and all other laws relating to the immigration and naturalization of aliens as were [previously] exercised by [EOIR], or by the Attorney General with respect to [EOIR].'' INA 103(g)(1), 8 U.S.C. 1103(g)(1); *see also* 6 U.S.C. 521. In addition, under the HSA, the Attorney General retains authority to ''establish such regulations, . . . issue such instructions, review such administrative determinations in immigration proceedings, delegate such authority, and perform such other acts as the Attorney General determines to be necessary for carrying out'' the Attorney General's authorities under the INA. INA 103(g)(2), 8 U.S.C. 1103(g)(2).

Under the HSA, the Attorney General retains authority over the conduct of removal proceedings under section 240 of the INA, 8 U.S.C. 1229a (''section 240 removal proceedings''). These adjudications are conducted by IJs within DOJ's EOIR. *See* 6 U.S.C. 521; INA 103(g)(1), 8 U.S.C. 1103(g)(1). With limited exceptions, IJs adjudicate asylum, statutory withholding of removal, and CAT protection applications filed by noncitizens during the pendency of section 240 removal proceedings, including asylum applications referred by USCIS to the immigration court. INA 101(b)(4), 8 U.S.C. 1101(b)(4); INA 240(a)(1), 8 U.S.C. 1229a(a)(1); INA 241(b)(3), 8 U.S.C. 1231(b)(3); 8 CFR 1208.2(b), 1240.1(a); *see also Dhakal* v. *Sessions,* 895 F.3d 532, 536–37 (7th Cir. 2018) (describing affirmative and defensive asylum processes). The Board of Immigration Appeals (''BIA''), also within DOJ's EOIR, in turn hears appeals from IJ decisions. *See* 8 CFR 1003.1(a)(1), (b)(3); *see also Garland* v. *Ming Dai,* 593 U.S. 357, 366–67 (2021) (describing appeals from IJs to the BIA). And the INA provides that the ''determination and ruling by the Attorney General with respect to all questions of law shall be controlling.'' INA 103(a)(1), 8 U.S.C. 1103(a)(1).

In addition to the separate authorities discussed above, the Attorney General and the Secretary share some authorities.[37] Section 208 of the INA, 8 U.S.C. 1158, authorizes the ''Secretary of Homeland Security or the Attorney General'' to ''grant asylum'' to a noncitizen ''who has applied for asylum in accordance with the requirements and procedures established by'' the Secretary or the Attorney General under section 208 if the Secretary or the Attorney General determines that the noncitizen is a ''refugee'' within the meaning of section 101(a)(42)(A) of the INA, 8 U.S.C. 1101(a)(42)(A). INA 208(b)(1)(A), 8 U.S.C. 1158(b)(1)(A). Section 208 thereby authorizes the Secretary and the Attorney General to ''establish[ ]'' ''requirements and procedures'' to govern asylum applications. *Id.* The statute further authorizes them to ''establish,'' ''by regulation,'' ''additional limitations and conditions, consistent with'' section 208, under which a noncitizen ''shall be ineligible for asylum.'' INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C); *see also* INA 208(d)(5)(B), 8 U.S.C. 1158(d)(5)(B) (authorizing the Secretary and the Attorney General to ''provide by regulation for any other conditions or limitations on the consideration of an application for asylum not inconsistent with [the INA]'').[38] The INA also provides the Secretary and Attorney General authority to publish regulatory amendments governing their respective roles regarding apprehension, inspection and admission, detention and removal, withholding of removal, deferral of removal, and release of noncitizens encountered in the interior of the United States or at or between POEs. *See* INA 235, 236, 241, 8 U.S.C. 1225, 1226, 1231.

The HSA granted DHS the authority to adjudicate asylum applications and to conduct credible fear interviews, make credible fear determinations in the context of expedited removal, and establish procedures for further consideration of asylum applications after an individual is found to have a credible fear. INA 103(a)(3), 8 U.S.C. 1103(a)(3); INA 235(b)(1)(B), 8 U.S.C. 1225(b)(1)(B); *see also* 6 U.S.C. 271(b) (providing for the transfer of adjudication of asylum and refugee applications from the Commissioner of Immigration and Naturalization to the Director of the Bureau of Citizenship and Immigration Services, now USCIS). Within DHS, the Secretary has delegated some of those authorities to the Director of USCIS, and AOs conduct credible fear interviews, make credible fear determinations, and determine whether a noncitizen's asylum application should be granted. *See* DHS, No. 0150.1, Delegation to the Bureau of Citizenship and Immigration Services (June 5, 2003); 8 CFR 208.2(a), 208.9, 208.30.

The United States is a party to the 1967 Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223, 606 U.N.T.S. 267 (''Refugee Protocol''), which incorporates Articles 2 through 34 of the 1951 Convention Relating to the Status of Refugees, July 28, 1951, 19 U.S.T. 6259, 189 U.N.T.S. 150 (''Refugee Convention''). Article 33 of the Refugee Convention generally prohibits parties to the Convention from expelling or returning (''refouler'') ''a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.'' Refugee Convention, *supra,* 19 U.S.T. at 6276, 189 U.N.T.S. at 176.

[36] Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment art. 3, Dec. 10, 1984, S. Treaty Doc. No. 100–20 (1988), 1465 U.N.T.S. 85, 114; *see also* 8 U.S.C. 1231 note (United States Policy With Respect to Involuntary Return of Persons in Danger of Subjection to Torture); 8 CFR 208.16(c)–208.18, 1208.16(c)–1208.18.

[37] The HSA further provides, ''Nothing in this Act, any amendment made by this Act, or in section 103 of the [INA], as amended . . . , shall be construed to limit judicial deference to regulations, adjudications, interpretations, orders, decisions, judgments, or any other actions of the Secretary of Homeland Security or the Attorney General.'' Public Law 107–296, 116 Stat. 2135, 2274 (codified at 6 U.S.C. 522).

[38] Under the HSA, the references to the ''Attorney General'' in the INA also encompass the Secretary with respect to statutory authorities vested in the Secretary by the HSA or subsequent legislation, including in relation to immigration proceedings before DHS. 6 U.S.C. 251, 271(b)(3), (5), 557.

Congress implemented these obligations through the Refugee Act of 1980, Public Law 96–212, 94 Stat. 102 (''Refugee Act''), creating the precursor to what is now known as statutory withholding of removal. The Supreme Court has long recognized that the United States implements its non-refoulement obligations under Article 33 of the Refugee Convention (via the Refugee Protocol) through the statutory withholding of removal provision in section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3) (''statutory withholding of removal''), which provides that a noncitizen may not be removed to a country where their life or freedom would be threatened on account of one of the protected grounds listed in Article 33 of the Refugee Convention.[39] *See* INA 241(b)(3), 8 U.S.C. 1231(b)(3); *see also* 8 CFR 208.16, 1208.16. The INA also authorizes the Secretary and the Attorney General to implement statutory withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3). *See* INA 103(a)(1), (3), (g)(1)–(2), 8 U.S.C. 1103(a)(1), (3), (g)(1)–(2).

The Departments also have authority to implement Article 3 of the CAT. The Foreign Affairs Reform and Restructuring Act of 1998 (''FARRA'') provides the Departments with the authority to ''prescribe regulations to implement the obligations of the United States under Article 3 of the [CAT], subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention.'' Public Law 105–277, div. G, sec. 2242(b), 112 Stat. 2681, 2681–822 (codified at 8 U.S.C. 1231 note). DHS and DOJ have implemented the obligations of the United States under Article 3 of the CAT in the Code of Federal Regulations, consistent with FARRA. *See, e.g.,* 8 CFR 208.16(c)–208.18, 1208.16(c)–1208.18; Regulations Concerning the Convention Against Torture, 64 FR 8478 (Feb. 19, 1999), *amended by* 64 FR 13881 (Mar. 23, 1999).

This rule is necessary because, while the Proclamation recognizes that the asylum system has contributed to the border emergency, the Proclamation itself does not and cannot affect noncitizens' right to apply for asylum, eligibility for asylum, or asylum procedures. That has been the Executive Branch's consistent position for four decades.[40] That longstanding understanding follows from the text and structure of the governing statutes. Section 212(f) provides that under certain circumstances, the President may ''suspend the entry of all aliens or any class of aliens as immigrants or nonimmigrants, or impose on the entry of aliens any restrictions he may deem to be appropriate.'' INA 212(f), 8 U.S.C. 1182(f). Although this provision—first enacted in 1952—''grants the President broad discretion,'' it ''operate[s]'' only in its ''sphere[ ].'' *Trump* v. *Hawaii,* 585 U.S. 667, 683–84, 695 (2018). Section 212 of the INA, 8 U.S.C. 1182 (entitled ''Inadmissible aliens''), generally ''defines the universe of aliens who are admissible'' and ''sets the boundaries of admissibility into the United States.'' *Id.* at 695. Hence, when section 212(f) authorizes the President to suspend ''entry,'' it ''enabl[es] the President to supplement the other grounds of inadmissibility in the INA,'' *id.* at 684 (citing *Abourezk* v. *Reagan,* 785 F.2d 1043, 1049 n.2 (D.C. Cir. 1986)), and to bar individuals from entry into the United States.

This authority, though broad, does not authorize the President to override the asylum statute.[41] The asylum statute, first enacted in the Refugee Act of 1980, today provides that ''[a]ny alien who is physically present in the United States or who arrives in the United States . . . irrespective of such alien's status, may apply for asylum.'' INA 208(a)(1), 8 U.S.C. 1158(a)(1). The right to apply for asylum thus turns on whether a noncitizen is ''physically present'' or has ''arrive[d] in the United States,'' *id.,* as those terms are properly understood, and exists regardless of whether a noncitizen is inadmissible.[42] As a result, the power under section 212(f) to suspend ''entry'' does not authorize the President to override the asylum rights of noncitizens who have already physically entered the United States and who are entitled to an adjudication of eligibility under the applicable statutory and regulatory rules and standards.[43]

[39] *See INS* v. *Aguirre-Aguirre,* 526 U.S. 415, 426–27 (1999); *see also INS* v. *Cardoza-Fonseca,* 480 U.S. 421, 440–41 (1987) (distinguishing between Article 33's non-refoulement prohibition, which aligns with what was then called withholding of deportation, and Article 34's call to ''facilitate the assimilation and naturalization of refugees,'' which the Court found aligned with the discretionary provisions in section 208 of the INA, 8 U.S.C. 1158). The Refugee Convention and Protocol are not self-executing. *E.g., Al-Fara* v. *Gonzales,* 404 F.3d 733, 743 (3d Cir. 2005) (''The 1967 Protocol is not self-executing, nor does it confer any rights beyond those granted by implementing domestic legislation.'').

[40] In 1984, then-Assistant Attorney General of the Office of Legal Counsel Theodore B. Olson advised that section 212(f) did not permit the President to eliminate the asylum rights of noncitizens who had hijacked a plane and, as a condition of the plane's release, been flown to the United States. And in 2018, the Departments reaffirmed that ''[a]n alien whose entry is suspended or restricted under . . . a [section 212(f)] proclamation, but who nonetheless reaches U.S. soil contrary to the President's determination that the alien should not be in the United States, would remain subject to various procedures under immigration laws,'' including ''expedited-removal proceedings'' where they could ''raise any claims for protection.'' *Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims,* 83 FR 55934, 55940 (Nov. 9, 2018). Although Presidents have invoked section 212(f) at least 90 times since 1981, to the Departments' knowledge, none of those proclamations was understood to affect the right of noncitizens on U.S. soil to apply for, or noncitizens' statutory eligibility to receive, asylum. *See* Kelsey Y. Santamaria et al., Cong. Rsch. Serv., *Presidential Authority to Suspend Entry of Aliens Under 8 U.S.C. 1182(f)* (Feb. 21, 2024). At the same time, nothing in the proclamations or the INA have precluded the Departments from considering as an adverse *discretionary* criterion that a noncitizen is described in a section 212(f) proclamation.

[41] The Supreme Court, though it has never squarely addressed this issue, has also never indicated that section 212(f) confers power to affect asylum rights of those present in the United States. *Cf., e.g., Sale* v. *Haitian Ctrs. Council, Inc.,* 509 U.S. 155, 174–77 (1993) (upholding a Coast Guard program of intercepting migrant vessels and returning migrants to their home country, authorized in part by section 212(f), on the basis that statutory rights under the withholding of removal statute did not have ''extraterritorial application'' to migrants who were not physically present); *Hawaii,* 585 U.S. at 689, 695 (assuming, without deciding, that section 212(f) ''does not allow the President to expressly override particular provisions of the INA,'' while emphasizing the particular ''sphere[ ]'' in which it operates).

[42] Section 212(f) contrasts with 42 U.S.C. 265, which authorizes the CDC to temporarily suspend ''the right to introduce . . . persons and property'' into the United States if such suspension ''is required in the interest of the public health.'' During the COVID–19 pandemic and to prevent the ''serious danger of the introduction of [the] disease into the United States,'' 42 U.S.C. 265, the CDC issued an order invoking section 265 to expel certain noncitizens without allowing asylum applications. As the final rule implementing section 265 explained, the provision is part of a ''broad public health statute'' that ''operates separately and independently of the immigration power'' and authorizes the CDC ''to temporarily suspend the effect of any law . . . by which a person would otherwise have the right to be introduced . . . into the U.S.,'' *Control of Communicable Diseases; Foreign Quarantine: Suspension of the Right To Introduce and Prohibition of Introduction of Persons Into United States From Designated Foreign Countries or Places for Public Health Purposes,* 85 FR 56424, 56426, 56442 (Sept. 11, 2020), including the immigration laws, *id.* at 56426 (noting that legislative history indicates that section 265 was intended to suspend immigration if public health required it). The drafting history of section 265 also confirms that Congress conferred authority to prohibit ''the introduction of persons'' in order to broaden this provision and that this provision subsumed but was not limited to the authority to ''suspend immigration.'' Br. for Appellants at 41–43, *Huisha-Huisha* v. *Mayorkas,* 27 F.4th 718 (D.C. Cir. 2022) (No. 21–5200); *see Huisha-Huisha,* 27 F.4th at 730–31 (determining plaintiffs not likely to succeed on their challenge to the CDC order on the ground that it improperly suspended migrants' right to apply for asylum). Section 265 is a public-health authority under the Public Health Service Act. Its grant of authority to allow the CDC to temporarily suspend immigration laws in case of a public health emergency has no relevance to the interpretation of section 212(f), which is in title 8.

[43] For similar reasons, section 215(a) of the INA, 8 U.S.C. 1185(a), which the Proclamation also

Continued

This rule, as discussed elsewhere, is authorized because Congress has conferred upon the Secretary and the Attorney General express rulemaking power to create new conditions and limitations on asylum eligibility and create certain procedures for adjudicating asylum claims. INA 103(a)(1), (a)(3), (g), 208(b)(1)(A), (b)(2)(C), (d)(5)(B), 8 U.S.C. 1103(a)(1), (a)(3), (g), 1158(b)(1)(A), (b)(2)(C), (d)(5)(B); INA 235(b)(1)(B)(iii)(III), (iv), 8 U.S.C. 1225(b)(1)(B)(iii)(III), (iv).

C. Summary of Provisions of the IFR

This IFR adds provisions at 8 CFR 208.13(g), 208.35, 235.15, 1208.13(g), and 1208.35 that effectuate three key changes to the process for those seeking asylum, statutory withholding of removal, or protection under the CAT during emergency border circumstances giving rise to the suspension and limitation on entry under the Presidential Proclamation of June 3, 2024, Securing the Border (''Presidential Proclamation of June 3''):

- During emergency border circumstances, persons who enter across the southern border and who are not described in section 3(b) of the Proclamation will be ineligible for asylum unless they demonstrate by a preponderance of the evidence that exceptionally compelling circumstances exist, including if the noncitizen demonstrates that they or a member of their family as described in 8 CFR 208.30(c) with whom they are traveling: (1) faced an acute medical emergency; (2) faced an imminent and extreme threat to life or safety, such as an imminent threat of rape, kidnapping, torture, or murder; or (3) satisfied the definition of ''victim of a severe form of trafficking in persons'' provided in 8 CFR 214.11.
- During emergency border circumstances, rather than asking specific questions of every noncitizen encountered and processed for expedited removal to elicit whether the noncitizen may have a fear of persecution or an intent to apply for asylum, for those who enter across the southern border and are not described in section 3(b) of the Proclamation, DHS will provide general notice regarding the process for seeking asylum, statutory withholding of removal, or protection under the CAT and will refer a noncitizen for a credible fear interview only if the noncitizen manifests a fear of return, expresses an intention to apply for asylum or protection, or expresses a fear of persecution or torture or a fear of return to his or her country or the country of removal.
- The limitation on asylum eligibility will be applied during credible fear interviews and reviews, and those who enter across the southern border during emergency border circumstances and are not described in section 3(b) of the Proclamation will receive a negative credible fear determination with respect to their asylum claim unless there is a significant possibility the noncitizen could demonstrate by a preponderance of the evidence that exceptionally compelling circumstances exist. Such noncitizens will thereafter be screened for a reasonable probability of persecution because of a protected ground or torture, a higher standard than that applied to noncitizens in a similar posture under the Circumvention of Lawful Pathways rule. The ''reasonable probability'' standard is defined to mean substantially more than a ''reasonable possibility'' but somewhat less than more likely than not.

As discussed throughout this IFR, these changes are designed to implement the policies and objectives of the Proclamation by enhancing the Departments' ability to address historic levels of migration and efficiently process migrants arriving at the southern border during emergency border circumstances.

III. Discussion of the IFR

A. Current Framework

1. Asylum, Statutory Withholding of Removal, and CAT Protection

Asylum is a discretionary benefit that can be granted by the Secretary or the Attorney General if a noncitizen establishes, among other things, that they have experienced past persecution or have a well-founded fear of future persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. INA 208(b)(1)–(2), 8 U.S.C. 1158(b)(1)–(2) (providing that, unless subject to a mandatory bar, the Secretary or Attorney General ''may'' grant asylum to refugees); INA 101(a)(42)(A), 8 U.S.C. 1101(a)(42)(A) (defining ''refugee''). As long as they retain their asylee status, noncitizens who are granted asylum (1) cannot be removed or returned to their country of nationality or, if they have no nationality, their last habitual residence, (2) receive employment authorization incident to their status, (3) may be permitted to travel outside of the United States and return with prior consent, and (4) may seek derivative benefits for their spouses or children. INA 208(c)(1), 8 U.S.C. 1158(c)(1); *see Johnson* v. *Guzman Chavez,* 594 U.S. 523, 536 (2021) (''[A] grant of asylum permits an alien to remain in the United States and to apply for permanent residency after one year[.]'' (emphasis omitted) (internal quotation marks and citation omitted)); 8 CFR 274a.12(a)(5) (employment authorization incident to asylum status); 8 CFR 223.1(b) (allowing for return to the United States after travel with a requisite travel document for a ''person who holds . . . asylum status pursuant to section 208 of the Act''); *see also* 6 U.S.C. 271(b)(3) (transferring asylum functions to DHS); 6 U.S.C. 557 (providing that references to any other officer shall be deemed to refer to the ''Secretary'' with respect to any transferred function); INA 208(b)(3), 8 U.S.C. 1158(b)(3) (derivative asylum status).

Asylum applications are generally classified as ''affirmative'' or ''defensive'' applications, depending on the agency with which they are filed. If a noncitizen is physically present in the United States, not detained, and not in section 240 removal proceedings, the noncitizen may file an asylum application with USCIS. These applications are ''affirmative'' filings. Generally, if the noncitizen is in section 240 removal proceedings before an IJ, the noncitizen may apply for asylum before the IJ as a defense to removal.[44] These applications are ''defensive'' filings.

Noncitizens are eligible for asylum if they have been persecuted or have a well-founded fear of future persecution in their country of nationality or, if they have no nationality, their last habitual residence, on account of one of five protected grounds and are not subject to a bar to eligibility. *See generally* INA 208, 8 U.S.C. 1158; INA 101(a)(42), 8 U.S.C. 1101(a)(42). To be granted

invokes, does not authorize the President to impose the condition and limitation on asylum eligibility created by this rule. *Cf. United States ex rel. Knauff* v. *Shaughnessy,* 338 U.S. 537, 540–47 (1950) (holding that under the precursor to section 215(a)(1) of the INA and the presidential proclamation and regulations issued pursuant to that provision, which during times of national emergency made it unlawful for ''any alien to . . . enter or attempt to . . . enter the United States except under such reasonable rules, regulations, and orders, and subject to such limitations and exceptions as the President shall prescribe,'' the Attorney General could issue regulations governing entry during such an emergency to ''deny [certain noncitizens] a hearing . . . in special cases'' notwithstanding the ordinary exclusion hearing provisions governing entry). This does not mean, however, that the President could not invoke section 215(a) as authority to impose reasonable rules, regulations, and orders on asylum applicants and asylees, such as travel document requirements for re-entry and departure controls.

[44] The only exception is that USCIS has initial jurisdiction over asylum applications filed by a UC even where the applicant is in section 240 removal proceedings. INA 208(b)(3)(C), 8 U.S.C. 1158(b)(3)(C).

asylum, eligible noncitizens must also establish that they merit asylum in the exercise of discretion. *Id.* Noncitizens who are ineligible for a grant of asylum, or who are denied asylum based on the Attorney General's or the Secretary's discretion, may qualify for other forms of protection. An application for asylum submitted by a noncitizen in section 240 removal proceedings is also considered an application for statutory withholding of removal under section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3). *See* 8 CFR 1208.3(b), 1208.13(c)(1). An IJ also may consider a noncitizen's eligibility for statutory withholding of removal and CAT protection under regulations issued pursuant to the implementing legislation regarding the obligations of the United States under Article 3 of the CAT. FARRA sec. 2242(b) (codified at 8 U.S.C. 1231 note); 8 CFR 1208.3(b), 1208.13(c)(1); *see also* 8 CFR 1208.16(c), 1208.17.

Statutory withholding of removal and CAT protection preclude removing a noncitizen to any country where the noncitizen would ''more likely than not'' face persecution or torture, meaning that the noncitizen's life or freedom would be threatened because of a protected ground or that the noncitizen would be tortured. 8 CFR 1208.16(b)(2), (c)(2). Thus, if a noncitizen establishes that it is more likely than not that their life or freedom would be threatened because of a protected ground, but is denied asylum for some other reason, the noncitizen nonetheless may be entitled to statutory withholding of removal if not otherwise barred from that form of protection. INA 241(b)(3)(A), 8 U.S.C. 1231(b)(3)(A); 8 CFR 208.16, 1208.16. Likewise, a noncitizen who establishes that they more likely than not will face torture in their country of removal will qualify for CAT protection. *See* 8 CFR 208.16(c), 208.17(a), 1208.16(c), 1208.17(a).

In contrast to the more generous benefits available by attaining asylum, statutory withholding of removal and CAT protection do not: (1) prohibit the Government from removing the noncitizen to a third country where the noncitizen would not face the requisite likelihood of persecution or torture (even in the absence of an agreement with that third country); (2) create a path to lawful permanent resident status; or (3) afford the same ancillary benefits, such as derivative protection for family members. *See, e.g., Guzman Chavez,* 594 U.S. at 536 (''distinguish[ing] withholding-only relief from asylum'' on the ground that withholding does not preclude the Government from removing the noncitizen to a third country and does not provide the noncitizen any permanent right to remain in the United States); *Matter of A–K–,* 24 I&N Dec. 275, 279 (BIA 2007) (stating that ''the Act does not permit derivative withholding of removal under any circumstances''); INA 208(b)(3)(A), 8 U.S.C. 1158(b)(3)(A) (statutory provision allowing asylum status to be granted to accompanying or following-to-join spouse or children of a noncitizen granted asylum; no equivalent statutory or regulatory provision for individuals granted withholding or deferral of removal).

2. Expedited Removal and Screenings in the Credible Fear Process

In the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (''IIRIRA''), Public Law 104–208, div. C, 110 Stat. 3009, 3009–546, Congress established the expedited removal process. The process is applicable to certain noncitizens present or arriving in the United States (and, in the discretion of the Secretary, certain other designated classes of noncitizens) who are found to be inadmissible under either section 212(a)(6)(C) of the INA, 8 U.S.C. 1182(a)(6)(C), which renders inadmissible noncitizens who make certain material misrepresentations, or section 212(a)(7) of the INA, 8 U.S.C. 1182(a)(7), which renders inadmissible noncitizens who lack documentation requirements for admission. INA 235(b)(1)(A)(i), 8 U.S.C. 1225(b)(1)(A)(i). Upon being subject to expedited removal, such noncitizens may be ''removed from the United States without further hearing or review unless the [noncitizen] indicates either an intention to apply for asylum . . . or a fear of persecution.'' *Id.*

Congress created a screening process, known as ''credible fear'' screening, to identify potentially valid claims for asylum by noncitizens in expedited removal proceedings. The Departments have used the same screening process to identify potentially valid claims for statutory withholding of removal and CAT protection. If a noncitizen indicates a fear of persecution or torture, a fear of return, or an intention to apply for asylum during the course of the expedited removal process, DHS refers the noncitizen to a USCIS AO to determine whether the noncitizen has a credible fear of persecution or torture in the country of citizenship or removal. INA 235(b)(1)(A)(ii), (B), 8 U.S.C. 1225(b)(1)(A)(ii), (B); *see also* 8 CFR 235.3(b)(4). A noncitizen has a ''credible fear of persecution'' if ''there is a significant possibility, taking into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the officer, that the alien could establish eligibility for asylum.'' INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v). If the AO determines that the noncitizen does not have a credible fear of persecution or torture, the noncitizen may request that an IJ review that determination. *See* INA 235(b)(1)(B)(iii)(III), 8 U.S.C. 1225(b)(1)(B)(iii)(III); 8 CFR 208.30(g), 208.33(b)(2)(v), 1208.30(g).

If the AO (or an IJ reviewing the AO's decision) determines that a noncitizen has a credible fear of persecution or torture, USCIS can refer the noncitizen to an immigration court for adjudication of the noncitizen's claims in section 240 removal proceedings, 8 CFR 208.30(f), 8 CFR 1208.30(g)(2)(iv)(B), and the noncitizen may subsequently file a defensive asylum application with the court during those proceedings, *see* 8 CFR 1240.1(a)(1)(ii). Alternatively, USCIS can retain jurisdiction over the application for asylum for further consideration in an asylum merits interview. *See* 8 CFR 208.30(f). During an asylum merits interview, a positive credible fear determination is treated as the asylum application, and strict timelines thereafter govern the applicant's case before both USCIS and EOIR. *See* 8 CFR 208.2(a)(1)(ii), 208.3(a)(2), 208.4(b)(2), 208.9(a)(1), (e)(1)–(2), (g)(2), (i), 1240.17. The AO may grant asylum, subject to review within USCIS, where the noncitizen is eligible and warrants a grant as a matter of discretion. 8 CFR 208.14(b). If the noncitizen is not eligible or does not warrant a grant of asylum as a matter of discretion, the AO refers the application to EOIR. 8 CFR 208.14(c)(1). Where USCIS does not grant asylum, the AO's decision will also include a determination on eligibility for statutory withholding of removal and CAT protection based on the record before USCIS. 8 CFR 208.16(a), (c)(4).

For cases referred to EOIR following an asylum merits interview, the written record of the positive credible fear determination serves as the asylum application, 8 CFR 1240.17(e), and the record the AO developed during the asylum merits interview, as supplemented by the parties, serves as the record before the IJ, 8 CFR 1240.17(c), (f)(2)(i)(A)(*1*), (f)(2)(ii)(B). The IJ reviews applications for asylum de novo and also reviews applications for statutory withholding of removal and CAT protection de novo where USCIS found the noncitizen ineligible for such protection. 8 CFR 1240.17(i)(1). However, where USCIS found the noncitizen eligible for statutory withholding of removal or CAT

protection, IJs must give effect to USCIS's eligibility determination unless DHS demonstrates, through evidence or other testimony that specifically pertains to the noncitizen and was not in the record of proceedings for the asylum merits interview, that the noncitizen is not eligible for such protection. 8 CFR 1240.17(i)(2). With a limited exception, DHS may not appeal the grant of any protection for which the AO determined the noncitizen eligible. *Id.*

3. Lawful Pathways Condition on Asylum Eligibility

On March 20, 2020, the Director of the Centers for Disease Control and Prevention (''CDC'') issued an order under 42 U.S.C. 265 and 268 suspending the introduction of certain noncitizens from foreign countries or places where the existence of a communicable disease creates a serious danger of the introduction of such disease into the United States and the danger is so increased by the introduction of persons from the foreign country or place that a temporary suspension of such introduction is necessary to protect the public health.[45] The CDC's Title 42 public health Order was extended multiple times.[46] While the Title 42 public health Order was in effect, noncitizens who did not have proper travel documents were generally not processed into the United States; they were instead expelled to Mexico or to their home countries under the Order's authority without being processed under the authorities set forth in title 8 of the United States Code, which includes the INA. Circumvention of Lawful Pathways, 88 FR 11704, 11705 (Feb. 23, 2023) (''Circumvention of Lawful Pathways NPRM''). In early 2023, the President announced that the Administration expected to end the public health emergency on May 11, 2023, which would cause the then-operative Title 42 public health Order to end. *See id.* at 11708.

As the Departments stated in the Circumvention of Lawful Pathways rule, absent further action, the end of the Title 42 public health Order was expected to cause encounters with noncitizens seeking to enter the United States at the SWB to rise to or remain at all-time highs—as high as 11,000 migrants daily. 88 FR at 31331, 31315. And many of these individuals would be entitled to remain in the United States pending resolution of their asylum and protection claims. *See* INA 235(b)(1)(B)(ii), 8 U.S.C. 1225(b)(1)(B)(ii) (not allowing for removal of those found to have a credible fear pending further consideration of the asylum claim); *see also* 88 FR at 31363 (noting that ''most non-Mexicans processed for expedited removal under Title 8 would likely establish credible fear and remain in the United States for the foreseeable future''). The Departments thus faced a looming urgent situation: absent policy change, the end of the Title 42 public health Order was expected to result in many more migrants crossing the border and asserting claims of fear or seeking protection, which would in turn exceed the border security and immigration systems' capacity to process migrants in a safe, expeditious, and orderly way. *See* 88 FR at 31363. To address this expected increase in the number of migrants at the SWB and adjacent coastal borders seeking to enter the United States without authorization, the Departments promulgated the Circumvention of Lawful Pathways rule. *See* 88 FR 31314.

The Circumvention of Lawful Pathways rule, which became effective on its public inspection date, May 11, 2023, *id.,* and applies to those who enter during a two-year period, imposes a rebuttable presumption of asylum ineligibility on certain noncitizens who fail to pursue safe, orderly, and lawful processes for entry into the United States or seek protection in another qualifying country through which they traveled. 8 CFR 208.33(a), 1208.33(a). The rebuttable presumption applies to noncitizens who enter the United States from Mexico at the SWB or adjacent coastal borders without documents sufficient for lawful admission where the entry is: (1) between May 11, 2023, and May 11, 2025; (2) subsequent to the end of implementation of the Title 42 public health Order issued on August 2, 2021, and related prior orders issued pursuant to the authorities in 42 U.S.C. 265 and 268 and the implementing regulation at 42 CFR 71.40; and (3) after the noncitizen traveled through a country other than their country of citizenship, nationality, or, if stateless, last habitual residence, that is a party to the Refugee Convention or Refugee Protocol. 8 CFR 208.33(a)(1), 1208.33(a)(1).

The presumption does not apply to UCs or to noncitizens who availed themselves of or were traveling with a family member who availed themselves of certain safe, orderly, and lawful pathways—specifically those who (1) received appropriate authorization to travel to the United States to seek parole, pursuant to a DHS-approved parole process; (2) presented at a POE pursuant to a pre-scheduled time and place or presented at a POE without a pre-scheduled time and place but who can demonstrate by a preponderance of the evidence that it was not possible to access or use the DHS scheduling system due to language barrier, illiteracy, significant technical failure, or other ongoing and serious obstacle; or (3) sought asylum or other protection in a country through which the noncitizen traveled and received a final decision denying that application. 8 CFR 208.33(a)(2), 1208.33(a)(2). Noncitizens may also overcome the presumption by demonstrating by a preponderance of the evidence that ''exceptionally compelling circumstances exist.'' 8 CFR 208.33(a)(3)(i), 1208.33(a)(3)(i). Such circumstances necessarily exist where, at the time of entry, the noncitizen or a family member with whom the noncitizen is traveling: (1) faced an acute medical emergency; (2) faced an imminent and extreme threat to life or safety, such as an imminent threat of rape, kidnapping, torture, or murder; or (3) was a victim of a severe form of trafficking in persons under 8 CFR 214.11(a). 8 CFR 208.33(a)(3)(i)(A)–(C), (ii), 1208.33(a)(3)(i)(A)–(C), (ii). A noncitizen presumed ineligible for asylum under the rule may still apply for statutory withholding of removal or CAT protection and thus may not be removed to a country where it is more likely than not that they will be persecuted because of a protected ground or tortured.

The condition on asylum eligibility in the Circumvention of Lawful Pathways rule (''Lawful Pathways condition'') applies to asylum applications before USCIS and EOIR. 8 CFR 208.13(f), 1208.13(f). It also applies during credible fear screenings. 8 CFR 208.33(b), 1208.33(b). Noncitizens subject to expedited removal who indicate a fear of persecution or an intention to apply for asylum are currently first screened to assess whether the rebuttable presumption applies and, if so, whether the noncitizen is able to rebut the presumption. 8 CFR 208.33(b). If the AO

[45] CDC, Order Under Sections 362 & 365 of the Public Health Services Act (42 U.S.C. 265, 268): Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists (Mar. 20, 2020), *https://www.cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons_Final_3-20-20_3-p.pdf.*

[46] *See* Public Health Determination and Order Regarding Suspending the Right to Introduce Certain Persons From Countries Where a Quarantinable Communicable Disease Exists, 87 FR 19941, 19941–42 (Apr. 6, 2022) (describing the CDC's recent Title 42 public health Orders, which ''suspend[ed] the right to introduce certain persons into the United States from countries or places where the quarantinable communicable disease exists in order to protect the public health from an increased risk of the introduction of COVID–19'').

determines that the rebuttable presumption does not apply or the noncitizen has rebutted the presumption, the general procedures governing the credible fear process then apply. *See* 8 CFR 208.33(b)(1)(ii). On the other hand, if the AO determines that the noncitizen is covered by the rebuttable presumption and no rebuttal ground applies, the AO will consider whether the noncitizen has established a reasonable possibility of persecution or torture with respect to the identified country or countries of removal. *See* 8 CFR 208.33(b)(1)(i), (b)(2). The Circumvention of Lawful Pathways rule currently provides that, if a noncitizen has established a reasonable possibility of persecution or torture, then DHS will issue a notice to appear (''NTA'') to commence section 240 removal proceedings and may not refer the case to the asylum merits interview process. 8 CFR 208.33(b)(2)(ii).

Where a noncitizen requests review by an IJ, the IJ reviews the negative credible fear finding de novo. *See* 8 CFR 1208.33(b). If the IJ determines that the noncitizen has made a sufficient showing that the rebuttable presumption does not apply to them or that they can rebut the presumption, and that the noncitizen has established a significant possibility of eligibility for asylum, statutory withholding of removal, or CAT protection, the IJ issues a positive credible fear finding and the case proceeds under existing procedures. *See* 8 CFR 208.33(b)(2)(v)(A), 1208.33(b)(2)(i). If the IJ determines that the noncitizen is covered by the rebuttable presumption and it has not been rebutted, but the noncitizen has established a reasonable possibility of persecution or torture, the IJ issues a positive credible fear finding and DHS will issue an NTA to commence section 240 removal proceedings. 8 CFR 208.33(b)(2)(v)(B), 1208.33(b)(2)(ii). And finally, if the IJ issues a negative credible fear determination, the case is returned to DHS for removal of the noncitizen. *See* 8 CFR 208.33(b)(2)(v)(C), 1208.33(b)(2)(ii). In such a circumstance, the noncitizen may not appeal the IJ's decision or request that USCIS reconsider the AO's negative determination, although USCIS may, in its sole discretion, reconsider a negative determination. *See* 8 CFR 208.33(b)(2)(v)(C).

A noncitizen who has not established during expedited removal proceedings a significant possibility of eligibility for asylum because of the Lawful Pathways condition may, if placed in section 240 removal proceedings, apply for asylum, statutory withholding of removal, or CAT protection, or any other form of relief or protection for which the noncitizen is eligible. *See* 8 CFR 1208.33(b)(4). Where a principal asylum applicant in section 240 removal proceedings is eligible for statutory withholding of removal or withholding of removal under the CAT and would be granted asylum but for the rebuttable presumption, and where either an accompanying spouse or child does not independently qualify for asylum or other protection from removal or the principal asylum applicant has a spouse or child who would be eligible to follow to join that applicant, the presumption shall be deemed rebutted as an exceptionally compelling circumstance. 8 CFR 1208.33(c).

B. Justification

1. Global Migration at Record Levels

Border encounters in the 1980s, 1990s, and 2000s consisted overwhelmingly of single adults from Mexico, most of whom were migrating for economic reasons.[47] Beginning in the 2010s, a growing share of migrants were from northern Central America [48] and, since the late 2010s, from countries throughout the Americas.[49] Since 2010, the makeup of border crossers has significantly changed, expanding from Mexican single adults to single adults and families from the northern Central American countries, and now to single adults and families from throughout the hemisphere (and beyond). Those encountered also have been more likely to seek asylum and other forms of relief or protection, straining the Departments' capacity to process individuals through expedited removal.[50]

In the early 2010s, U.S. Border Patrol (''USBP'') encounters along the SWB reached modern lows, averaging fewer than 400,000 per year from 2011 to 2018. *See* 88 FR at 11708. This followed decades during which annual USBP encounters routinely numbered in the millions; however, the overall share of those who were processed for expedited removal and claimed a fear never exceeded 2 percent until 2011. *Id.* at 11708, 11716. Despite these historically low encounter numbers, the Departments faced significant challenges in 2014 due to an unprecedented surge in migration by UCs and in 2016 due to a surge in family units at the border—demographics that present unique challenges due to their vulnerability.[51]

From FY 2017 to FY 2019, however, encounters between the POEs along the SWB more than doubled, to more than 850,000, and—following a significant drop during the beginning of the COVID–19 pandemic—continued to increase in FY 2021 and FY 2022.[52] In FY 2021, USBP encounters between POEs along the SWB reached a level not seen since the early 2000s—over 1.6 million.[53] In FY 2022, encounters at the

[47] *See* 88 FR at 11708. According to OHSS Persist data and historic Office of Immigration Statistics (''OIS'') Yearbooks of Immigration Statistics, Mexican nationals accounted for 87 to over 99 percent of apprehensions between POEs of persons entering without inspection between 1981 and 2010. *See* March 2024 OHSS Persist Dataset; *see, e.g.,* INS, *1981 Statistical Yearbook of the Immigration and Naturalization Service* 119 tbl. 53 (1981); INS, *1999 Statistical Yearbook of the Immigration and Naturalization Service* 208–11 tbl. 56 (Mar. 2002), *https://www.dhs.gov/sites/default/files/publications/Yearbook_Immigration_Statistics_1999.pdf.* For more information about Mexican migrants' demographics and economic motivations during some of that time period, see Jorge Durand et al., *The New Era of Mexican Migration to the United States,* 86 J. Am. Hist. 518, 525–27, 530–31, 535–36 (1999).

[48] Northern Central America refers to El Salvador, Guatemala, and Honduras. 88 FR at 11708 n.35.

[49] According to OHSS Persist data, Mexican nationals continued to account for 89 percent of total CBP SWB encounters in FY 2010, with northern Central Americans accounting for 8 percent and all other nationalities accounting for 3 percent. March 2024 OHSS Persist Dataset. Northern Central Americans' share of total CBP SWB encounters increased to 21 percent by FY 2012 and averaged 48 percent from FY 2014 to FY 2019, the last full year before the start of the COVID–19 pandemic. *Id.* Nationals from all other countries except Mexico and the northern Central American countries accounted for an average of 5 percent of total CBP SWB encounters from FY 2010 to FY 2013, and for 10 percent of total encounters from FY 2014 to FY 2019. *Id.* This transition has accelerated since the start of FY 2021, as Mexican nationals accounted for approximately 32 percent of total CBP SWB encounters in FY 2021 through March 2024, including roughly 29 percent in the first six months of FY 2024; northern Central Americans accounted for roughly 25 percent from FY 2021 through March 2024 (20 percent in FY 2024 through March 2024); and all other countries accounted for roughly 42 percent from FY 2021 through March 2024, including roughly 51 percent of FY 2024 encounters through March 2024. *Id.*

[50] For noncitizens encountered at the SWB from FY 2014 to FY 2019 who were placed in expedited removal proceedings, roughly 6 percent of Mexican nationals made fear claims that were referred to USCIS for determination compared to roughly 57 percent of people from northern Central America and 90 percent of all other nationalities. OHSS analysis of Enforcement Lifecycle data as of December 31, 2023; *see also* 88 FR at 11709 n.37.

[51] Decl. of Blas Nuñez-Neto ¶ 6, *E. Bay Sanctuary Covenant* v. *Biden,* No. 18–cv–6810 (N.D. Cal. June 16, 2023) (Dkt. 176–2).

[52] OHSS analysis of March 2024 OHSS Persist Dataset; *see also* OHSS, *Immigration Enforcement and Legal Processes Monthly Tables, https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables* (last updated May 10, 2024) (providing historic data on SWB encounters).

[53] OHSS analysis of March 2024 OHSS Persist Dataset; *see also* OHSS, *Immigration Enforcement and Legal Processes Monthly Tables, https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables* (last updated May 10, 2024) (providing historic data on SWB encounters).

SWB reached a new high-water mark, with total USBP encounters exceeding 2.2 million.[54] FY 2023 saw a slight drop, but USBP encounters remained high—over 2.0 million.[55] By early 2023, while the Title 42 public health Order was in place, total encounters at the SWB—referring to the number of times U.S. officials encountered noncitizens attempting to cross the SWB without authorization to do so either between or at POEs—had reached all-time highs.[56] This dramatic increase in encounters has coincided with a substantial and—setting aside the period of time when the Title 42 public health Order was in effect—persistent increase in the number of noncitizens making fear claims in recent years. *See* 88 FR at 11716.[57] In 2019—prior to the implementation of the Title 42 public health Order—44 percent of noncitizens encountered at the SWB placed in expedited removal proceedings claimed fear, resulting in 98,000 credible fear screenings. *Id.* The number of fear claims returned to these historically high levels after the Title 42 public health Order ended. From May 2023 through March 2024, approximately 54 percent of noncitizens encountered at and between SWB POEs who were subject to expedited removal claimed fear (approximately 169,000 fear claims out of 315,000 noncitizens processed for expedited removal, excluding cases processed for expedited removal but reprocessed into other dispositions by ICE).[58] These high numbers of both encounters and fear claims combine to further compound the significant stress on the immigration system.

Much of this growth in encounters was driven by nationalities that DHS had never before encountered in large numbers at the border—including nationals of countries such as Brazil, Colombia, Cuba, Ecuador, Haiti, Nicaragua, Peru, and Venezuela, as well as migrants from Eastern Hemisphere countries.[59] Because of this, DHS has had to undertake a focused diplomatic effort, working closely with the Department of State, to enter into commitments with countries to facilitate the return of their nationals. However, despite this concerted effort, it remains difficult for DHS to repatriate nationals of some of these countries who do not establish a legal basis to remain in the United States, including those from the Eastern Hemisphere—substantially limiting DHS's ability to impose consequences on those nationals.[60]

Overall, countries other than Mexico and the northern Central American countries of El Salvador, Guatemala, and Honduras accounted for 43 percent of total SWB encounters from January 2021 to March 2024—including 51 percent of total SWB encounters in FY 2023 and in the first two quarters of FY 2024—up from 10 percent from FY 2014 to December 2020.[61] Encounters of Mexican nationals have fallen to 29 percent of total SWB encounters during this time frame—an enormous change from historical trends that has sweeping ramifications for the border and immigration system, which are detailed below.[62]

The increase in migration at the SWB is consistent with global and regional trends. Over the past three years, migration around the world has reached levels not seen since World War II.[63] The Western Hemisphere is no exception and has been facing historic levels of migration that have severely strained the immigration systems of countries throughout the region.[64] There is a growing consensus within the region that this shared challenge cannot be solved without collective action—a consensus reflected by the 22 countries that have supported the Los Angeles Declaration on Migration and Protection, which proposes a comprehensive approach to managing migration throughout the region.[65]

[54] OHSS analysis of March 2024 OHSS Persist Dataset; *see also* OHSS, *Immigration Enforcement and Legal Processes Monthly Tables, https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables* (last updated May 10, 2024) (providing historic data on SWB encounters).

[55] OHSS analysis of March 2024 OHSS Persist Dataset; *see also* OHSS, *Immigration Enforcement and Legal Processes Monthly Tables, https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables* (last updated May 10, 2024) (providing historic data on SWB encounters).

[56] OHSS analysis of March 2024 OHSS Persist Dataset; *see also* OHSS, *Immigration Enforcement and Legal Processes Monthly Tables, https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables* (last updated May 10, 2024) (providing historic data on SWB encounters). During the initial seven months of FY 2023, while the Title 42 public health Order was still in effect, total CBP encounters surged to an all-time high of 1.4 million—an 11 percent increase over the same period in FY 2022 and nearly double the encounters recorded in FY 2021 for the same time period.

[57] The percentage of noncitizens encountered at and between SWB POEs processed for expedited removal who made fear claims steadily rose from 16 percent in FY 2013 to 44 percent in FY 2019, experienced a temporary dip in FY 2020 at the start of the Title 42 public health Order, and then resumed an upward trajectory, reaching a peak of 59 percent in FY 2023, marking the highest level of fear claims as a share of the SWB expedited removal population ever recorded. *See* OHSS Enforcement Lifecycle as of December 31, 2023; March 2024 OHSS Persist Dataset. Data on the exact number of noncitizens encountered at the SWB processed for expedited removal who made fear claims is not available for years prior to FY 2013, but OHSS estimates that about 84 percent of all fear claims made in prior years were made by noncitizens encountered at and between SWB POEs. Even if 100 percent of fear claims made before FY 2013 were made by noncitizens encountered at the SWB, the level of fear claims as a share of SWB encounters at and between POEs processed for expedited removal in 2023 would be the highest ever.

[58] OHSS analysis of data downloaded from CBP UIP on April 2, 2024.

[59] Nationals from all countries other than Mexico and the northern Central American countries accounted for less than 5 percent of total CBP SWB encounters each year between FY 1981 and FY 2010, an average of 5 percent of SWB encounters from FY 2010 to FY 2013, and 10 percent of total SWB encounters from FY 2014 to FY 2019. The increase in encounters from these new countries of origin has accelerated since the start of FY 2021, as non-Mexican, non-northern Central American countries accounted for 42 percent of encounters from the start of FY 2021 through the second quarter of FY 2024, including 51 percent of FY 2024 encounters through March 2024. OHSS analysis of historic OIS *Yearbooks of Immigration Statistics* and March 2024 OHSS Persist Dataset; *see also* OHSS, *Immigration Enforcement and Legal Processes Monthly Tables, https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables* (last updated May 10, 2024) (''SW Border Encounters by Citizenship'').

[60] *See* 88 FR at 11708–11.

[61] March 2024 OHSS Persist Dataset; *see also* OHSS, *Immigration Enforcement and Legal Processes Monthly Tables, https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables* (last updated May 10, 2024) (''CBP SW Border Encounters by Agency and Selected Citizenship'').

The application of title 42 authorities at the SWB also altered migratory patterns, in part by incentivizing individuals who were expelled—without being issued a removal order, which, unlike a title 42 expulsion, carries immigration consequences—to try to re-enter, often multiple times. *See* 88 FR at 11709. The majority of repeat encounters were of Mexican and northern Central American nationals, who were much more likely than others to be expelled to the Mexican side of the U.S.-Mexico border—between FY 2020 and FY 2023, 72 percent of Mexican and 50 percent of northern Central American encounters at and between SWB POEs resulted in title 42 expulsion, contrasting sharply with 8 percent of non-Mexican and non-northern Central American encounters experiencing similar outcomes. March 2024 OHSS Persist Dataset; *see also* OHSS, *Immigration Enforcement and Legal Processes Monthly Tables, https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables* (last updated May 10, 2024) (''CBP SW Border Encounters Book-Outs by Selected Citizenship'').

Even accounting for increased repeat encounters, unique encounters at and between SWB POEs also hit all-time highs in each year from FY 2021 to FY 2023. Nationals of countries other than Mexico and the northern Central America countries account for an even larger share of the growth in unique encounters, comprising 51 percent of unique encounters from January 2021 to March 2024, up from 9 percent in FY 2014 to December 2020. March 2024 OHSS Persist Dataset.

[62] March 2024 OHSS Persist Dataset.

[63] Decl. of Blas Nuñez-Neto ¶ 2, *M.A.* v. *Mayorkas,* No. 23–cv–1843 (D.D.C. Oct. 27, 2023) (Dkt. 53–1).

[64] *See* 88 FR at 11710–11.

[65] *See* The White House, *Los Angeles Declaration on Migration and Protection* (June 10, 2022), *https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/10/los-angeles-declaration-on-migration-and-protection/.*

As it prepared for the return to title 8 processing of all noncitizens, DHS led a comprehensive, all-of-government planning and preparation effort that lasted more than 18 months.[66] This included record deployments of personnel, infrastructure, and resources to support DHS's frontline personnel at a substantial cost to other DHS operations.[67] This effort also included the development and implementation of policy measures, including the joint DHS and DOJ Circumvention of Lawful Pathways rule and complementary measures, which were critically important components of DHS preparations to manage the anticipated significant influx of migrants associated with the end of the Title 42 public health Order's application at the border.[68] And the United States Government's efforts were complemented by a range of measures taken by foreign partners in the region, such as Mexico's independent decision to continue to accept the return of certain non-Mexican migrants after May 11, 2023,[69] and campaigns by Colombia and Panama to attack smuggling networks operating in the Darién Gap.[70]

The Circumvention of Lawful Pathways rule has strengthened the consequences in place for those who cross the border irregularly and is a critical component of the Government's regional strategy. DHS has also put in place complementary measures to streamline expedited removal processing to more quickly apply consequences to those who fail to use lawful pathways. These measures include holding noncitizens processed for expedited removal for the pendency of their credible fear interviews in CBP facilities to maximize the use of expedited removal and limit noncitizens absconding;[71] changing the consultation period such that credible fear interviews take place no earlier than 24 hours after the noncitizen's acknowledgement of receipt of information explaining the credible fear process;[72] returning certain third-country nationals to Mexico, consistent with established processes under the INA;[73] permitting certain non-Mexican citizens to withdraw their application for admission and voluntarily return to Mexico;[74] and increasing USCIS's capacity to train and prepare additional staff temporarily detailed as AOs to conduct credible fear interviews.[75] These measures, combined with existing processes and resources and work with regional and international partners to disrupt irregular migration and smuggling networks, seek to form a comprehensive framework for managing migratory flows to the border—one that seeks to disincentivize noncitizens from putting their lives in the hands of callous smugglers by crossing the SWB between POEs and to incentivize noncitizens to use lawful, safe, and orderly pathways and processes instead.

Without the Circumvention of Lawful Pathways rule and complementary measures, DHS assesses that irregular migration at the border would be substantially higher today. DHS saw evidence of very high levels of irregular migration in the days leading up to the end of the Title 42 public health Order on May 11, 2023.[76] A historic surge in migration culminated with what were then the highest recorded encounter levels in U.S. history over the days immediately preceding May 11, which placed a significant strain on DHS's operational capacity at the border.[77] Encounters between POEs almost doubled from an average of approximately 4,900 per day the week ending April 11, 2023, to an average of approximately 9,500 per day the week ending May 11, 2023, including an average of approximately 10,000 encounters immediately preceding the termination of the Title 42 public health Order (from May 8 to May 11).[78] The sharp increase in encounters between POEs during the 30 days preceding May 11 represented the largest month-over-month increase in almost two decades—since January 2004.[79]

As a consequence of the elevated flows USBP experienced in the days leading up to the end of the Title 42 public health Order, USBP saw a steady increase in the numbers of noncitizens in custody, leading to significant operational challenges.[80] From May 8 to 11, 2023, USBP's daily in-custody average was approximately 27,000 noncitizens, with a single-day peak of approximately 28,500 on May 10—well above its holding capacity at that time of approximately 18,500.[81] During this same time frame, eight out of nine SWB sectors were over their holding capacity—with four sectors (El Centro, El Paso, Rio Grande Valley, and Yuma) at more than 50 percent over their holding capacity and one sector (Tucson) at more than two-and-a-half times over its holding capacity.[82]

This record number of encounters between POEs severely strained DHS operations and resources, as well as the resources of other Federal Government agencies, local communities, and non-governmental organizations (''NGOs'').[83] CBP redirected limited resources from other mission needs—in particular, legitimate travel and trade operations, the volume of which by that time had surpassed pre-pandemic levels—to focus on processing apprehended noncitizens.[84] Overcrowding in CBP facilities increased the potential for health and safety risks to noncitizens, Government personnel, and contract support staff. Such risks were exacerbated by an increase in the average time in custody, which generally occurs when there are large numbers of noncitizens in custody who must be processed.[85] To manage these conditions, USBP sectors redirected personnel from the field to perform tasks for noncitizens in custody, including processing, transporting, and escorting noncitizens.[86] This, in turn, decreased USBP's ability to respond to noncitizens avoiding detection, other agency calls for assistance, and noncitizens in distress.[87]

The surge in encounters between POEs immediately preceding the end of the Title 42 public health Order also led

[66] Decl. of Blas Nuñez-Neto ¶ 8, *E. Bay Sanctuary Covenant* v. *Biden,* No. 18–cv–6810 (N.D. Cal. June 16, 2023) (Dkt. 176–2).

[67] *Id.*

[68] *Id.*

[69] The White House, *Mexico and United States Strengthen Joint Humanitarian Plan on Migration* (May 2, 2023), *https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/02/mexico-and-united-states-strengthen-joint-humanitarian-plan-on-migration/.*

[70] Decl. of Blas Nuñez-Neto ¶ 40, *M.A.* v. *Mayorkas,* No. 23–cv–1843 (D.D.C. Oct. 27, 2023) (Dkt. 53–1).

[71] *Id.* ¶ 5.

[72] *Id.*

[73] *See, e.g.,* The White House, *Mexico and United States Strengthen Joint Humanitarian Plan on Migration* (May 2, 2023), *https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/02/mexico-and-united-states-strengthen-joint-humanitarian-plan-on-migration/* (noting the United States and Mexico's commitment to increase joint actions to counter human smugglers and traffickers, address root causes of migration, and continue to combine expanded lawful pathways with consequences for irregular migration, and noting that Mexico will continue to accept back migrants on humanitarian grounds).

[74] Decl. of Blas Nuñez-Neto ¶ 5, *M.A.* v. *Mayorkas,* No. 23–cv–1843 (D.D.C. Oct. 27, 2023) (Dkt. 53–1).

[75] *Id.*

[76] Decl. of Blas Nuñez-Neto ¶ 9, *E. Bay Sanctuary Covenant* v. *Biden,* No. 18–cv–6810 (N.D. Cal. June 16, 2023) (Dkt. 176–2); Decl. of Matthew J. Hudak ¶ 11, *Florida* v. *Mayorkas,* No. 22–cv–9962 (N.D. Fla. May 12, 2023) (Dkt. 13–1).

[77] Decl. of Blas Nuñez-Neto ¶ 9, *E. Bay Sanctuary Covenant* v. *Biden,* No. 18–cv–6810 (N.D. Cal. June 16, 2023) (Dkt. 176–2).

[78] *Id.*

[79] *Id.*

[80] *Id.* ¶ 10.

[81] *Id.*

[82] *Id.*

[83] *Id.* ¶ 11.

[84] *Id.*

[85] *Id.*

[86] *Id.*

[87] *Id.*

to significant challenges for local border communities.[88] For example, in the days leading up to May 11, 2023, local community resources in El Paso, Texas, were quickly overwhelmed as the number of noncitizens arriving in the United States surpassed the city's capacity.[89] In anticipation of an influx of noncitizens arriving to the city—an influx that ultimately materialized—the city declared a state of emergency, as more than 1,000 noncitizens were sleeping on the sidewalks and left without shelter.[90] Similarly, the cities of Brownsville and Laredo, Texas, declared states of emergency to allow them to seek additional resources to bolster their capacities.[91] The surge in encounters also placed strain on interior cities. In May 2023, for instance, New York's Governor declared a State Disaster Emergency.[92]

Since their implementation in May 2023, the Circumvention of Lawful Pathways rule and complementary measures have helped DHS to better manage migratory flows. Between May 12, 2023, and March 31, 2024, CBP placed into expedited removal more than 970 individuals encountered at and between POEs each day on average, and USCIS conducted a record number of credible fear interviews (more than 152,000) resulting from such cases. This is more interviews from SWB encounters at and between POEs during the span of ten and a half months than in any full fiscal year prior to 2023, and more than twice as many as the annual average from FY 2010 to FY 2019.[93] On average, since May 12, 2023, USCIS has completed approximately 3,300 cases each week, more than double its average weekly completed cases from FY 2014 to FY 2019.[94] In addition, in FY 2023, IJs conducted over 38,000 credible fear and reasonable fear reviews, the highest figure on record since at least 2000.[95] These efforts have significantly reduced the median time to process credible fear cases. Since May 12, 2023, the median time to refer noncitizens claiming a fear for credible fear interviews decreased by 77 percent from its historical average, from 13 days in the FY 2014 to FY 2019 pre-pandemic period to 3 days in the four weeks ending March 31, 2024; for those who receive negative fear determinations, the median time from encounter to removal, in the same time frames, decreased by 85 percent from 73 days to 11 days.[96]

The increase in referrals into expedited removal proceedings, combined with the streamlining of the process, has had tangible results. From May 12, 2023, to March 31, 2024, DHS removed more than 662,000 individuals—more removals than in any full fiscal year since 2013 and an indication that the increased efficiencies gained through these measures have enabled DHS to swiftly impose immigration consequences when individuals do not establish a legal basis to remain in the United States.[97] Over the first six months immediately following May 12, 2023, DHS saw a significant decrease in border encounters between POEs. After peaking at 9,700 per day in the seven days just before the end of the Title 42 public health Order, daily SWB encounters between POEs decreased by 45 percent to an average of 5,200 per day for the period from May 12, 2023, to November 30, 2023.[98] While this months-long trend included variability over shorter periods, border encounters between POEs remained below the levels projected to occur in the absence of the Circumvention of Lawful Pathways rule and complementary measures.[99]

While the Circumvention of Lawful Pathways rule and complementary measures have yielded demonstrable results, the resources provided to the Departments still have not kept pace with irregular migration.

After months of relatively lower encounter levels between POEs following the changes put in place after May 11, 2023, encounter levels increased through the fall of 2023,[100] and December 2023 saw the highest levels of encounters between POEs in history, including a surge in which border encounters between POEs exceeded 10,000 for three consecutive days and averaged more than 8,000 a day for the month.[101] That surge in migration was focused increasingly on western areas of the border—California and Arizona—that had not been the focal point of migration over the prior two years, and in areas that are geographically remote and challenging to respond to. For instance, the Tucson sector's average full-year encounter total for the pre-pandemic period (FY 2014 to FY 2019) was approximately 62,000; by contrast, in November and December of 2023, the sector recorded approximately 64,000 and 80,000 encounters, respectively.[102] And while the number of encounters between POEs since December 2023 has decreased, consistent with seasonal migration flows and as a result of increased enforcement, they still remain at historically high levels—USBP encounters from January 2024 to March 2024 are just 5 percent below the levels

[88] *Id.* ¶ 12.

[89] *Id.*

[90] *Id.*

[91] *Id.*

[92] *See* N.Y. Exec. Order No. 28, Declaring a Disaster Emergency in the State of New York (May 9, 2023), *https://www.governor.ny.gov/executive-order/no-28-declaring-disaster-emergency-state-new-york; see also* Mayor of Chicago Emergency Exec. Order No. 2023–2 (May 9, 2023).

[93] Pre-May 12, 2023, data from OHSS Lifecycle Dataset; post-May 11, 2023, data from OHSS analysis of data downloaded from UIP on April 2, 2024.

[94] Completed cases are those with credible fear interviews that have been adjudicated or that have been closed. Pre-May 12, 2023, data from OHSS Lifecycle Dataset; post-May 11, 2023, data from OHSS analysis of data downloaded from UIP on April 2, 2024.

[95] EOIR, *Adjudication Statistics: Credible Fear and Reasonable Fear Review Decisions* (Apr. 27, 2023), *https://www.justice.gov/eoir/media/1344816/dl?inline.*

[96] Historic processing times are based on OHSS Enforcement Lifecycle data as of December 31, 2023; post-May 12 estimates are based on OHSS analysis of operational CBP, ICE, USCIS, and DOJ/EOIR data downloaded from UIP on April 2, 2024. Encounter-to-removal cases include noncitizens removed after being placed in expedited removal proceedings, claiming fear, and receiving a negative fear determination or an administrative closure that is not referred to EOIR. Comparisons to the pandemic period are not relevant because many noncitizens who normally would have been referred for expedited removal processing were instead expelled under title 42 authority.

[97] OHSS analysis of data downloaded from UIP on April 2, 2024; *see* OHSS, *Immigration Enforcement and Legal Processes Monthly Tables, https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables* (last updated May 10, 2024); OHSS, *2022 Yearbook of Immigration Statistics* 103–04 tbl. 39 (Nov. 2023), *https://www.dhs.gov/sites/default/files/2023-11/2023_0818_plcy_yearbook_immigration_statistics_fy2022.pdf* (noncitizen removals, returns, and expulsions for FY 1892 to FY 2022).

[98] Pre-May 12, 2023, data from March 2024 OHSS Persist Dataset; post-May 11, 2023, data from OHSS analysis of data downloaded from UIP on December 12, 2023.

[99] Decl. of Blas Nuñez-Neto ¶ 4, *E. Bay Sanctuary Covenant* v. *Biden,* No. 18–cv–6810 (N.D. Cal. June 16, 2023) (Dkt. 176–2) (noting that in the absence of the rule, DHS planning models suggest that irregular migration could meet or exceed the levels that DHS recently experienced in the days leading up to the end of the Title 42 public health Order).

[100] *See* CBP, *Southwest Land Border Encounters, https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters* (last visited May 27, 2024) (providing monthly figures for 2021 to 2024).

[101] OHSS analysis of March 2024 OHSS Persist Dataset; *see also* OHSS, *Immigration Enforcement and Legal Processes Monthly Tables, https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables* (last updated May 10, 2024); OHSS, *2022 Yearbook of Immigration Statistics* 103–04 tbl. 39 (Nov. 2023), *https://www.dhs.gov/sites/default/files/2024-02/2023_0818_plcy_yearbook_immigration_statistics_fy2022.pdf;* -Priscilla Alvarez, *Authorities Encountering Record Number of Migrants at the Border Each Day Amid Unprecedented Surge,* CNN (Dec. 22, 2023), *https://www.cnn.com/2023/12/22/politics/border-surge-record-amounts/index.html.*

[102] *See* March 2024 OHSS Persist Dataset; *see also* OHSS, *Immigration Enforcement and Legal Processes Monthly Tables, https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables* (last updated May 10, 2024) (''SW Border Encounters by Sector'').

reached during the same months in 2023,[103] while some USBP sectors, such as Tucson and San Diego, have seen increases of 83 percent and 62 percent, respectively, from the second quarter of FY 2023, and Tucson is on pace for an all-time high number of annual encounters.[104]

Since the lifting of the Title 42 public health Order, then, it has become increasingly clear that DHS's ability to process individuals encountered at the SWB under applicable title 8 authorities—including, critically, to deliver timely consequences to a meaningful proportion of those who do not establish a legal basis to remain in the United States—is significantly limited by the lack of resources and tools available to the Departments. In response to the record high levels of encounters between POEs in December 2023, DHS had to take extraordinary steps to shift personnel and resources to the affected sectors: CBP curtailed or suspended operations at a number of POEs, and, just before December 25, 2023, CBP reassigned 246 officers to support USBP operations. As part of these extraordinary measures: vehicular traffic through the Eagle Pass, Texas, POE was suspended on November 27, 2023; the POE in Lukeville, Arizona, was closed on December 4, 2023; rail operations at POEs in El Paso and Eagle Pass, Texas, were suspended on December 18, 2023; [105] the Morley Gate POE in Nogales, Arizona, which was closed due to construction and slated to be reopened in November 2023, delayed its reopening; [106] and operations at Pedestrian West, part of the San Ysidro POE in San Diego, California, were suspended on December 9, 2023.[107] On January 4, 2024, once the volume of migrants had diminished and CBP officers were able to return to normal duties, port operations in these locations resumed.[108]

The decision to close POEs was not one taken lightly. The United States Government fully understands the impacts of such closures on local communities on both sides of the border, both socially and economically.[109] Closing international POEs is a measure of last resort, and one that DHS was compelled to take in order to reassign its resources to support frontline agents in a challenging moment.

In addition to concerted efforts to strengthen and maximize consequences, including through new regulations, the United States Government has engaged intensively with the Government of Mexico to identify coordinated measures both countries could take, as partners, to address irregular migration. During the period before and after the December surge, the United States Government and the Government of Mexico held numerous talks at the highest levels of government to address migration. For example, President Biden and President of Mexico Andrés Manuel López Obrador spoke on December 21, 2023, and February 3, 2024.[110] During their conversation on December 21, the presidents agreed that additional enforcement actions were urgently needed so that the POEs that were temporarily closed could reopen.[111] In subsequent high-level meetings, both countries committed to expanding efforts to increase enforcement measures to deter irregular migration, expanding safe and lawful pathways, and strengthening cooperation.[112] The Government of Mexico expressed its concern about the economic impact of the POE closures and committed to increasing enforcement on key transit routes north.[113] On January 22, 2024, after a series of follow-on meetings between United States and Mexican Cabinet members in Washington, DC, Mexico's Foreign Secretary enumerated a series of steps that the United States and Mexico committed to taking to continue to address migration, including combating human smuggling and trafficking organizations.[114]

DHS assesses that the surge in late 2023 was likely the result of a number of factors, including the growing understanding by smugglers and migrants that DHS's capacity to impose consequences at the border is limited by the lack of resources and tools that Congress has made available and the Government of Mexico's operational constraints at the end of its fiscal year, which limited its ability to enforce its own immigration laws.[115] The

[103] OHSS analysis of March 2024 OHSS Persist Dataset; *see also* OHSS, *Immigration Enforcement and Legal Processes Monthly Tables, https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables* (last updated May 10, 2024) (''SW Border Encounters by Sector'').

[104] OHSS analysis of March 2024 OHSS Persist Dataset; *see also* OHSS, *Immigration Enforcement and Legal Processes Monthly Tables, https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables* (last updated May 10, 2024) (''SW Border Encounters by Sector'').

[105] *See* CBP, *Statement from CBP on Operations in Eagle Pass, Texas and Lukeville, Arizona* (Nov. 27, 2023), *https://www.cbp.gov/newsroom/national-media-release/statement-cbp-operations-eagle-pass-texas-and-lukeville-arizona.*

[106] *See* CBP, *Statement on Operational Changes and Resumption of Rail Operations in Eagle Pass and El Paso* (Dec. 22, 2023), *https://www.cbp.gov/newsroom/national-media-release/statement-cbp-operational-changes-and-resumption-rail-operations.*

[107] *See* CBP, *Statement from CBP on Operations in San Diego, California* (Dec. 7, 2023), *https://www.cbp.gov/newsroom/national-media-release/statement-cbp-operations-san-diego-california.*

[108] *See* CBP, *Statement from CBP on Resumption of Operations in Arizona, California, and Texas* (Jan. 2, 2024), *https://www.cbp.gov/newsroom/national-media-release/statement-cbp-resumption-field-operations-arizona-california-and/.*

[109] *See, e.g.,* Russel Contreras, *U.S.-Mexico Border Closures Could Cost Billions,* Axios (Dec. 22, 2023), *https://www.axios.com/2023/12/22/us-mexico-border-closures-could-cost-billions* (discussing evidence of the ''devastating consequences'' that follow from partial border closings); *cf.* Bryan Roberts et al., *The Impact on the U.S. Economy of Changes in Wait Times at Ports of Entry: Report to U.S. Customs and Border Protection* 5 (Apr. 2013), *https://ebtc.info/wp-content/uploads/2014/07/U.S.C.-Create-CBP-Final-Report.pdf* (discussing the benefits of adding staffing to land border POEs).

[110] *See* The White House, *Readout of President Joe Biden's Call with President Andrés Manuel López Obrador of Mexico* (Dec. 21, 2023), *https://www.whitehouse.gov/briefing-room/statements-releases/2023/12/21/readout-of-president-joe-bidens-call-with-president-andres-manuel-lopez-obrador-of-mexico-2/;* The White House, *Readout of President Joe Biden's Call with President Andrés Manuel López Obrador of Mexico* (Feb. 3, 2024), *https://www.whitehouse.gov/briefing-room/statements-releases/2024/02/03/readout-of-president-joe-bidens-call-with-president-andres-manuel-lopez-obrador-of-mexico-3/.*

[111] The White House, *Readout of President Joe Biden's Call with President Andrés Manuel López Obrador of Mexico* (Dec. 21, 2023), *https://www.whitehouse.gov/briefing-room/statements-releases/2023/12/21/readout-of-president-joe-bidens-call-with-president-andres-manuel-lopez-obrador-of-mexico-2/.*

[112] The White House, *Readout of Homeland Security Advisor Dr. Liz Sherwood-Randall's Trip to Mexico* (Feb. 7, 2024), *https://www.whitehouse.gov/briefing-room/statements-releases/2024/02/07/readout-of-homeland-security-advisor-dr-liz-sherwood-randalls-trip-to-mexico/.*

[113] *Id.; see also, e.g.,* Amna Nawaz, *Mexico's Foreign Secretary Discusses What Her Country Is Doing to Ease Border Crisis,* PBS News Hour (Jan. 25, 2024), *https://www.pbs.org/newshour/show/mexicos-foreign-secretary-discusses-what-her-country-is-doing-to-ease-border-crisis; US, Mexico Agree to Strengthen Efforts to Curb Record Migration,* Reuters (Dec. 28, 2023), *https://www.reuters.com/world/us-mexico-keep-border-crossings-open-lopez-obrador-says-2023-12-28/.*

[114] *See, e.g.,* Valentine Hilaire & Cassandra Garrison, *Mexico, US Pitch Measures to Ease Pressure on Border, Plan Guatemala Talks,* Reuters (Jan. 22, 2024), *https://www.reuters.com/world/americas/mexico-us-guatemala-officials-meet-migration-talks-2024-01-22/;* Amna Nawaz, *Mexico's Foreign Secretary Discusses What Her Country Is Doing to Ease Border Crisis,* PBS News Hour (Jan. 25, 2024), *https://www.pbs.org/newshour/show/mexicos-foreign-secretary-discusses-what-her-country-is-doing-to-ease-border-crisis* (quoting Mexico's Foreign Affairs Secretary as saying that ''we have done much more law enforcement to bring down the pressure in the border in the north'').

[115] *See* María Verza, *Mexico Halts Deportations and Migrant Transfers Citing Lack of Funds,* AP News (Dec. 4, 2023), *https://apnews.com/article/mexico-immigration-migrants-venezuela-17615ace23d0677bb443d8386e254fbc; Smugglers Are Bringing Migrants To a Remote Arizona Crossing, Overwhelming Agents,* NPR (Dec. 10, 2023), *https://www.npr.org/2023/12/10/1218428530/smugglers-are-bringing-migrants-to-a-remote-arizona-crossing-overwhelming-agents;*

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Departments cannot address all of these factors in one rule, but assess that this rule will significantly increase the ability to deliver timely decisions and timely consequences at the border within current resources, combating perceptions and messaging to the contrary.

Encounters between POEs in January 2024 were substantially lower than December 2023 encounters, consistent with historic seasonal trends, and encounters in January 2022 and January 2023.[116] In February and March 2024, encounter levels increased from the levels in January but remained significantly lower than in December 2023.[117] Overall, from January 1 to March 31, 2024, encounters between POEs were 5 percent lower than during the same months in 2023 and 22 percent lower than those in 2022.[118] However, despite the overall decrease in encounters since December 2023, specific areas of the border—in particular USBP's San Diego and Tucson Sectors—have experienced localized increases in encounters that have, at times, strained DHS's holding capacity, adversely impacted local operations, and limited DHS's ability to swiftly impose consequences on individuals who do not establish a legal basis to remain in the United States. During the last week of April 2024, USBP's San Diego Sector encountered an average of more than 1,400 migrants each day, including many migrants from countries outside the Western Hemisphere who are more difficult to process.[119] The USBP Tucson Sector is experiencing similar, unprecedented migratory flows and consequent challenges. This high concentration of encounters, including comparatively large numbers of migrants who are hard to remove, in a focused geographic area places particular strain on the immigration enforcement system. This is particularly true in areas of the border—such as San Diego—where infrastructure-related capacity constraints limit DHS's ability to swiftly impose consequences at the border. These factors resulted in USBP's main processing facility in San Diego reaching over 200 percent capacity in April 2024, despite a recent expansion of this facility.

Since January 2024, the United States and Mexico have continued to hold regular, high-level conversations, as partners, to continue to deepen their collaboration, identify emerging trends, and coordinate additional steps by both countries to address changing flows. These meetings have informed operational deployments by both governments, including the coordinated response to the shift in migratory flows to the San Diego and Tucson sectors. This extensive ongoing collaboration was reflected by another bilateral engagement between President Biden and President López-Obrador on April 28, 2024, after which the presidents released a joint statement in which they ''ordered their national security teams to work together to immediately implement concrete measures to significantly reduce irregular border crossings while protecting human rights.'' [120]

Since then, the United States and the Government of Mexico have worked together, cooperatively, to increase enforcement.[121] But these efforts—while significant—are likely to be less effective over time. Smuggling networks are adaptable, responding to changes put in place. Despite their immediate effectiveness, such changes are not enough—and will almost certainly have diminished effect over time. The reality is that the scale of irregular migration over the past two years has strained the funding, personnel, and infrastructure of both countries' immigration enforcement systems in ways that have, at times, contributed to high encounters between POEs.

2. Need for These Measures

DHS projects that, absent the policy changes being promulgated here, irregular migration will once again increase, and that any disruption in Mexican enforcement will only exacerbate that trend. Without the Proclamation and this rule, the anticipated increase in migration will, in turn, worsen significant strains on resources already experienced by the Departments and communities across the United States.

Current trends and historical data indicate that migration and displacement in the Western Hemisphere will continue to increase as a result of violence, persecution, poverty, human rights abuses, the impacts of climate change, and other factors. The case of migration through the Darién jungle between Colombia and Panama is illustrative. For example, between January and April, 2024, the United Nations High Commissioner for Refugees (''UNHCR'') tracked 139,000 irregular entries, up from 128,000 for the same months in 2023 and a seven-fold increase over migration levels during that period in 2022.[122] The number of migrants crossing the Darién will only further increase the pressure on Mexico at its southern border and on the United States at the SWB.

Past unprecedented migration surges bolster the Departments' views and the need for this rulemaking. As described in detail in Section III.B.1 of this preamble, migration trends have been steadily increasing in scope and complexity, featuring increasingly varied nationalities and demographic groups. This has been true even as DHS has experienced sustained levels of historically high encounter levels. Over the past two years, an increasing proportion of total CBP encounters at the SWB has been composed of families and UCs, and DHS has seen record flows of migrants from countries outside of northern Central America.[123] These

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Adam Isaacson, *Weekly U.S.-Mexico Border Update: Senate Negotiations, Migration Trends,* Washington Office of Latin America (Dec. 15, 2023), *https://www.wola.org/2023/12/weekly-u-s-mexico-border-update-senate-negotiations-migration-trends/;* Jordan, *supra* note 27.

[116] OHSS analysis of March 2024 OHSS Persist Dataset.

[117] OHSS analysis of March 2024 OHSS Persist Dataset.

[118] OHSS analysis of March 2024 OHSS Persist Dataset.

[119] *See* Elliot Spagat, *The Latest Hot Spot for Illegal Border Crossings is San Diego. But Routes Change Quickly,* AP News (May 17, 2024), *https://apnews.com/article/san-diego-border-asylum-biden-mexico-da1e7b7c81e4e58912deff6d36dbdb9e.*

[120] *See* The White House, *Joint Statement by the President of the United States Joe Biden and the President of Mexico Andrés Manuel López Obrador* (Apr. 29, 2024), *https://www.whitehouse.gov/briefing-room/statements-releases/2024/04/29/joint-statement-by-the-president-of-the-united-states-joe-biden-and-the-president-of-mexico-andres-manuel-lopez-obrador.*

[121] *See* Valerie Gonzalez & Elliot Spagat, *The US Sees a Drop in Illegal Border Crossings After Mexico Increases Enforcement,* AP News (Jan. 7, 2024), *https://apnews.com/article/mexico-immigration-enforcement-crossings-drop-b67022cf0853dca95a8e0799bb99b68a;* Luke Barr, *US Customs And Border Protection Reopening 4 Ports of Entry After Migrant Surge Subsides,* ABC News (Jan. 2, 2024), *https://abcnews.go.com/US/us-customs-border-protection-reopening-4-ports-entry/story?id=106062555;* Seung Min Kim, *US and Mexico Will Boost Deportation Flights and Enforcement to Crack Down on Illegal Immigration,* AP News (Apr. 30, 2024), *https://apnews.com/article/joe-biden-andres-manuel-lopez-obrador-mexico-immigration-border-c7e694f7f104ee0b87b80ee859fa2b9b;* Julia Ainsley & Chloe Atkins, *Mexico Is Stopping Nearly Three Times as Many Migrants Now, Helping Keep U.S. Border Crossings Down,* NBC News (May 15, 2024), *https://www.nbcnews.com/politics/immigration/mexico-stopping-three-times-as-many-migrants-as-last-year-rcna146821.*

[122] The UNHCR tracked 20,000 irregular entries in the Darién gap in 2022. OHSS analysis of downloaded from UNHCR Operational Data Portal, *Darien Panama: Mixed Movements Protection Monitoring—January–December 2023, https://data.unhcr.org/en/documents/details/105569* (last visited May 31, 2024); *Darien Panama: Mixed Movements Protection Monitoring—April 2024, https://data.unhcr.org/en/documents/details/108399* (last visited May 31, 2024).

[123] March 2024 OHSS Persist Dataset; *see also* OHSS, *Immigration Enforcement and Legal Processes Monthly Tables, https://www.dhs.gov/*

international migration trends are the result of exceedingly complex factors and are shaped by, among other things, family and community networks, labor markets, environmental and security-related push factors, and rapidly evolving criminal smuggling networks.[124] The United States Government is working to address these root causes of migration and to abate adverse effects from unprecedented levels of irregular migration,[125] including through working closely with partner countries across the Western Hemisphere.[126] But these efforts will take time to have significant impacts and will not alleviate the stress that the border security and immigration systems are currently experiencing, as described in the Proclamation.

The Departments' views and the need for this rulemaking are further supported by projections developed from ongoing work by DHS's Office of Homeland Security Statistics (''OHSS''), which leads an interagency working group that produces encounter projections used for operational planning, policy development, and short-term budget planning. OHSS uses a mixed-method approach that combines a statistical predictive model with subject matter expertise intended to provide informed estimates of future migration flow and trends. The mixed-methods approach blends multiple types of models through an ensemble approach of model averaging.[127] The model includes encounter data disaggregated by country and demographic characteristics, data on apprehensions of third-country nationals by Mexican enforcement agencies, and economic data. DHS uses the encounter projection to generate a range of planning models, which can include ''low'' planning models that are based on the lower bound of the 95 percent forecast interval, ''moderate'' planning models that are based on the upper bound of the 68 percent forecast interval, and ''high'' planning models based on the upper bound of the 95 percent forecast interval. These planning models account for changes in effectiveness of current enforcement and lawful migration processes.[128]

Because of the significant time and operational cost it takes to redeploy resources, DHS is generally conservative in its enforcement planning. 88 FR at 31328. As a result, it focuses on its higher planning models as it projects future resource deployments to avoid using more optimistic scenarios that could leave enforcement efforts badly under-resourced. *Id.* The current internal projections, based on this robust modeling methodology, suggest that encounters may once again reach extremely elevated levels in the weeks to come, averaging in the three months from July to September, 2024, in the range of approximately 3,900 to approximately 6,700 encounters at and between POEs per day, not including an additional 1,450 noncitizens per day who are expected to be encountered at POEs after making appointments though the CBP One app.[129] The Departments believe the policies in this rule are justified in light of high levels of migration that have ultimately proved persistent even in the face of new policies that have resulted in processing migrants with record efficiency, as evidenced by the migration patterns witnessed in December 2023. Current sustained, high encounter rates exceed the border security and immigration systems' capacity to effectively and safely process, detain, and remove, as appropriate, all migrants who are encountered.[130] This is generally true when considering total encounters across the entire SWB, and even more the case when specific sectors along the border are targeted by smuggling organizations with focused localized surges in encounters—as has been happening since the late fall in Tucson, Arizona, which accounted for 35 percent of SWB encounters between POEs in the second quarter of FY 2024, up from 18 percent in FY 2023 and 13 percent in FY 2022.[131]

Despite the fact that the average of 4,400 daily encounters between POEs in the second quarter of FY 2024 is below the highs experienced in the days immediately preceding the end of the Title 42 public health Order and in December 2023,[132] daily encounter numbers remain sufficiently high—especially in the locations where encounters have been extremely elevated, such as California and Arizona—that the numbers significantly impact the operational flexibility required to process individuals in a timely and consequential manner.[133]

ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables (last updated May 10, 2024) (''SWB Encounters by Agency and Family Status'' and ''SWB Encounters by Citizenship and Family Status'').

[124] *See* 88 FR at 31327–28 & n.59.

[125] *See, e.g.,* The White House, *Mexico and United States Strengthen Joint Humanitarian Plan on Migration* (May 2, 2023), *https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/02/mexico-and-united-states-strengthen-joint-humanitarian-plan-on-migration/* (committing to addressing root causes of migration).

[126] *See* The White House, *Fact Sheet: Third Ministerial Meeting on the Los Angeles Declaration On Migration and Protection in Guatemala* (May 7, 2024), *https://www.whitehouse.gov/briefing-room/statements-releases/2024/05/07/fact-sheet-third-ministerial-meeting-on-the-los-angeles-declarationon-migration-and-protection-in-guatemala.*

[127] Blending multiple models and basing predictions on prior data has been understood to improve modeling accuracy. *See, e.g.,* Spyros Makridakis et al., *Forecasting in Social Settings: The State of the Art,* 36 Int'l J. Forecasting 15, 16 (2020) (noting that it has ''stood the test of time . . . that combining forecasts improves the [forecast] accuracy''); The Forecasting Collaborative, *Insights into the Accuracy of Social Scientists' Forecasts of Societal Change,* 7 Nat. Hum. Behaviour 484 (2023), *https://doi.org/10.1038/s41562-022-01517-1* (comparing forecasting methods and suggesting that forecasting teams may materially improve accuracy by, for instance, basing predictions on prior data and including scientific experts and multidisciplinary team members). DHS notes that the complexity of international migration limits DHS's ability to precisely project border encounters under the best of circumstances. The current period is characterized by greater than usual uncertainty due to ongoing changes in the major migration source countries (*i.e.,* the shift in demographics of those noncitizens encountered by DHS), the growing impact of climate change on migration, political instability in several source countries, the evolving recovery from the COVID–19 pandemic, and uncertainty generated by border-related litigation, among other factors. *See* 88 FR at 31316 n.14.

[128] OHSS Southwest Border Encounter Projection, April 2024.

[129] OHSS Encounter Projections, April 2024. Note that the OHSS encounter projection excludes encounters of people who have registered with the CBP One app along with administrative encounters at POEs (*i.e.,* encounters in which removal proceedings are not considered), but includes non-CBP One enforcement encounters at POEs, which have averaged about 190 per day since May 2023, based on OHSS analysis of March 2024 OHSS Persist Dataset. *See also* CBP, *CBP One™ Appointments Increased to 1,450 Per Day* (June 30, 2023), *https://www.cbp.gov/newsroom/national-media-release/cbp-one-appointments-increased-1450-day.*

[130] *See, e.g.,* Decl. of Blas Nuñez-Neto ¶ 8, *M.A.* v. *Mayorkas,* No. 23–cv–1843 (D.D.C. Oct. 27, 2023) (Dkt. 53–1).

[131] March 2024 OHSS Persist Dataset; *see also* OHSS, *Immigration Enforcement and Legal Processes Monthly Tables—October 2023, https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables* (last updated May 10, 2024) (''SW Border Encounters by Sector'').

[132] March 2024 OHSS Persist Dataset. As noted *supra* note 5, preliminary April data show SWB encounters between POEs fell slightly, by 6 percent, between March and April. OHSS analysis of data obtained from CBP, *Southwest Land Border Encounters, https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters* (last accessed May 24, 2024). The preliminary April data are best understood to reflect a continuation of the general pattern described elsewhere in this rule.

[133] The Tucson Sector accounted for 35 percent of USBP encounters in the second quarter of FY 2024, up from 18 percent in FY 2023 and 13 percent in FY 2022. OHSS analysis of March 2024 OHSS Persist Dataset; *see also* CBP, *Southwest Land Border Encounters (By Component), https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters-by-component* (last modified May 15, 2024). Border encounters typically fall around the New Year and often remain lower than other months in January. *See* OHSS, *Immigration Enforcement and Legal Processes Monthly Tables, https://www.dhs.gov/ohss/topics/immigration/*

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When capacity is strained like this in specific locations along the border, it becomes even more difficult for the Departments to deliver timely decisions and timely consequences. At increased levels of encounters and without a change in policy, most non-Mexicans processed for expedited removal under title 8 would likely establish a credible fear and remain in the United States for the foreseeable future despite the fact that most of them will not ultimately be granted asylum, assuming results are similar to historic rates,[134] a scenario that would likely continue to incentivize an increasing number of migrants to journey to the United States and further increase the likelihood of sustained high encounter rates.

Even in times with sustained lower encounter volumes, such as between 2011 and 2017, the Departments experienced challenging situations, including the first surge in UCs in 2014, that severely strained the United States Government's capacity.[135] Surges in encounters at the southern border—both at and between POEs—are now occurring more frequently and at higher magnitudes, and featuring more diverse demographics and nationalities than ever before.[136] These surges affect more CBP sectors along the border, disrupt operations more quickly, and affect readiness in other critical areas as DHS diverts resources, including front-line agents, from other urgent tasks and geographic areas.[137] These actions, in turn, impact other critical mission sets, including processing lawful trade and travel at POEs.[138]

DHS continues to lack the necessary funding and resources to deliver timely consequences to the majority of noncitizens encountered given the increased level of encounters it is experiencing at the SWB.[139] On August 10, 2023, the Administration submitted to Congress a request for $2.2 billion in supplemental funding for border operations, including $1.4 billion for CBP and $714 million for ICE for border management and enforcement and an additional $416 million for counter-fentanyl efforts.[140]

On October 20, 2023, the Administration submitted to Congress a second request for supplemental funding for DHS, which would provide funding to enhance enforcement and processing, procure and operationalize needed technologies, and hire additional personnel.[141] This funding would further support critical border enforcement efforts, including:

- An additional 1,300 Border Patrol Agents to work alongside the 20,200 agents proposed in the President's FY 2024 budget request, as well as 300 Border Patrol Processing Coordinators and support staff;[142]
- An additional 1,600 AOs and associated support staff to process migrant claims, which would provide USCIS with the critical resources needed to expand its current credible fear interview capacity to support timely processing of those placed in expedited removal;[143] and
- An expansion of detention beds and ICE removal flight funding to sustain the current significantly increased use of expedited removal, provide necessary surge capacity, and allow DHS to process more expeditiously noncitizens who cross the SWB unlawfully and swiftly remove those without a legal basis to remain in the United States.[144]

On January 31, 2024, DHS published a new USCIS fee schedule, effective April 1, 2024, that adjusted the fees to fully recover costs and maintain adequate service. *See* U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements, 89 FR 6194, 6194 (Jan. 31, 2024); U.S. Citizenship and Immigration Services Fee Schedule and Changes to Certain Other Immigration Benefit Request Requirements; Correction, 89 FR 20101 (Mar. 21, 2024) (making corrections). Because there is

enforcement-and-legal-processes-monthly-tables (last updated May 10, 2024) (''Nationwide CBP Encounters by Encounter Type and Region''). Thus, while CBP's apprehension of 402,000 noncitizens between POEs in the second quarter of FY 2024 is slightly lower than the 424,000 observed in FY 2023 and 518,000 in FY 2022, it is almost four times as high as the pre-pandemic second-quarter average for FY 2014 through FY 2019, and with the exceptions of FY 2022 and FY 2023 the highest second-quarter count recorded since FY 2001. Even with the downturn between January and March, 2024, the high volume of encounters and challenging demographic mix still meant that most noncitizens processed by USBP were released from custody into the United States (including noncitizens enrolled in an ICE Alternatives to Detention program and those paroled by the Office of Field Operations). OHSS analysis of March 2024 OHSS Persist Dataset; *see also* OHSS, *Immigration Enforcement and Legal Processes Monthly Tables, https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables* (last updated May 10, 2024) (''CBP SW Border Encounters Book-Outs by Agency'').

[134] Since May 12, 2023, 60 percent of non-Mexican noncitizen SWB encounters (at and between POEs) processed for expedited removal who have made fear claims have been referred to EOIR for immigration proceedings. OHSS analysis of data downloaded from UIP on April 2, 2024. But based on historic (pre-pandemic) data, only 18 percent of non-Mexican noncitizens processed for expedited removal that are referred to EOIR result in an individual being granted relief or protection from removal once the case is completed. OHSS Enforcement Lifecycle December 31, 2023.

[135] OHSS, *Immigration Enforcement and Legal Processes Monthly Tables, https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables* (last updated May 10, 2024) (''CBP SW Border Encounters by Agency and Family Status'').

[136] OHSS, *Immigration Enforcement and Legal Processes Monthly Tables, https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables* (last updated May 10, 2024) (''CBP SW Border Encounters by Agency and Family Status'' and ''CBP SW Border Encounters by Agency and Selected Citizenship''); *The Unaccompanied Children Crisis: Does the Administration Have a Plan to Stop the Border Surge and Adequately Monitor the Children?: Hearing Before the S. Comm. On the Judiciary,* 114th Cong. (2016) (statement of Ronald Vitiello, Acting Chief of USBP), *https://www.judiciary.senate.gov/imo/media/doc/02-23-16%20Vitiello%20Testimony.pdf;* Memorandum on the Response to the Influx of Unaccompanied Alien Children Across the Southwest Border, 1 Pub. Papers of Pres. Barack Obama 635, 635 (June 2, 2014).

[137] *See, e.g.,* Decl. of Raul L. Ortiz ¶¶ 11–12, *Florida* v. *Mayorkas,* No. 23–11644 (11th Cir. May 19, 2023) (Dkt. 3–2).

[138] *See, e.g.,* Decl. of Raul L. Ortiz ¶¶ 11–12, *Florida* v. *Mayorkas,* No. 23–11644 (11th Cir. May 19, 2023) (Dkt. 3–2); Decl. of Blas Nuñez-Neto ¶ 32, *E. Bay Sanctuary Covenant* v. *Biden,* No. 18–cv–6810 (N.D. Cal. June 16, 2023) (Dkt. 176–2).

[139] Letter for Kevin McCarthy, Speaker of the House of Representatives, from Shalanda D. Young, Director, OMB, at 2–3 (Aug. 10, 2023), *https://www.whitehouse.gov/wp-content/uploads/2023/08/Final-Supplemental-Funding-Request-Letter-and-Technical-Materials.pdf;* The White House, *Fact Sheet: White House Calls on Congress to Advance Critical National Security Priorities* (Oct. 20, 2023), *https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/20/fact-sheet-white-house-calls-on-congress-to-advance-critical-national-security-priorities/.*

[140] *See* Letter for Kevin McCarthy, Speaker of the House of Representatives, from Shalanda D. Young, Director, OMB, at 2–3, attach. at 45–50 (Aug. 10, 2023), *https://www.whitehouse.gov/wp-content/uploads/2023/08/Final-Supplemental-Funding-Request-Letter-and-Technical-Materials.pdf.*

[141] *See* The White House, *Fact Sheet: White House Calls on Congress to Advance Critical National Security Priorities* (Oct. 20, 2023), *https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/20/fact-sheet-white-house-calls-on-congress-to-advance-critical-national-security-priorities/.*

[142] *See* DHS, *Fact Sheet: Biden-Harris Administration Supplemental Funding Request* (Oct. 20, 2023), *https://www.dhs.gov/news/2023/10/20/fact-sheet-biden-harris-administration-supplemental-funding-request;* The White House, *Fact Sheet: White House Calls on Congress to Advance Critical National Security Priorities* (Oct. 20, 2023), *https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/20/fact-sheet-white-house-calls-on-congress-to-advance-critical-national-security-priorities/.*

[143] *See* The White House, *Fact Sheet: White House Calls on Congress to Advance Critical National Security Priorities* (Oct. 20, 2023), *https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/20/fact-sheet-white-house-calls-on-congress-to-advance-critical-national-security-priorities/.*

[144] *See* The White House, *Fact Sheet: White House Calls on Congress to Advance Critical National Security Priorities* (Oct. 20, 2023), *https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/20/fact-sheet-white-house-calls-on-congress-to-advance-critical-national-security-priorities/;* DHS, *Fact Sheet: Biden-Harris Administration Supplemental Funding Request* (Oct. 20, 2023), *https://www.dhs.gov/news/2023/10/20/fact-sheet-biden-harris-administration-supplemental-funding-request.*

no fee required to file an asylum application or for protection screenings, 8 CFR 106.2(a)(28), and because Congress has not provided other funds to pay for the operating expenses of the Asylum Division,[145] fees generated from other immigration applications and petitions must be used to pay for these expenses. *See* INA 286(m), 8 U.S.C. 1356(m). While the new fee rule does provide for increased funding for the Refugee, Asylum, and International Operations Directorate,[146] keeping pace with USCIS's protection screening and affirmative asylum workloads requires additional funding, as reflected in the President's FY 2025 Budget.[147] Raising fees on other applications and petitions to cover the $755 million that would be required to hire and support the additional 1,600 AOs called for in the President's 2025 FY Budget [148] would impose a burden on other filers.

In early February 2024, a bipartisan group of Senators proposed reforms of the country's asylum laws that would have provided new authorities to significantly streamline and speed up immigration enforcement proceedings and immigration adjudications for individuals encountered at the border, including those who are seeking protection, while preserving principles of fairness and humane treatment.[149] Critically, the proposal included nearly $20 billion in additional resources for DHS, DOJ, and other departments to implement those new authorities,[150] including resources for:

- Over 1,500 new CBP personnel, including Border Patrol Agents and CBP Officers;
- Over 4,300 new AOs, as well as USCIS staff to facilitate timely and fair decisions;
- 100 additional IJ teams to help reduce the asylum caseload backlog and adjudicate cases more quickly;
- Shelter and critical services for newcomers in U.S. cities and States; and
- 1,200 new ICE personnel for functions including enforcement and removals.[151]

However, Congress failed to move forward with this bipartisan legislative proposal.[152] It also failed to pass the emergency supplemental funding requests that the Administration submitted. Although Congress did ultimately enact an FY 2024 appropriations bill for DHS, the funding falls significantly short of what DHS requires to deliver timely consequences and avoid large-scale releases pending section 240 removal proceedings. For example, the bill does not provide the resources necessary for DHS to refer the majority of noncitizens encountered by USBP who are amenable to expedited removal into such processing, resulting in large-scale releases pending section 240 removal proceedings based on current encounter numbers. Such releases, in turn, have significant impacts on communities and contribute to further migration by incentivizing potential migrants to travel to the United States with the belief that, even if initially detained, they will ultimately be released to live and work in the United States for long periods of time. Absent the Proclamation and this rule, these harmful results are especially likely given the circumstances described in the Proclamation.

The FY 2024 appropriations provided some additional funding for DHS above its request, including for additional Border Patrol Agents and a higher level of ICE detention beds than was previously appropriated.[153] Although this increase is helpful, there are a number of ways in which the FY 2024 budget falls well short of what DHS needs to respond to the current elevated levels of migration. For example, the FY 2024 appropriations failed to fund the salary increase set across the Federal Government by the Office of Management and Budget (''OMB''), effectively reducing salary funding for the entirety of the appropriations-funded DHS workforce.[154] This reduction will limit the availability of overtime to respond to surges in irregular migration and may require difficult operational decisions during the closing months of the fiscal year, which is historically a busier period for such migration. The appropriations also did not provide sufficient funding to maintain the temporary processing facilities needed to hold migrants in custody. Further, the funds for hiring additional personnel were restricted to the current fiscal year rather than being provided as multi-year funds as requested; given the length of the hiring process, DHS will not be able to realize the increases in personnel envisioned by the legislation before the funding expires.

All of these factors, taken together, mean that under the current appropriations law, DHS will, at best, be able only to sustain most of its current operations, resulting in an operating capacity that already experiences strain during times of high migration levels; this will, in turn, reduce DHS's ability to maximize the delivery of timely consequences for those without a lawful basis to remain. Additionally, DHS will not be able to expand capacity along the border or increase its ability to deliver consequences through referrals into expedited removal. Instead, DHS may actually need to reduce capacity in some key areas, including by closing critical temporary processing facilities and pulling USBP agents away from the frontline to undertake processing and tasks related to custody. Thus, while DHS has made significant progress toward a migration strategy focused on enforcement, deterrence, encouragement of the use of lawful pathways, and diplomacy, a lack of needed resources and tools hampers DHS's current ability to manage the unprecedented flow of hemispheric migration, and the

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[145] *See* DHS, *U.S. Citizenship and Immigration Services, Budget Overview, Fiscal Year 2025 Congressional Justification* CIS—IEFA—22 (Mar. 8, 2024), *https://www.dhs.gov/sites/default/files/2024-03/2024_0308_us_citizenship_and_immigration_services.pdf* (showing AOs are funded by Immigration Examinations Fee Account); *id.* at CIS—O&S—30 (showing that appropriated funds from the Refugee, Asylum, and International Operations Directorate of USCIS support Refugee Officers).

[146] DHS, *Immigration Examinations Fee Account: Fee Review Supporting Documentation with Addendum* 53 (Nov. 2023), *https://www.regulations.gov/document/USCIS-2021-0010-8176.*

[147] *See* The White House, *Fact Sheet: The President's Budget Secures Our Border, Combats Fentanyl Trafficking, and Calls on Congress to Enact Critical Immigration Reform* (Mar. 11, 2024), *https://www.whitehouse.gov/briefing-room/statements-releases/2024/03/11/fact-sheet-the-presidents-budget-secures-our-border-combats-fentanyl-trafficking-and-calls-on-congress-to-enact-critical-immigration-reform/.*

[148] *Id.*

[149] The White House, *Fact Sheet: Biden-Harris Administration Calls on Congress to Immediately Pass the Bipartisan National Security Agreement* (Feb. 4, 2024), *https://www.whitehouse.gov/briefing-room/statements-releases/2024/02/04/fact-sheet-biden-harris-administration-calls-on-congress-to-immediately-pass-the-bipartisan-national-security-agreement/.*

[150] Deirdre Walsh & Claudia Grisales, *Negotiators release $118 billion border bill as GOP leaders call it dead in the House,* NPR (Feb. 4, 2024), *https://www.npr.org/2024/02/04/1226427234/senate-border-deal-reached.*

[151] The White House, *Fact Sheet: Biden-Harris Administration Calls on Congress to Immediately Pass the Bipartisan National Security Agreement* (Feb. 4, 2024), *https://www.whitehouse.gov/briefing-room/statements-releases/2024/02/04/fact-sheet-biden-harris-administration-calls-on-congress-to-immediately-pass-the-bipartisan-national-security-agreement/.*

[152] Associated Press, *Border Bill Fails Senate Test Vote as Democrats Seek to Underscore Republican Resistance* (May 23, 2024), *https://apnews.com/article/border-immigration-senate-vote-924f48912eecf1dc544dc648d757c3fe.*

[153] *See* House of Representatives, *Explanatory Statement: Division C, Department of Homeland Security Appropriations Act, 2024,* at 14, 25 (Mar. 18, 2024), *https://docs.house.gov/billsthisweek/20240318/Division%20C%20Homeland.pdf.*

[154] *See id.* at 14, 22 (explaining that for CBP, ''[t]he agreement includes $346,498,000 below the request, including the following: $182,772,000 for the 2024 pay raise,'' and for ICE, ''[t]he agreement provides $9,501,542,000 for Operations and Support, including a decrease below the request of $74,153,000 for the 2024 pay raise'').

situation will only worsen with expected seasonal and other increases.

Immigration-related resource challenges are not unique to front-line border officials. The immigration removal continuum—from apprehension, processing, and inspection to protection interviews and removal—is hampered by a lack of sufficient funding, resources, and tools at every stage.[155] EOIR is underfunded, without sufficient resources to address the backlog of over 2.78 million cases that were pending in the immigration courts at the end of the first quarter of FY 2024.[156] This under-resourcing has contributed to the growth of this backlog; in FY 2023, IJs completed more cases than they ever had before in a single year, but more than twice as many cases were received by the immigration courts as were completed.[157] The FY 2024 budget creates even greater strains on EOIR. EOIR received $844 million this fiscal year,[158] a cut of $16 million from FY 2023.[159] EOIR's budget was also cut $94.3 million from its inflation-adjusted funding requirements (referred to as ''Current Services'').[160] As a result of the significant budgetary gap, EOIR will necessarily be required to reduce the Federal and contract labor force that has been supporting its immigration courts nationwide and cut spending to technological initiatives. Specifically, EOIR has identified a need to cut 200 of its authorized Federal positions and is identifying areas in which it can make cuts to contracts, including those supporting the Office of Information Technology, with the least amount of impact on operations.

Similarly, the USCIS backlog of affirmative asylum cases stands at over 1.16 million and is growing.[161] USCIS does not have enough AOs to keep pace with the number of individuals who could be referred for credible fear interviews at the border, much less keep pace with new affirmative asylum receipts or even marginally reduce the affirmative asylum backlog. In sum, the border security and immigration systems are badly strained and not functioning to provide timely relief or protection for those who warrant it or timely consequences for those without a legal basis to remain, including those without viable asylum or protection claims.

The TCOs operating in the region, and the migrants they prey upon who intend to make the dangerous journey north, have taken notice of this situation. They understand that when the capacity of DHS to quickly process individuals at the border is strained, DHS is limited in its ability to deliver timely consequences. Because of these resource limitations, individuals are more likely than not to be released to pursue a years-long immigration court process during which, beginning 180 days after applying for asylum, they may be authorized to work.[162] These smuggling organizations have built a multi-billion-dollar industry, featuring online marketing campaigns to spread misinformation and sophisticated logistics networks designed to quickly funnel migrants to the parts of the border where DHS capacity is lower.[163]

While the emergency measures instituted by the Proclamation are in effect, the Departments will put in place extraordinary procedures to more quickly process individuals encountered at the southern border, reducing the time noncitizens spend in DHS facilities. The specific measures introduced by this rule are designed to further streamline DHS processes at the border so that DHS can more quickly deliver meaningful consequences to more individuals who cross unlawfully or without authorization within the resource and operational constraints that have limited DHS capacity to date.

Under this rule, while emergency border circumstances persist, the way noncitizens are processed, their eligibility for asylum, and the way in which their eligibility for protection is assessed, will change in three ways. First, during emergency border circumstances, those who enter the United States across the southern border and who are not described in section 3(b) of the Proclamation will be ineligible for asylum unless they demonstrate by a preponderance of the evidence that exceptionally compelling circumstances exist. As discussed in Section III.B.3.a of this preamble, the Departments expect that applying the limitation on asylum eligibility will encourage noncitizens to make an appointment to present at the SWB, take advantage of other lawful migration

[155] *See* DHS, *Statement from Secretary Mayorkas on the President's Fiscal Year 2025 Budget for the U.S. Department of Homeland Security* (Mar. 11, 2024), *https://www.dhs.gov/news/2024/03/11/statement-secretary-mayorkas-presidents-fiscal-year-2025-budget-us-department* (''DHS reiterates previously submitted funding requests that are critical to secure the border, build immigration enforcement capacity, combat fentanyl and address domestic needs like natural disaster response, which Congress has failed to act on. Among them, the October funding request, which includes $8.7 billion for border, immigration, and counter fentanyl requirements and $9.2 billion for FEMA's Disaster Relief Fund and Nonprofit Security Grant Program. Notably, the Administration's border supplemental request includes funding to build capacity in the areas of border security, immigration enforcement, and countering fentanyl. DHS strongly supports the additional $19 billion in funding proposals included in the Senate's bipartisan border legislation that would, among other things, enable DHS to hire more CBP agents and officers, ICE enforcement and investigative personnel, and USCIS asylum officers and provide new tools to bolster the Department's efforts to secure and manage the border.''); *see also* Letter for Kevin McCarthy, Speaker of the House of Representatives, from Shalanda D. Young, Director, OMB, at 2–3 (Aug. 10, 2023), *https://www.whitehouse.gov/wp-content/uploads/2023/08/Final-Supplemental-Funding-Request-Letter-and-Technical-Materials.pdf;* The White House, *Fact Sheet: White House Calls on Congress to Advance Critical National Security Priorities* (Oct. 20, 2023), *https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/20/fact-sheet-white-house-calls-on-congress-to-advance-critical-national-security-priorities/;* DHS, *Fact Sheet: Biden-Harris Administration Supplemental Funding Request* (Oct. 20, 2023), *https://www.dhs.gov/news/2023/10/20/fact-sheet-biden-harris-administration-supplemental-funding-request.*

[156] *See* EOIR, *Adjudication Statistics: Pending Cases, New Cases, and Total Completions* (Jan. 18, 2024), *https://www.justice.gov/eoir/workload-and-adjudication-statistics.*

[157] *See* EOIR, *Adjudication Statistics: New Cases and Total Completions* (*Oct. 12, 2023), https://www.justice.gov/d9/pages/attachments/2018/05/08/2_new_cases_and_total_completions.pdf;* EOIR, *Adjudication Statistics: New Cases and Total Completions—Historical* 1 (Oct. 12, 2023), *https://www.justice.gov/d9/pages/attachments/2022/09/01/3_new_cases_and_total_completions_-_historical.pdf.*

[158] Consolidated Appropriations Act, 2024, Public Law 118–42, 138 Stat. 25, 133 (''[f]or expenses necessary for the administration of immigration-related activities of the Executive Office for Immigration Review, $844,000,000'').

[159] Consolidated Appropriations Act, 2023, Public Law 117–328, 136 Stat. 4459, 4522 (2022) (''[f]or expenses necessary for the administration of immigration-related activities of the Executive Office for Immigration Review, $860,000,000''); EOIR, *FY 2024 Budget Request at a Glance, https://www.justice.gov/d9/2023-03/eoir_fy_24_budsum_ii_omb_cleared_03.08.23.pdf* (showing FY 2023 enacted budget providing EOIR $860 million).

[160] EOIR, *FY 2024 Budget Request at a Glance, https://www.justice.gov/d9/2023-03/eoir_fy_24_budsum_ii_omb_cleared_03.08.23.pdf* (providing the Current Services Adjustment as an increase of $78.3 million, bringing the inflation-adjusted amount to $938.3 million).

[161] OHSS analysis of USCIS Global Affirmative Data as of April 25, 2024 (noting that ''[d]ata is limited to filings between FY2000 and March 31, 2024'').

[162] *See* 8 CFR 208.7, 274a.12(c)(8). Sixty-seven percent of individuals encountered by CBP at and between POEs at the SWB between May 2023 and March 2024 were released, including 66 percent of such individuals in the second quarter of FY 2024. These individuals include noncitizens enrolled in an ICE Alternatives to Detention program. March 2024 OHSS Persist Dataset; *see also* OHSS, *Immigration Enforcement and Legal Processes Monthly Tables, https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables* (last updated May 10, 2024) (''CBP SW Border Encounters Book-Out Outcomes by Agency'').

[163] *See, e.g.,* Priscilla Alvarez, *Human smugglers peddle misinformation to US-bound migrants on Facebook, watchdog says,* CNN (July 27, 2022), *https://www.cnn.com/2022/07/27/politics/human-smuggling-misinformation/index.html;* Bernd Debusmann Jr, *TikTok and Title 42 rumours fuel human smuggling at the US border,* BBC (July 8, 2023), *https://www.bbc.com/news/world-us-canada-65848683.*

pathways, or not undertake the dangerous journey north to begin with.

Second, this rule will reduce the time it takes to process individuals placed in expedited removal at the border by changing the way CBP immigration officers identify and refer noncitizens for credible fear interviews. Under current title 8 procedures, noncitizens encountered at the border and processed for expedited removal are provided lengthy advisals regarding the credible fear and asylum process and are asked questions to ascertain whether they may potentially have a fear of persecution or torture.[164] During emergency border circumstances, DHS will move to a ''manifestation of fear'' process at the border, detailed below in Section III.B.3.b of this preamble, that will involve general (rather than individual) advisals and require individuals who have a fear of persecution or torture to manifest that fear, verbally, non-verbally, or physically, in order for DHS personnel to refer them for a credible fear interview.

Third, the limitation on asylum eligibility will be considered during credible fear interviews and reviews, and those who are subject to the limitation and are unable to establish a significant possibility of showing exceptionally compelling circumstances will be screened for eligibility for statutory withholding of removal and CAT protection under a heightened ''reasonable probability of persecution or torture'' standard—a higher standard than the ''reasonable possibility'' standard under the Circumvention of Lawful Pathways rule.

As the Departments described more fully in the Circumvention of Lawful Pathways rule, the current asylum system—in which a high number of migrants are initially determined to be eligible to pursue their claims, even though most ultimately are not granted asylum or protection at the merits stage—has contributed to the growing backlog of cases awaiting review by IJs.[165] The practical result is that those with meritorious claims may have to wait years for their claims to be granted, while individuals who are ultimately denied protection may spend years in the United States before being issued a final order of removal.[166] As the demographics of border encounters have shifted in recent years to include Mexicans claiming fear at a higher rate, and large numbers of non-Mexicans—who have historically been far more likely to assert fear claims—and as the time required to process and remove noncitizens ineligible for protection has grown (during which individuals may become eligible to apply for employment authorization), the deterrent effect of apprehending noncitizens at the SWB has become more limited.[167]

The provisions in this rule are intended to be emergency measures that impact the expedited removal process and eligibility for relief or protection only for those who enter the United States across the southern border during emergency border circumstances. Unfortunately, the significant efforts the Departments have made to address such circumstances to date have not been as effective as they could have been had Congress provided the personnel, infrastructure, technology, and broader reforms that the Departments have requested. Communities all over the United States are being adversely impacted as a result. The goal of these measures is to quickly reduce unlawful and unauthorized entries at the border and to quickly impose decisions and consequences on those who cross our border unlawfully and lack a legal basis to remain.

3. Description of the Rule and Explanation of Regulatory Changes

This rule amends the Departments' regulations to further the purpose of the Presidential Proclamation of June 3, 2024, which suspends and limits entry along the southern border to address the emergency border circumstances outlined in that Proclamation. The rule does so by amending 8 CFR 208.13 and 1208.13 and adding regulatory provisions at 8 CFR 208.35, 235.15, and 1208.35 that (1) limit asylum eligibility for those who enter the United States across the southern border during emergency border circumstances described in the Proclamation and this rule, are not described in section 3(b) of the Proclamation, and do not establish the existence of exceptionally compelling circumstances; (2) alter the process for advising noncitizens of their rights to seek asylum and for identifying which noncitizens to refer to an AO for credible fear screening during emergency border circumstances; and (3) alter the standard for screening for statutory withholding of removal and CAT protection while such circumstances exist.[168] Below is an explanation of the limitation and each change to the expedited removal and fear screening process. The specific content of each provision and amendment is set forth in detail in Section III.C of this preamble.

a. Limitation on Asylum Eligibility

As discussed above in Sections III.B.1 and 2 of this preamble, irregular migration is continuing to strain the Departments' ability to timely process, detain, and remove, as appropriate, and

[164] 8 CFR 235.3(b)(2).

[165] 88 FR at 31315.

[166] *See supra* note 25.

[167] According to OHSS Persist data, Mexican nationals continued to account for 89 percent of total CBP SWB encounters in FY 2010, with northern Central Americans accounting for 8 percent and all other nationalities accounting for 3 percent. March 2024 OHSS Persist Dataset. Northern Central Americans' share of total CBP SWB encounters increased to 21 percent by FY 2012 and averaged 48 percent from FY 2014 to FY 2019, the last full year before the start of the COVID–19 pandemic. *Id.* Nationals from all other countries except Mexico and the northern Central American countries accounted for an average of 5 percent of total CBP SWB encounters from FY 2010 to FY 2013, and for 10 percent of total encounters from FY 2014 to FY 2019. *Id.* This transition has accelerated since the start of FY 2021, as Mexican nationals accounted for approximately 32 percent of total CBP SWB encounters in FY 2021 through March 2024, including roughly 29 percent in the first six months of FY 2024; northern Central Americans accounted for roughly 25 percent from FY 2021 through March 2024 (20 percent in FY 2024 through March 2024); and all other countries accounted for roughly 42 percent from FY 2021 through March 2024, including roughly 51 percent of FY 2024 encounters through March 2024. *Id.*

For noncitizens encountered at and between SWB POEs from FY 2014 through FY 2019 who were placed in expedited removal, nearly 6 percent of Mexican nationals made fear claims that were referred to USCIS for determination. OHSS analysis of Enforcement Lifecycle data as of December 31, 2023. In contrast, as discussed in Section III.B.3.a.iv of this preamble, from May 12, 2023 to March 31, 2024, 29 percent of all Mexican nationals processed for expedited removal at the SWB made fear claims, including 39 percent in February 2024. OHSS analysis of UIP ER Daily Report Data Dashboard as of April 2, 2024.

For noncitizens encountered at and between SWB POEs from FY 2014 through FY 2019, nearly 57 percent of people from northern Central America (*i.e.,* El Salvador, Guatemala, and Honduras), and close to 90 percent of all other nationalities made fear claims that were referred to USCIS for determination. OHSS analysis of Enforcement Lifecycle data as of December 31, 2023. Of note, according to OHSS analysis of historic EOIR and CBP data, there is a clear correlation since FY 2000 between the increasing time it takes to complete immigration proceedings, which results in a lower share of noncitizens being removed, and the growth in non-Mexican encounters at and between SWB POEs. Both trends accelerated in the 2010s, as non-Mexicans became the majority of such encounters, and they have accelerated further since FY 2020, as people from countries other than Mexico and northern Central America now account for the largest numbers of such encounters. OHSS analysis of March 2024 OHSS Persist Dataset.

[168] The Departments understand that the President has directed the agencies to promptly consider issuing ''any instructions, orders, or regulations as may be necessary to address the circumstances at the southern border.'' Such actions may include other measures that are not addressed in this rule, and the Departments have considered and are continuing to consider such other actions. The Departments believe that the changes made in this rule are the most appropriate means to begin addressing the concerns identified in the Proclamation, and the Departments will assess the effectiveness of this rule as they continue to consider other actions to respond to the President's direction.

thus to swiftly deliver timely decisions and timely consequences to noncitizens at the southern border. This challenge is exacerbated by the sheer number of migrants who invoke credible fear procedures at a POE or when they are encountered between POEs without following the lawful, safe, and orderly processes that DHS has made available. The Departments have implemented the Circumvention of Lawful Pathways rule and complementary measures, but Congress has not provided the resources necessary to timely and effectively process and interview all those who invoke credible fear procedures through the expedited removal process at the southern border, particularly during times in which the country's border faces an emergency of the magnitude described in the Proclamation. The record numbers of migrants invoking the credible fear procedures at the southern border exacerbate the risk of severe overcrowding in USBP facilities and POEs, and it creates a situation in which large numbers of migrants—only a small proportion of whom are likely to be granted asylum—are not able to be expeditiously removed but are instead referred to backlogged immigration courts. This situation is self-reinforcing: the expectation of a lengthy stay in the United States and the lack of timely consequences for irregular migration encourage more migrants without potentially meritorious claims for asylum to make the dangerous journey to the southern border to invoke credible fear procedures at the southern border and take their chances on being allowed to remain in the country for a lengthy period.

For these reasons, pursuant to section 208(b)(1)(A), (b)(2)(C), (d)(5)(B) of the INA, 8 U.S.C. 1158(b)(1)(A), (b)(2)(C), (d)(5)(B), the Departments are adopting a limitation on asylum eligibility for noncitizens who (1) enter the United States across the southern border during emergency border circumstances; (2) are not described in section 3(b) of the Proclamation; and (3) do not establish exceptionally compelling circumstances. *See* 8 CFR 208.13(g), 208.35(a), 1208.13(g), 1208.35(a). Section 3(b) of the Proclamation lists classes of individuals to whom the Proclamation's suspension and limitation on entry and this limitation on asylum eligibility does not apply; those classes are discussed in Section II.A of this preamble. The exceptionally compelling circumstances exception to this rule's limitation on asylum eligibility is discussed below in Sections III.B.3.a and III.C.2 of this preamble.

The limitation on asylum eligibility is needed to address the emergency border circumstances outlined in the Proclamation and this rule and responds to the President's direction to the Secretary of Homeland Security and the Attorney General to promptly consider issuing such instructions, orders, or regulations as may be necessary to address the circumstances at the southern border, including any additional limitations and conditions on asylum eligibility that they determine are warranted, subject to any exceptions that they determine are warranted. Under the circumstances described in the Proclamation, the Departments assess that the limitation on asylum is necessary to help streamline the Departments' processing of noncitizens, thereby conserving limited resources during the emergency border circumstances described in the Proclamation and this rule and allowing for enough resources to continue to process lawful cross-border trade and travel and noncitizens who present in a safe and orderly manner at a POE.[169]

The Departments have further made the determination to apply the limitation on asylum eligibility to those who enter the United States across the southern border during emergency border circumstances irrespective of whether the noncitizen is encountered during such emergency border circumstances. This will permit a consistent application of the rule to all those who enter across the southern border during such circumstances and are subject to this limitation on asylum eligibility, including those who evade detection at the southern border and are later placed in section 240 removal proceedings, as well as those who affirmatively apply for asylum. The Departments have considered applying the rule's asylum limitation only to those who enter and are encountered at the southern border during emergency border circumstances. The Departments believe, however, that the rule's asylum limitation should avoid creating an incentive for noncitizens to take risky measures to evade detection, which would further strain resources dedicated to apprehension at the border.[170]

Additionally, the approach adopted in this rule is consistent with the Circumvention of Lawful Pathways rule, which, with narrow exceptions, applies to all those who enter during the two-year period currently specified in that rule, regardless of whether they are apprehended at or near the border during the 14-day period immediately after entry or within 100 miles of the border. *See* 8 CFR 208.33(c), 1208.33(d). Moreover, the Departments note that the provisions of §§ 208.35(b) and 235.15 would be applicable only to those who have entered the United States during the emergency border circumstances described in the Proclamation and this rule and are processed for expedited removal. Thus, those provisions would not apply to those who have long since entered the United States. Accordingly, the Departments have determined that it is reasonable to apply this rule's limitation on asylum eligibility consistent with the Circumvention of Lawful Pathways rule, without regard to the date of encounter or commencement of proceedings.

Even if a noncitizen entered the United States across the southern border during emergency border circumstances and is not described in section 3(b) of the Proclamation, they may avoid application of the limitation on asylum eligibility if they establish by a preponderance of the evidence that exceptionally compelling circumstances exist.[171] Such circumstances necessarily

[169] When it comes to determining the applicability of the Proclamation, CBP immigration officers, who first encounter noncitizens when they enter or attempt to enter, must determine whether a noncitizen is subject to the Proclamation under section 3(a), including whether the noncitizen is excluded from the suspension and limitation on entry under section 3(b). *See* 8 CFR 208.35(a), 1208.35(a). The Departments anticipate that, when determining whether the limitation on asylum eligibility applies, AOs and IJs will rarely have grounds to reach a different result from the CBP immigration officers. *See* 8 CFR 208.35(b), 1208.35(b). In part, the Proclamation's application turns on straightforward questions of status—*e.g.,* whether someone was a noncitizen, Proclamation sec. 3(a)(i); was a noncitizen national, *id.* sec. 3(b)(i); was a lawful permanent resident, *id.* sec. 3(b)(ii); was a UC, *id.* sec. 3(b)(iii); or had a valid visa or other lawful permission to seek entry or admission into the United States or presented at a POE pursuant to a pre-scheduled time and place, *id.* sec. 3(b)(v). The Proclamation's application also turns on questions of historical fact, including whether the suspension and limitation on entry was in place at the relevant time, *id.* sec. 3(a), and whether someone was ''permitted to enter by . . . a CBP immigration officer'' based on two sets of specified considerations ''at the time of the entry or encounter that warranted permitting the noncitizen to enter,'' *id.* Sec. 3(b)(vi)–(vii). These two exceptions allow CBP immigration officers to permit the entry of noncitizens who present at the encounter with—for example—medical issues requiring immediate attention. *See id.* sec. 3(b)(vi).

[170] The Departments note that adjudicators already make determinations regarding the noncitizen's date of arrival when determining whether the noncitizen is barred from filing an asylum application (unless meeting an exception) within one year of arrival. *See* INA 208(a)(2)(B) and (D), 8 U.S.C. 1158(a)(2)(B) and (D).

[171] The Departments decline to adopt an exception mirroring the exception from the Circumvention of Lawful Pathways rule for those who present at a POE without a pre-scheduled time and place but show that it was not possible to access or use the DHS scheduling system due to language barrier, illiteracy, significant technical failure, or other ongoing and serious obstacle. *See*

exist where the noncitizen demonstrates that, at the time of entry, the noncitizen or a member of the noncitizen's family as described in 8 CFR 208.30(c) with whom the noncitizen was traveling faced an acute medical emergency; faced an imminent and extreme threat to their life or safety; or was a ''victim of a severe form of trafficking in persons'' as defined in 8 CFR 214.11.[172] 8 CFR 208.35(a)(2)(i), 1208.35(a)(2)(i). Acute medical emergencies would include, but would not be limited to, situations in which someone faces a life-threatening medical emergency or faces acute and grave medical needs that cannot be adequately addressed outside of the United States. Examples of imminent and extreme threats would include imminent threats of rape, kidnapping, torture, or murder that the noncitizen faced at the time the noncitizen crossed the southern border, such that they cannot wait for an appointment at a pre-scheduled time and place or until this IFR's limitation on asylum eligibility is not in effect for an opportunity to present at a POE without putting their life or well-being at extreme risk; it would not include generalized threats of violence.

The ''exceptionally compelling circumstances'' exception mirrors the rebuttal circumstance the Departments adopted in the Circumvention of Lawful Pathways rule. *See* 8 CFR 208.33(a)(3)(i), 1208.33(a)(3)(i). That exception is adopted here for the reasons articulated for adopting it in the Circumvention of Lawful Pathways NPRM and rule and the exception is intended to apply to the same circumstances identified in that NPRM and rule. *See, e.g.,* 88 FR at 11723; 88 FR at 31318, 31338, 31348, 31351, 31380, 31390, 31391–93.

Like the Circumvention of Lawful Pathways rule, this rule recognizes an additional exception that avoids the separation of families. *See* 8 CFR 208.35(c), 1208.35(c). Those noncitizens who are subject to the limitation on asylum eligibility and who do not establish exceptionally compelling circumstances under 8 CFR 208.35(a)(2)(i) or 1208.35(a)(2)(i) would be able to continue to apply for statutory withholding of removal and protection under the CAT, forms of protection to which the limitation does not apply if placed in section 240 removal proceedings. Unlike asylum, spouses and minor children are not eligible for derivative grants of statutory withholding of removal or CAT protection. *Compare* INA 208(b)(3)(A), 8 U.S.C. 1158(b)(3)(A) (''[a] spouse or child . . . of an alien who is granted asylum under this subsection may, if not otherwise eligible for asylum under this section, be granted the same status as the alien if accompanying, or following to join, such alien''), *with* INA 241(b)(3), 8 U.S.C. 1231(b)(3) (not providing for derivative statutory withholding of removal), *and* 8 CFR 1208.16(c) (not providing for derivative CAT protection); *see also Sumolang* v. *Holder,* 723 F.3d 1080, 1083 (9th Cir. 2013) (recognizing that the asylum statute allows for derivative beneficiaries of the principal applicant for asylum, but that the withholding of removal statute makes no such allowance). Again, mirroring EOIR's family unity provision in the Circumvention of Lawful Pathways rule, *see* 8 CFR 1208.33(c), where a principal asylum applicant is eligible for statutory withholding of removal or CAT protection and would be granted asylum but for the limitation on eligibility established in this rule, and where an accompanying spouse or child as defined in section 208(b)(3)(A) of the INA, 8 U.S.C. 1158(b)(3)(A), does not independently qualify for asylum or other protection from removal or the principal asylum applicant has a spouse or child who would be eligible to follow to join that applicant as described in section 208(b)(3)(A) of the INA, 8 U.S.C. 1158(b)(3)(A), the noncitizen shall be excepted from the limitation on eligibility by the IJ if placed in section 240 removal proceedings. 8 CFR 1208.35(c). The Departments have determined that the possibility of separating the family should be avoided. *See* E.O. 14011, Establishment of Interagency Task Force on the Reunification of Families, 86 FR 8273, 8273 (Feb. 2, 2021) (''It is the policy of my Administration to respect and value the integrity of families seeking to enter the United States.'').

In the Circumvention of Lawful Pathways rule, the Departments included a family unity provision in EOIR's regulations but not DHS's. The Departments did so because they decided at that time that those who an AO concludes are subject to the Lawful Pathways presumption and who are not able to establish an exception or rebut the presumption during a credible fear screening may not be placed into the asylum merits interview process and may instead only be issued an NTA and placed into section 240 removal proceedings. *See* 88 FR at 11725–26; 88 FR at 31336–37. For purposes of this rule, the Departments have allowed for an asylum merits interview process at the discretion of USCIS that includes USCIS discretion to apply a parallel family unity provision. *See* 8 CFR 208.35(c). This provision is discretionary to allow USCIS flexibility as it implements the new process. The Departments request comment on whether to adopt a non-discretionary family unity provision for the asylum merits interview process in a final rule.

i. Authority To Impose Additional Limitations on Asylum Eligibility

The Secretary and the Attorney General have authority to adopt this additional limitation on asylum eligibility. Both have long exercised discretion, now expressly authorized by Congress, to create new rules governing the granting of asylum. When section

8 CFR 208.33(a)(2)(ii)(B), 1208.33(a)(2)(ii)(B). This rule, unlike the Circumvention of Lawful Pathways rule, applies only in the emergency circumstances described in the Proclamation and the rule, where encounters strain the border security and immigration systems' capacity. And although the Circumvention of Lawful Pathways rule was also aimed at reducing irregular migration, it was focused on encouraging the use of lawful pathways, rather than the number of daily entrants. In these emergency border circumstances, this rule's exception for ''exceptionally compelling circumstances'' captures individuals with a time-sensitive imperative; such individuals may also be permitted to enter under one of the exceptions in section 3(b) of the Proclamation. And in these emergency border circumstances, the Departments have determined that individuals who do not qualify for this exception should wait for a CBP One appointment. Moreover, under the Circumvention of Lawful Pathways rule, this exception requires additional questioning of any noncitizen who entered at a POE and is subject to the rule—time that, in the aggregate, could diminish the Departments' ability to deploy resources to address the emergency circumstances that support application of this rule.

In addition, the Departments did not include an exception for a noncitizen who sought asylum or other protection in a country through which the noncitizen traveled and received a final decision denying that application. *See* 8 CFR 208.33(a)(2)(ii)(C), 1208.33(a)(2)(ii)(C). This rule serves a different purpose than 8 CFR 208.33(a)(2)(ii)(C) and 1208.33(a)(2)(ii)(C); specifically, this rule is aimed at deterring irregular migration and speeding up the border process during a period of high encounters, rather than encouraging noncitizens to seek protection in other countries. During the emergency border circumstances described in the Proclamation and this rule, narrowing the exceptions to those who are unable to wait for an appointment is key. Those who sought and were denied protection in another country will still be eligible for asylum if they enter pursuant to an appointment, meet another exception to the Proclamation, or establish exceptionally compelling circumstances, such as that at the time of entry they faced an acute medical emergency or an imminent and extreme threat to life or safety.

[172] The Departments note that noncitizens who are a ''victim of a severe form of trafficking in persons'' are already excepted from the Proclamation's suspension and limitation on entry as provided in section 3(b) of the Proclamation and are therefore also not subject to the rule's limitation on asylum eligibility. Nonetheless, the Departments have opted to retain ''victims of severe form of trafficking in persons'' as an exceptional circumstance to avoid any confusion and to ensure that the exceptions in this rule mirror the rebuttal circumstances the Departments adopted in the Circumvention of Lawful Pathways rule.

208 of the INA was first enacted as part of the Refugee Act of 1980, it simply provided that the Attorney General ''shall establish a procedure'' for a noncitizen ''to apply for asylum,'' and that the noncitizen ''may be granted asylum in the discretion of the Attorney General if the Attorney General determines that such [noncitizen] is a refugee within the meaning of section 1101(a)(42)(A).'' 8 U.S.C. 1158(a) (1982). In 1980, the Attorney General, in the exercise of that broad statutory discretion, established several mandatory bars to the granting of asylum. *See* 8 CFR 208.8(f)(1) (1980); Aliens and Nationality; Refugee and Asylum Procedures, 45 FR 37392, 37392 (June 2, 1980). In 1990, the Attorney General substantially amended the asylum regulations, but exercised his discretion to retain the mandatory bars to asylum eligibility related to persecution of others on account of a protected ground, conviction of a particularly serious crime in the United States, firm resettlement in another country, and the existence of reasonable grounds to regard the noncitizen as a danger to the security of the United States. *See* Aliens and Nationality; Asylum and Withholding of Deportation Procedures, 55 FR 30674, 30678, 30683 (July 27, 1990); *see also Yang* v. *INS,* 79 F.3d 932, 936–39 (9th Cir. 1996) (upholding firm-resettlement bar); *Komarenko* v. *INS,* 35 F.3d 432, 436 (9th Cir. 1994) (upholding particularly-serious-crime bar), *abrogated on other grounds by Abebe* v. *Mukasey,* 554 F.3d 1203 (9th Cir. 2009) (en banc).

In that 1990 rule, the Attorney General also codified another limitation that was first discussed in *Matter of Chen,* 20 I&N Dec. 16 (BIA 1989). 55 FR at 30678. Specifically, although the statute defines a ''refugee'' and thus allows asylum for a noncitizen based on a showing of past ''persecution or a well-founded fear of persecution,'' INA 101(a)(42)(A), 8 U.S.C. 1101(a)(42)(A), by regulation, a showing of past persecution only gives rise to a presumption of a well-founded fear of future persecution, which can be rebutted by showing that circumstances have changed such that the noncitizen no longer has a well-founded fear of future persecution or that the noncitizen can relocate to avoid persecution and under all the circumstances it is reasonable to expect the noncitizen to do so.[173] 8 CFR 208.13(b)(1), 1208.13(b)(1). Where the presumption is rebutted, the adjudicator, ''in the exercise of his or her discretion, shall deny the asylum application.'' [174] 8 CFR 208.13(b)(1)(i), 1208.13(b)(1)(i). In 1990, Congress added a mandatory statutory bar for those with aggravated felony convictions. Immigration Act of 1990, Public Law 101–649, sec. 515, 104 Stat. 4978, 5053.

With the passage of IIRIRA, Congress added three categorical statutory bars to the ability to apply for asylum for (1) noncitizens who can be removed, pursuant to a bilateral or multilateral agreement, to a third country where they would not be persecuted on account of a specified ground; (2) noncitizens who failed to apply for asylum within one year of arriving in the United States; and (3) noncitizens who have previously applied for asylum and had the application denied. Public Law 104–208, div. C, sec. 604, 110 Stat. 3009, 3009–690 to –691. Congress also adopted six mandatory bars to asylum eligibility that largely reflected the pre-existing, discretionary bars that had been set forth in the Attorney General's asylum regulations. These bars cover (1) noncitizens who ''ordered, incited, assisted, or otherwise participated'' in the persecution of others; (2) noncitizens who, having been convicted of a ''particularly serious crime,'' constitute a danger to the United States; (3) noncitizens for whom there are serious reasons to believe committed a ''serious nonpolitical crime outside the United States'' before arriving in the United States; (4) noncitizens for whom there are reasonable grounds to regard as a ''danger to the security of the United States''; (5) noncitizens who are removable under a set of specified grounds relating to terrorist activity; and (6) noncitizens who were ''firmly resettled'' in another country prior to arriving in the United States. *Id.* at 3009–691 (codified at INA 208(b)(2)(A), 8 U.S.C. 1158(b)(2)(A)). Congress further added that aggravated felonies, defined in section 101(a)(43) of the INA, 8 U.S.C. 1101(a)(43), would be considered ''particularly serious crime[s].'' *Id.* at 3009–692 (codified at INA 208(b)(2)(B)(i), 8 U.S.C. 1158(b)(2)(B)(i)).

In IIRIRA, Congress also made clear that the Executive Branch may continue to exercise its broad discretion in determining whether to grant asylum by creating additional limitations and conditions on the granting of asylum. The INA provides that the Attorney General and Secretary ''may by regulation establish additional limitations and conditions, consistent with [section 208], under which an alien shall be ineligible for asylum.'' INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C); *see* 6 U.S.C. 552(d); INA 103(a)(1), 8 U.S.C. 1103(a)(1). In addition, while section 208(d)(5) of the INA, 8 U.S.C. 1158(d)(5), establishes certain procedures for consideration of asylum applications, Congress specified that the Attorney General and Secretary ''may provide by regulation for any other conditions or limitations on the consideration of an application for asylum'' so long as those conditions or limitations are ''not inconsistent with this chapter,'' INA 208(d)(5)(B), 8 U.S.C. 1158(d)(5)(B). In sum, the current statutory framework retains the broad discretion of the Attorney General (and, after the HSA, also the Secretary) to adopt additional limitations on the granting of asylum and procedures for implementing those limitations.

Previous Attorneys General and Secretaries have since invoked their authorities under section 208 of the INA, 8 U.S.C. 1158, to establish eligibility bars beyond those required by the statute itself. *See, e.g.,* Asylum Procedures, 65 FR 76121, 76126 (Dec. 6, 2000) (requiring consideration of the applicant's ability to relocate safely in his or her home country in assessing asylum eligibility); Aliens Subject to a Bar on Entry Under Certain Presidential Proclamations; Procedures for Protection Claims, 83 FR 55934 (Nov. 9, 2018) (''Proclamation Bar IFR'') (limit on eligibility for applicants subject to certain presidential proclamations); [175] Asylum Eligibility and Procedural Modifications, 85 FR 82260 (Dec. 17, 2020) (''TCT Bar final rule'') (limit on eligibility for certain noncitizens who failed to apply for protection while in a third country through which they transited en route to the United States); [176] Procedures for Asylum and Bars to Asylum Eligibility, 85 FR 67202 (Oct. 21, 2020) (limits on eligibility for noncitizens convicted of certain criminal offenses); [177] Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of

[173] As noted below, the internal relocation provision was added in 2000 by Asylum Procedures, 65 FR 76121, 76126 (Dec. 6, 2000).

[174] There is a narrow exception to this mandatory discretionary ground for denial, called ''humanitarian asylum,'' where the noncitizen establishes ''compelling reasons for being unwilling or unable to return to the [noncitizen's] country arising out of the severity of . . . past persecution'' or ''that there is a reasonable possibility that [the non-citizen] may suffer other serious harm upon removal to [the noncitizen's] country.'' 8 CFR 208.13(b)(1)(iii), 1208.13(b)(1)(iii).

[175] *See O.A.* v. *Trump,* 404 F. Supp. 3d 109 (D.D.C. 2019) (vacating Proclamation Bar IFR).

[176] *See E. Bay Sanctuary Covenant* v. *Barr,* 519 F. Supp. 3d 663 (N.D. Cal. 2021) (preliminarily enjoining the TCT Bar final rule).

[177] *See Pangea Legal Servs.* v. *U.S. Dep't of Homeland Sec.,* 501 F. Supp. 3d 792, 827 (N.D. Cal. 2020) (granting temporary restraining order against operation of the rule and ordering defendants to show cause why the rule should not be preliminarily enjoined).

Removal Proceedings; Asylum Procedures, 62 FR 10312, 10342 (Mar. 6, 1997) (IFR codifying mandatory bars and adding provision allowing for discretionary denials of asylum where ''the alien can be removed to a third country which has offered resettlement and in which the alien would not face harm or persecution''); *see also Yang,* 79 F.3d at 936–39 (upholding firm-resettlement bar); *Komarenko,* 35 F.3d at 436 (upholding particularly-serious-crime bar). Consistent with this historical practice, the Secretary and Attorney General exercised this authority when adopting the Lawful Pathways presumption of asylum ineligibility. *See* Circumvention of Lawful Pathways rule, 88 FR 31314.[178]

ii. Litigation Over the Proclamation Bar IFR

This rule places a limitation on asylum eligibility for those noncitizens who are described in the Proclamation subject to certain exceptions. The Departments acknowledge prior judicial decisions addressing a different limit on asylum eligibility adopted pursuant to section 208(b)(2)(C) of the INA, 8 U.S.C. 1158(b)(2)(C), relating to suspensions and limitations on entry by presidential proclamation under section 212(f) of the INA, 8 U.S.C. 1182(f). In *East Bay Sanctuary Covenant* v. *Biden,* 993 F.3d 640 (9th Cir. 2021) (''*East Bay III*''), the Ninth Circuit affirmed a preliminary injunction against the Proclamation Bar IFR, which categorically rendered certain noncitizens ineligible for asylum if they entered the United States in violation of a presidential proclamation or other presidential order suspending or limiting the entry of noncitizens along the southern border. The relevant presidential proclamation in that case suspended entry of all migrants along the southern border except those who entered at a POE. *See id.* at 659. The court held that the Proclamation Bar IFR was inconsistent with section 208(a) of the INA, 8 U.S.C. 1158(a), which provides that any migrant ''who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum.'' *Id.* at 670.[179]

The Departments regard this rule as substantially different than the rule the Ninth Circuit deemed invalid in *East Bay III.* The Proclamation and limitation on asylum eligibility at issue here differ significantly from the prior categorical bar on ''manner of entry'' because they do not treat the manner of entry as dispositive in determining eligibility. Rather, the limitation at issue here turns on whether—during emergency border circumstances described in the Proclamation and this rule—an individual has followed the lawful, safe, and orderly pathways that the United States Government has established during these emergency situations when it is essential that noncitizens use such pathways to ensure the United States Government's ability to manage the border. And even during these situations, AOs and IJs have the ability to except noncitizens from the rule's asylum limitation where the noncitizens establish that an exceptionally compelling circumstance exists. *See* 8 CFR 208.35(a)(2)(i), 1208.35(a)(2)(i). For example, a noncitizen may be excepted from the limitation on asylum eligibility if they experienced an acute medical emergency at the time of entry regardless of where that entry occurred. Other exceptionally compelling circumstances include, but are not limited to, if the noncitizen demonstrates that, at the time of entry, the noncitizen or a member of their family as described in 8 CFR 208.30(c) with whom the noncitizen was traveling faced an imminent and extreme threat to their life or safety or was a ''victim of a severe form of trafficking in persons'' as defined in 8 CFR 214.11. 8 CFR 208.35(a)(2)(i)(B)–(C), 1208.33(a)(2)(i)(B)–(C). Indeed, the rule's exceptionally compelling circumstances exception is identical to the grounds that would rebut the presumption of asylum ineligibility under the Circumvention of Lawful Pathways rule, which has been allowed to continue in effect despite litigation challenging its validity. *See E. Bay Sanctuary Covenant* v. *Biden,* No. 23–16032, 2023 WL 11662094, at *1 (9th Cir. Aug. 3, 2023) (staying order vacating Circumvention of Lawful Pathways rule pending appeal). Furthermore, this rule does not implicate the same concerns as the prior categorical bar based on ''manner of entry'' because it applies only to individuals who enter during emergency border circumstances and would not treat solely the manner of entry as dispositive in determining eligibility even during such circumstances, given that the rule applies both at and between POEs and in light of the exceptions available under section 3(b) of the Proclamation and for exceptionally compelling circumstances under 8 CFR 208.35(a)(2) and 1208.35(a)(2).

Moreover, the Departments disagree with important aspects of the reasoning that the district court and Ninth Circuit relied upon in *East Bay III.* The Departments argued in *East Bay III* that section 208(a)(1) of the INA, 8 U.S.C. 1158(a)(1), by its plain terms requires only that a noncitizen be permitted to ''apply'' for asylum, regardless of their manner of entry. It does not require that a noncitizen be eligible to be granted asylum, regardless of their manner of entry. Indeed, the BIA has long taken account of a noncitizen's manner of entry in determining whether to grant asylum. *See Matter of Pula,* 19 I&N Dec. 467, 473 (BIA 1987) (holding that ''manner of entry . . . is a proper and relevant discretionary factor to consider in adjudicating asylum applications''). The court in *East Bay III* rejected this argument, stating that ''[e]xplicitly authorizing a refugee to file an asylum application because he arrived between ports of entry and then summarily denying the application for the same reason borders on absurdity,'' 993 F.3d at 670 (emphasis omitted), but the statute draws a clear distinction between the two. Section 208(a) of the INA, 8 U.S.C. 1158(a), governs who may ''apply for asylum'' and includes several categorical bars, such as the bar for applications for noncitizens present in the country for more than one year. INA 208(a)(1), (2)(B), 8 U.S.C. 1158(a)(1), (2)(B); *see* INA 241(a)(5), 8 U.S.C. 1231(a)(5). Section 208(b) of the INA, 8 U.S.C. 1158(b), in turn, governs who is eligible to be granted asylum. Specifically, section 208(b)(1)(A) of the INA, 8 U.S.C. 1158(b)(1)(A), provides that the Attorney General or the Secretary ''may grant asylum to an alien who has applied,'' INA 208(b)(2), 8 U.S.C. 1158(b)(2), then specifies six categories of noncitizens to whom ''[p]aragraph (1)'' (*i.e.,* the discretionary authority to grant asylum to an applicant) ''shall not apply.'' Any noncitizen falling within one of those categories may apply for asylum under section 208(a)(1) of the INA, 8 U.S.C. 1158(a)(1), but is categorically ineligible

[178] The Circumvention of Lawful Pathways rule was vacated by *East Bay Sanctuary Covenant* v. *Biden,* 683 F. Supp. 3d 1025 (N.D. Cal. 2023). But the Ninth Circuit has stayed that vacatur pending appeal, *see E. Bay Sanctuary Covenant* v. *Biden,* No. 23–16032 (9th Cir. Aug. 3, 2023), and thus the rule and its presumption remain in effect. On February 21, 2024, the Ninth Circuit placed the case in abeyance pending settlement discussions. *E. Bay Sanctuary Covenant* v. *Biden,* 93 F.4th 1130 (9th Cir. 2024).

[179] The court also held that the Proclamation Bar IFR likely did not properly fall under the good cause or foreign affairs exceptions to notice-and-comment rulemaking under 5 U.S.C. 553(a)(1) and (b)(B). *See East Bay III,* 993 F.3d at 676–77.

to receive it under section 208(b) of the INA, 8 U.S.C. 1158(b).

The broad preemptive sweep that the Ninth Circuit attributed to section 208(a)(1) of the INA, 8 U.S.C. 1158(a)(1), also fails to account for the discretionary nature of asylum. No noncitizen ever has a right to be granted asylum. The ultimate ''decision whether asylum should be granted to an eligible alien is committed to the Attorney General's [and the Secretary's] discretion.'' *INS* v. *Aguirre-Aguirre,* 526 U.S. 415, 420 (1999). The *East Bay III* court did not dispute that manner of entry is a permissible consideration in determining whether to exercise that discretion to grant asylum in individual cases. 99 F.3d at 671; *see also Matter of Pula,* 19 I&N Dec. at 473; *Fook Hong Mak* v. *INS,* 435 F.2d 728, 730 (2d Cir. 1970) (Friendly, J.) (upholding the INS's authority to ''determine[ ] certain conduct to be so inimical to the statutory scheme that all persons who have engaged in it shall be ineligible for favorable consideration'').

The *East Bay III* court also suggested that a regulation categorically barring asylum based on manner of entry is inconsistent with the United States' commitments under the Refugee Protocol, in which the United States adhered to specified provisions of the Refugee Convention. *See* 993 F.3d at 972–75. Even accepting *East Bay III*'s reasoning on this point, that reasoning is limited to a categorical eligibility bar premised on manner of entry; this IFR does not implicate the same concerns as the prior categorical bar on ''manner of entry'' for the reasons identified above. In any event, the *East Bay III* court's conclusion was incorrect. The United States' non-refoulement obligation under Article 33 of the Refugee Convention is implemented by statute through the provision in section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3)(A), for mandatory withholding of removal. This rule specifically preserves the availability of that protection from removal. The INA's provision in section 208 of the INA, 8 U.S.C. 1158, for the discretionary granting of asylum instead aligns with Article 34 of the Refugee Convention, which is precatory and does not require any signatory to actually grant asylum to all those who are eligible. *See, e.g., INS* v. *Cardoza-Fonseca,* 480 U.S. 421, 440–41 (1987). The *East Bay III* court also misread Article 31(1) of the Refugee Convention, which pertains only to ''penalties'' imposed ''on account of . . . illegal entry or presence'' on refugees who, among other criteria, are ''coming directly from a territory where'' they face persecution. *See, e.g., Singh* v. *Nelson,* 623 F. Supp. 545, 560–61 & n.14 (S.D.N.Y. 1985) (quoting the Refugee Convention). And a bar to the granting of the discretionary relief of asylum is not a penalty under Article 31(1), especially given that the noncitizen remains eligible to apply for statutory withholding of removal, which implements U.S. non-refoulement obligations under the Refugee Protocol. *See Mejia* v. *Sessions,* 866 F.3d 573, 588 (4th Cir. 2017); *Cazun* v. *U.S. Att'y Gen.,* 856 F.3d 249, 257 n.16 (3d Cir. 2017).

iii. Litigation Over Other Limitations

The Departments also acknowledge other prior precedent concerning the scope of the Departments' statutory rulemaking authority under section 208(b)(2)(C) of the INA, 8 U.S.C. 1158(b)(2)(C). Specifically, when reviewing the TCT Bar final rule, the Ninth Circuit in *East Bay Sanctuary Covenant* v. *Garland,* 994 F.3d 962 (9th Cir. 2020) (''*East Bay I*''), held that a new condition on asylum eligibility under section 208(b)(2)(C) of the INA, 8 U.S.C. 1158(b)(2)(C), must ''further[ ] the purpose'' of another provision in section 208 to be ''consistent with'' it. 994 F.3d at 977, 977–80. The Departments disagree. A requirement that additional asylum limitations can only ''further[ ] the purpose'' of the existing exceptions by either targeting threats to the nation or promoting the purposes the Ninth Circuit identified in the safe-third-country or firm-resettlement bars, *id.* at 977, is irreconcilable with the statute's meaning and conflicts with its history. Not only has Congress adopted asylum bars that do not further the purpose the Ninth Circuit identified—*e.g.,* the one-year filing deadline and the bar on successive applications—it has granted to the Departments the broad discretion to add more such bars. The Ninth Circuit's approach is also inconsistent with *Trump* v. *Hawaii,* 585 U.S. 667, 690–91 (2018) (INA's express provisions governing entry ''did not implicitly foreclose the Executive from imposing tighter restrictions,'' even if restrictions addressed a subject that is ''similar'' to one that Congress ''already touch[ed] on''). The statutory asylum bars likewise do not foreclose imposing further conditions, even if those conditions address subjects similar to those already in the asylum statute. *See, e.g.,* INA 241(a)(5), 8 U.S.C. 1231(a)(5) (barring from asylum those whose orders of removal have been reinstated regardless whether they have asylum claims stemming from events that occurred after the original order of removal); *see R–S–C* v. *Sessions,* 869 F.3d 1176, 1184 (10th Cir. 2017) (reconciling the reinstatement provision's bar on asylum with section 208's allowing noncitizens to apply for asylum regardless of manner of entry).

Regardless, this rule is consistent with section 208 of the INA, 8 U.S.C. 1158, as a limitation on asylum eligibility.[180] The President has determined that, under certain emergency border circumstances, entries must be suspended and limited because in such circumstances the border security and immigration systems lack capacity to deliver timely decisions and timely consequences, which threatens to incentivize further migration. And in light of such circumstances and their pernicious effects, the Departments have determined that special procedures must be used to quickly process the influx of noncitizens, including those seeking asylum. Those determinations do not conflict with the text or structure of section 208 of the INA, 8 U.S.C. 1158, and are consistent with (and an appropriate exercise of the Departments' authority under) that provision. Nothing more is required for the rule to constitute a valid exercise of authority under section 208(b)(2)(C) of the INA, 8 U.S.C. 1158(b)(2)(C).

Moreover, this rule's propriety is reinforced by the statutory bars on asylum Congress has enacted. Just as Congress has chosen to promote systemic efficiency by prohibiting asylum applications filed more than one year after entry and by generally prohibiting noncitizens from pursuing successive asylum applications, INA 208(a)(2)(B)–(C), 8 U.S.C. 1158(a)(2)(B)–(C), this rule furthers systemic efficiency by limiting asylum in certain situations where the strains on the immigration system are at their peak. Congress did

[180] The Departments' interpretation of the phrase ''consistent with'' is supported by judicial interpretation of the term in other contexts. The D.C. Circuit, for example, has cautioned against construing ''consistent with'' too narrowly in a Clean Air Act case. *Envtl. Def. Fund, Inc.* v. *EPA,* 82 F.3d 451, 457 (D.C. Cir. 1996) (per curiam), *amended by* 92 F.3d 1209 (D.C. Cir. 1996). The court emphasized that this ''flexible statutory language'' does not require ''exact correspondence . . . but only congruity or compatibility'' and underscored that the phrase's ambiguity warranted deference to the agency's policy. *Id.* Other courts have adopted the same understanding of ''consistent with.'' *See, e.g., Jimenez-Rodriguez* v. *Garland,* 996 F.3d 190, 198 (4th Cir. 2021) (''The phrase 'consistent with' does not require 'exact correspondence . . . but only congruity or compatibility.' '' (quoting *Nuclear Energy Inst., Inc.* v. *EPA,* 373 F.3d 1251, 1269 (D.C. Cir. 2004))); *Nat'l Wildlife Fed'n* v. *Sec'y of U.S. Dep't of Transp.,* 960 F.3d 872, 878 (6th Cir. 2020) (''[T]he phrase 'consistent with' cannot bear the weight that the Federation places on it. Response plans are 'consistent' with the contingency plans if they 'show no noteworthy opposing, conflicting, inharmonious, or contradictory qualities'—in other words, if the documents put together are 'not self-contradictory. Consistency does *not* mean exact, point-by-point correspondence.'' (cleaned up)).

not foreclose the Departments from likewise taking systemic considerations into account when exercising their discretion to add conditions or limitations on eligibility. Indeed, the ultimate consideration when determining whether someone warrants a grant of relief as a matter of discretion is whether granting relief ''appears in the best interests of th[e] country,'' *Matter of Marin,* 16 I&N Dec. 581, 584 (BIA 1978), a point Congress was aware of when it amended the INA in 1996, *see id.* (best interests standard preceded 1996 amendments by nearly two decades). The Departments find that the rule's limitation on asylum eligibility furthers the efficiency aims of the asylum statute and is in the best interests of the United States because it allows the Departments to deliver timely decisions and timely consequences in order to address the emergency border circumstances discussed in the Proclamation and this rule.

Consistent with the best-interest standard, the BIA has long held a noncitizen's ''circumvention of orderly refugee procedures'' to be relevant to whether a favorable exercise of discretion is warranted. *Matter of Pula,* 19 I&N Dec. at 473. And the BIA has specifically considered as relevant factors the noncitizen's ''manner of entry or attempted entry.'' *Id.* Although the rule places greater weight on these factors under certain emergency circumstances, this decades-old precedent establishes that the Departments can permissibly take into account manner of entry. And exactly how much weight to place on those factors, and whether to do so in weighing asylum eligibility, falls well within the broad discretion conferred on the Departments by section 208(b)(2)(C) of the INA, 8 U.S.C. 1158(b)(2)(C). *Cf. Lopez* v. *Davis,* 531 U.S. 230, 244 (2001); *Reno* v. *Flores,* 507 U.S. 292, 313 (1993); *Yang,* 79 F.3d at 936–37.

The Departments acknowledge that *Matter of Pula* did not consider a noncitizen's arrival at a POE to weigh against a discretionary grant of asylum. *See* 19 I&N Dec. at 473. But *Matter of Pula* also did not involve circumstances in which the country's border faced an emergency of a magnitude comparable to the emergency border circumstances described by the Proclamation and this rule, where even arrivals at POEs significantly contribute to the Departments' inability to process migrants and deliver timely decisions and timely consequences to those without a lawful basis to remain. Given the emergency border circumstances described by the Proclamation and the President's direction in section 3(d) of the Proclamation to promptly consider issuing any instructions, orders, or regulations as may be necessary to address the situation at the southern border; and given the strain on operations and resources that high volumes of new arrivals create, such that consequences cannot be appropriately delivered; the Departments believe that the rule's limitation on asylum eligibility should apply to noncitizens who enter the United States across the southern border, including at a POE during the emergency border circumstances described in the Proclamation and this rule, unless an exception applies.

In *Matter of Pula,* the BIA explained that a noncitizen's ''circumvention of orderly refugee procedures,'' including their ''manner of entry or attempted entry,'' is a relevant factor for asylum, 19 I&N Dec. at 473–74, and this rule merely takes such circumvention into account. Because the Proclamation contains an exception for arrivals at a pre-scheduled time and place under a process approved by the Secretary, this rule's limitation on asylum will also not apply to such arrivals. One of the mechanisms by which a noncitizen may arrive at a POE with a pre-scheduled time to appear is through the CBP One app. Use of the CBP One app creates efficiencies that enable CBP to safely and humanely expand its ability to process noncitizens at POEs, including those who may be seeking asylum. *See* 88 FR at 11719. Indeed, without CBP One, noncitizens could have longer wait times for processing at the POE depending on daily operational constraints and circumstances. *See* 88 FR at 31342. During emergency border circumstances, use of the CBP One app is especially critical because it allows DHS to maximize the use of its limited resources. *See, e.g., id.* at 31317–18 (explaining the benefits of having noncitizens pre-schedule appointments using the CBP One app). The CBP One app and other lawful pathways that the United States Government has made available to those seeking to enter the United States, including to seek asylum or protection, are intended to allow for orderly processing. Therefore, those who ''circumvent orderly refugee procedures,'' consistent with *Matter of Pula,* 19 I&N Dec. at 474, during emergency border circumstances without meeting one of the recognized exceptions will be ineligible for asylum.[181]

[181] As the BIA further explained with respect to the asylum statute as it existed at the time, ''[a] careful reading of the language of [section 208(a)(1)] reveals that the phrase 'irrespective of such alien's status' modifies only the word 'alien.'" *Matter of Pula,* 19 I&N Dec. at 473. ''The function of that phrase is to ensure that the procedure established by the Attorney General for asylum applications includes provisions for adjudicating applications from *any* alien present in the United States or at a land or port of entry, 'irrespective of such alien's status.'" *Id.* (collecting cases). Congress accordingly made clear that noncitizens like stowaways, who, at the time the Refugee Act was passed, could not avail themselves of our immigration laws, would be eligible at least to apply for asylum ''irrespective of [their] status.'' *Id.* ''Thus, while section 208(a) provides that an asylum application be accepted from an alien 'irrespective of such alien's status,' no language in that section precludes the consideration of the alien's status in granting or denying the application in the exercise of discretion.'' *Id.*

[182] The Departments have considered the July 25, 2023 district court decision vacating the Circumvention of Lawful Pathways rule. *See E. Bay Sanctuary Covenant* v. *Biden,* 683 F. Supp. 3d 1025 (N.D. Cal. 2023). That decision applied the holdings of the other *East Bay* decisions generally, and the Departments do not see a need to address it separately except to note that as of publication the court's vacatur remains stayed pending appeal in the Ninth Circuit, and thus the rule is in effect. *See E. Bay Sanctuary Covenant* v. *Biden,* No. 23–16032, 2023 WL 11662094, at *1 (9th Cir. Aug. 3, 2023).

iv. This Limitation on Asylum Eligibility

For the reasons discussed above, the *East Bay* cases dealt with different limitations on asylum and involved different factual circumstances, and hence are distinguishable from this rule.[182] Moreover, the Departments respectfully disagree with some of the substantive holdings of the Ninth Circuit and the district court as described above. The Secretary and the Attorney General permissibly may determine that, during emergency border circumstances, it is in the ''best interests of th[e] country,'' *Matter of Marin,* 16 I&N Dec. at 584, to limit asylum eligibility for those who enter in violation of the Proclamation, which, in turn, will allow the Departments to allocate their limited resources to prioritize processing noncitizens who do not enter in violation of it. Nothing in section 208 of the INA, 8 U.S.C. 1158, forecloses that view, and securing the best interests of the country is a reasonable policy goal under section 208 and thus ''consistent with'' it. INA 208(b)(2)(C), 8 U.S.C. 1158(b)(2)(C); *see Yang,* 79 F.3d at 939 (observing that ''it is precisely to cope with the unexpected that Congress deferred to the experience and expertise of the Attorney General in fashioning section 208''); *see also id.* at 935 (''We must reject the argument that [the] regulation [establishing a categorical discretionary bar to asylum eligibility] exceeds the authority of the Attorney General if we find that the regulation has a 'reasonable foundation . . . that is, if it rationally pursues a purpose that it is lawful for the

[immigration agencies] to seek.' '' (quoting *Reno,* 507 U.S. at 309)).

Beyond the clear statutory text, settled principles of administrative law dictate that the Departments may adopt generally applicable eligibility requirements. Those principles establish that it is permissible for agencies to establish general rules or guidelines in lieu of case-by-case assessments, so long as those rules or guidelines are not inconsistent with the statute, and that principle is especially salient here as asylum is inherently discretionary in nature. *See Lopez,* 531 U.S. at 243–44 (rejecting the argument that the Bureau of Prisons was required to make ''case-by-case assessments'' of eligibility for sentence reductions and explaining that an agency ''is not required continually to revisit 'issues that may be established fairly and efficiently in a single rulemaking' '' (quoting *Heckler* v. *Campbell,* 461 U.S.458, 467 (1983))); *Reno,* 507 U.S. at 313–14 (holding that a statute requiring ''individualized determination[s]'' does not prevent immigration authorities from using ''reasonable presumptions and generic rules'' (quotation marks omitted)); *Fook Hong Mak,* 435 F.2d at 730 (upholding INS's authority to ''determine[ ] certain conduct to be so inimical to the statutory scheme that all persons who have engaged in it shall be ineligible for favorable consideration'' and observing that there is no legal principle forbidding an agency that is ''vested with discretionary power'' from determining that it will not use that power ''in favor of a particular class on a case-by-case basis''); *see also Singh,* 623 F. Supp. at 556 (''attempting to discourage people from entering the United States without permission . . . provides a rational basis for distinguishing among categories of illegal aliens''); *Matter of Salim,* 18 I&N Dec. 311, 315–16 (BIA 1982) (before *Pula,* explaining that a certain form of entry can be considered an ''extremely adverse factor which can only be overcome with the most unusual showing of countervailing equities''); *cf. Peulic* v. *Garland,* 22 F.4th 340, 346–48 (1st Cir. 2022) (rejecting challenge to *Matter of Jean,* 23 I&N Dec. 373 (A.G. 2002), which established strong presumption against a favorable exercise of discretion for certain categories of applicants for asylee and refugee adjustment of status under section 209(c) of the INA, 8 U.S.C. 1159(c) (citing cases)); *Cisneros* v. *Lynch,* 834 F.3d 857, 863–64 (7th Cir. 2016) (rejecting challenge to 8 CFR 1212.7(d), which established strong presumption against a favorable exercise of discretion for waivers under section 212(h) of the INA, 8 U.S.C. 1182(h), for certain classes of noncitizens, even if a few could meet the heightened discretionary standard (citing cases)).

The Departments recognize that in the Circumvention of Lawful Pathways rule they declined to adopt on a permanent basis the Proclamation Bar IFR because it conflicted with the tailored approach in that rule and because barring all noncitizens who enter between POEs along the SWB was not the proper approach under the circumstances the Departments then faced. *See* 88 FR at 31432. The Departments continue to believe that the approach taken in the Proclamation Bar IFR conflicts with the tailored approach of the Circumvention of Lawful Pathways rule as well as the tailored approach in this rule, which borrows heavily from the Circumvention of Lawful Pathways rule. The Proclamation Bar IFR contained no exceptions and was open-ended, allowing for implementation of any future proclamations or orders regardless of their terms. *See* 83 FR at 55952. In contrast, like the Circumvention of Lawful Pathways rule, this rule is narrowly tailored to address the emergency border circumstances described in the Proclamation and the rule and includes exceptions to account for circumstances in which waiting for an end to the suspension and limitation on entry and the limitation on asylum eligibility is not possible. And by relating the rule to a specific proclamation and the circumstances described therein, the Departments have been able to tailor its provisions to the terms of the Proclamation and the circumstances under which it is applied.

Finally, the Departments acknowledge that, unlike the Circumvention of Lawful Pathways rule, neither the Proclamation nor this rule excepts Mexican nationals. *See* 8 CFR 208.33(a)(1)(iii), 1208.33(a)(1)(iii) (providing that the Lawful Pathways rebuttable presumption of asylum ineligibility applies only to those who enter the United States along the SWB after transiting through a third country). Traveling through a third country is a key part of the Circumvention of Lawful Pathways rule because one lawful pathway for obtaining protection is applying for protection in a third country. *See* 8 CFR 208.33(a)(2)(ii)(C), 1208.33(a)(2)(ii)(C). The Departments recognize that some Mexican nationals seek asylum and protection in the United States. Indeed, since 2021, DHS has seen a sharp increase in total SWB encounters of Mexican nationals, from a pre-pandemic (FY 2014 through FY 2019) average of approximately 239,000 to more than 717,000 in FY 2023.[183] Of note, this increase in encounters has been accompanied by a sharp increase in referrals for credible fear interviews of Mexican nationals in expedited removal. The percentage of Mexican nationals processed for expedited removal who claimed a fear of return averaged 6 percent in the pre-pandemic period (FY 2014 through FY 2019), and never exceeded 7 percent for any fiscal year.[184] But 29 percent of all Mexican nationals processed for expedited removal at the SWB from May 12, 2023, to March 31, 2024, made fear claims, including 39 percent in February 2024.[185] Because of this sharp increase from the historical average, the Departments believe that applying this rule to Mexican nationals will result in faster processing of a significant number of Mexican noncitizens and thereby significantly advance this rule's overarching goal of alleviating the strain on the border security and immigration systems while entry is suspended and limited under the Proclamation. At the same time, the Departments continue to believe that, if encounters decrease to levels under which the systems do not experience the substantial strains they currently experience while the Circumvention of Lawful Pathways rule remains in effect, the application of that rule only to those noncitizens who travel through a third country en route to the United States appropriately accounts for the goals of encouraging migrants to seek protection in other countries or to use safe, orderly, and lawful pathways to enter the United States, ensuring the border security and immigration systems can efficiently process noncitizens, and affording asylum and other protection to those seeking it who establish their eligibility.

Under this rule, Mexican nationals will still be eligible for asylum in some circumstances—they may present at a POE pursuant to a pre-scheduled appointment, or, if they are unable to wait in Mexico while scheduling an appointment, they may be able to establish an exception to the Proclamation or exceptionally compelling circumstances under the rule. Even if they are not able to do so, the rule does not preclude eligibility for

[183] March 2024 OHSS Persist Dataset; *see also* OHSS, *Immigration Enforcement and Legal Processes Monthly Tables, https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables* (last updated May 10, 2024) (''CBP SW Border Encounters by Agency and Selected Citizenship'').

[184] OHSS Enforcement Lifecycle December 31, 2023.

[185] OHSS analysis of UIP ER Daily Report Data Dashboard as of April 2, 2024.

statutory withholding of removal and CAT protection, and they will be able to seek such protection. In the absence of an exception, however, Mexican nationals should be ineligible for asylum under the rule because, during the emergency border circumstances described in the Proclamation and this rule, it is important to deter irregular entry by all noncitizens regardless of country of origin. And the above data make clear that additional incentives are necessary to encourage Mexican nationals to pursue the available lawful, safe, and orderly pathways, rather than entering the country unlawfully.

v. Application During Credible Fear Screenings and Reviews

The limitation on asylum eligibility adopted here applies during merits adjudications, *see* 8 CFR 208.13(g), 1208.13(g), but will most frequently be relevant for noncitizens who are subject to expedited removal under section 235(b)(1) of the INA, 8 U.S.C. 1225(b)(1). Noncitizens in expedited removal are subject to removal ''without further hearing or review'' unless they indicate an intention to apply for asylum or fear of persecution. INA 235(b)(1)(A)(i), 8 U.S.C. 1225(b)(1)(A)(i). Noncitizens in expedited removal who indicate an intention to apply for asylum or fear of persecution are referred to an AO for an interview to determine if they have a credible fear of persecution and should accordingly remain in proceedings for further consideration of the application. INA 235(b)(1)(A)(ii), (b)(1)(B)(i), (ii), 8 U.S.C. 1225(b)(1)(A)(ii), (b)(1)(B)(i), (ii). In addition, AOs consider whether a noncitizen in expedited removal may be eligible for statutory withholding of removal or for CAT protection. *See* 8 CFR 208.30(e)(2), (3).

This rule instructs AOs and IJs to apply the limitation it adopts during credible fear screenings and reviews. 8 CFR 208.35(b), 1208.35(b). Under the rule, when screening for asylum eligibility, the AO and IJ must determine whether there is a significant possibility that the noncitizen would be able to establish by a preponderance of the evidence that they were not subject to the rule's limitation on asylum eligibility or that they will be able to establish by a preponderance of the evidence exceptionally compelling circumstances. For the reasons noted in the Circumvention of Lawful Pathways rule, the Departments expect that noncitizens rarely would be found excepted from the limitation on asylum for credible fear purposes and subsequently be found not to be excepted at the merits stage. *See* 88 FR at 31380–81.

The Departments recognize that in the recent past they changed course regarding whether to apply bars and conditions and limitations on asylum eligibility during credible fear screenings by rescinding provisions that would have applied the mandatory asylum bars during credible fear screenings. *See* 87 FR at 18135. In the Circumvention of Lawful Pathways NPRM, the Departments explained their reasoning for nevertheless applying that condition on asylum eligibility during credible fear screenings, stating that the rebuttable presumption would be less difficult to apply than other bars, limitations, or conditions because the facts regarding the presumption's applicability, exceptions, and rebuttal circumstances would generally be straightforward to apply. 88 FR at 11744–45. Indeed, the Departments have applied the presumption effectively in credible fear screenings for the time in which the Circumvention of Lawful Pathways rule has been in effect.[186]

The limitation adopted here is in many ways parallel to the Lawful Pathways rebuttable presumption—specifically, it borrows from the Circumvention of Lawful Pathways rule's rebuttal circumstances—although it is more straightforward because it does not include the Lawful Pathways rebuttable presumption's exceptions for those who applied and were denied asylum or other protection in a third country and those who were unable to schedule an appointment through the CBP One app for certain reasons. *See* 8 CFR 208.33(a)(2)(ii)(B)–(C), 1208.33(a)(2)(ii)(B)–(C). Given the Departments' experience with implementing the Circumvention of Lawful Pathways rule, the Departments are confident that the limitation and exceptions established here will be just as straightforward to apply as the similar provisions are for the Circumvention of Lawful Pathways rule.

b. Manifestation of Fear

This rule also alters certain aspects of the expedited removal process for individuals who enter across the southern border during emergency border circumstances and are not described in section 3(b) of the Proclamation. When an immigration officer inspects a noncitizen at a POE or between POEs and determines that the noncitizen is inadmissible and will be subject to expedited removal, current regulations require the immigration officer to take certain steps before ordering the noncitizen removed from the United States. *See* 8 CFR 235.3(b). This process takes approximately two hours per individual in USBP custody. In particular, the immigration officer conducts an inspection, including taking biometrics; running background checks; collecting biographic information, citizenship, and place and manner of entry; and advising the noncitizen of the charges against them. 8 CFR 235.3(b)(2)(i). The noncitizen has an opportunity to provide a response. *Id.* The officer must also read (or have read through an interpreter, if appropriate) the information contained in the Form I–867A, Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act, which advises the noncitizen of their ability to seek protection in the United States. *Id.* The examining immigration officer must also read the noncitizen the questions on the Form I–867B, Jurat for Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act, which asks, among other things, whether the noncitizen has any fear of return or would be harmed if returned. *Id.* After the noncitizen has provided answers to the questions on Form I–867B, the immigration officer records the answers, and the noncitizen then reads the statement (or has the statement read to them) and signs the statement. *Id.* On average, USBP agents spend about 20 to 30 minutes of the inspection period completing both the Form I–867A and the Form I–867B. Finally, a noncitizen who indicates a fear of return or an intention to seek asylum is served with and acknowledges receipt of a Form M–444, which includes more detailed information about the credible fear process. 8 CFR 235.3(b)(4)(i).

Instead of this current process, DHS is adding a new provision at 8 CFR 235.15(b)(4) to modify the process for determining whether a noncitizen who enters across the southern border and is

[186] In the post-May 12, 2023, period, the median time to refer noncitizens encountered by CBP at the SWB who claim a fear for credible fear interviews has decreased by 77 percent from its historical average, from 13 days in the FY 2014 to FY 2019 pre-pandemic period to 3 days in the four weeks ending March 31, 2024; for those who receive negative fear determinations or administrative closures that are not referred to EOIR, the median time from encounter to removal, in the same time frames, decreased 85 percent from 73 days to 11 days. Pre-pandemic medians based on OHSS analysis of OHSS Enforcement Lifecycle December 31, 2023; post-May 12 estimates based on OHSS analysis of operational CBP, ICE, USCIS, and DOJ/EOIR data downloaded from UIP on April 2, 2024. The Departments note that DHS recently published a notice of proposed rulemaking proposing that certain mandatory bars be considered at the screening stage under a reasonable possibility standard. Application of Certain Mandatory Bars in Fear Screenings, 89 FR 41347 (May 13, 2024). If DHS were to finalize that rule as drafted, this rule's ''reasonable probability'' standard would still apply when the noncitizen is subject to this rule's limitation on asylum eligibility.

not described in section 3(b) of the Proclamation during the emergency circumstances giving rise to the Proclamation's suspension and limitation on entry should be referred to an AO for a credible fear interview. These procedures apply during emergency border circumstances. *See* 8 CFR 235.15(a). Under the new rule, immigration officers will conduct an immigration inspection and, where the noncitizen will be subject to expedited removal, will advise the noncitizen of the removal charges against them and provide an opportunity to respond, consistent with existing practice and regulations outlined above. 8 CFR 235.3(b)(2)(i). However, the immigration officer will not complete either the Form I–867A or Form I–867B or a sworn statement. Moreover, the officer will not be required to provide individualized advisals on asylum or ask the noncitizen questions related to whether they have a fear. *See* 8 CFR 235.15(b)(4). Under the rule, the immigration officer will instead refer the noncitizen to an AO for a credible fear interview only if the noncitizen manifests a fear of return, expresses an intention to apply for asylum, expresses a fear of persecution or torture, or expresses a fear of return to the noncitizen's country or country of removal. *See id.* This manifestation can occur at any time in the process and can be expressed verbally, non-verbally, or physically.[187] In such situations, the immigration officer will not proceed further with the removal and will comply with the existing regulations, policies, and procedures, including as outlined in 8 CFR 235.3(b)(4), regarding processing and referring noncitizens for credible fear interviews. At the time that a noncitizen is referred for a credible fear interview, they will receive additional information about the credible fear process that has the same substantive information as in the current process, but without the requirement that such information be provided on a particular form.

DHS is making these changes to address the emergency circumstances at the southern border discussed in the Proclamation and the rule in a manner consistent with its legal obligations. DHS has broad authority to change the procedures that immigration officers apply to determine whether a noncitizen subject to expedited removal will be referred for a credible fear interview by an AO so long as those procedures are consistent with the INA. *See* INA 103(a)(1), (3), 8 U.S.C. 1103(a)(1), (3) (granting the Secretary the authority to establish regulations and take other actions ''necessary for carrying out'' the Secretary's authority under the immigration laws); *see also* 6 U.S.C. 202; *Motor Vehicle Mfrs. Ass'n of U.S., Inc.* v. *State Farm Mut. Auto. Ins. Co.,* 463 U.S. 29, 42 (1983) (emphasizing that agencies ''must be given ample latitude to adapt their rules and policies to the demands of changing circumstances'' (quotation marks omitted)).

DHS believes that the above-described changes are fully consistent with the statutory procedures governing expedited removal under section 235(b)(1)(A) of the INA, 8 U.S.C. 1225(b)(1)(A). Section 235(b)(1)(A) of the INA, 8 U.S.C. 1225(b)(1)(A), does not specify the relevant aspects of the procedures that immigration officers must follow to determine whether a noncitizen who is subject to expedited removal can be ordered removed or whether the noncitizen must be referred to an AO for a credible fear interview. Instead, the statute provides that the immigration officer may order removed any noncitizen who, subject to certain exceptions, is arriving in the United States, or who is within a class of noncitizens subject to expedited removal as designated by the Secretary, and who is inadmissible under sections 212(a)(6)(C) or 212(a)(7) of the INA, 8 U.S.C. 1182(a)(6)(C) or 1182(a)(7). The statute further provides that only those noncitizens who ''indicate[] either an intention to apply for asylum . . . or a fear of persecution,'' INA 235(b)(1)(A)(i), 8 U.S.C. 1225(b)(1)(A)(i), must be referred to an AO for a credible fear interview, INA 235(b)(1)(A)(ii), 8 U.S.C. 1225(b)(1)(A)(ii). But the statute does not require immigration officers to affirmatively ask every noncitizen subject to expedited removal if they have a fear of persecution or torture. Moreover, Congress has not provided a particular definition of the phrase ''indicates . . . an intention.'' The statute's text thus gives DHS discretion to employ the procedures it reasonably concludes are appropriate to implement section 235(b)(1)(A)(ii) of the INA, 8 U.S.C. 1225(b)(1)(A)(ii).[188]

Interpreting the statute in this manner is also consistent with the United States' international law obligations. As described in Section II.B of this preamble, the United States is a party to the Refugee Protocol, which incorporates Articles 2 through 34 of the Refugee Convention. Article 33 of the Refugee Convention generally prohibits parties to the Convention from expelling or returning ''a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.'' Refugee Convention, *supra,* 19 U.S.T. at 6276, 189 U.N.T.S. at 176.[189] Neither the Refugee Convention nor the Protocol prescribes minimum screening procedures that must be implemented.[190] Rather, each state party has the authority ''to establish the procedure that it considers most appropriate, having regard to its particular constitutional and administrative structure,'' as long as such procedures are consistent with the purposes of the Convention.[191] The United States has also ratified the CAT, which includes a non-refoulement provision at Article 3 that prohibits the return of a person from the United States to a country where there are ''substantial grounds for believing'' the person would be tortured. *See Pierre* v. *Gonzales,* 502 F.3d 109, 114 (2d Cir. 2007); *see id.* at 115 (''[T]he United States understands the phrase, 'where there are substantial grounds for believing that he would be in danger of being subjected to torture,' as used in

[187] By these terms, DHS intends to include a wide range of human communication and behavior, such that ''non-verbally'' could include things like noises or sounds without any words, while physical manifestations could include behaviors, with or without sound, such as shaking, crying, or signs of abuse. *See* U.S. State Dep't, Bureau of Population, Refugees, and Migration, *Fact Sheet: U.S. Commemorations Pledges, Fact Sheet, Bureau of Population, Refugees, and Migration* (June 24, 2013), *https://2009-2017.state.gov/j/prm/releases/factsheets/2013/211074.htm.* A noncitizen could thus manifest a fear of returning to a previous location without using actual words to state that they are specifically afraid of return to their home country or country of removal.

[188] *See Vermont Yankee Nuclear Power Corp.* v. *Nat. Res. Def. Council, Inc.,* 435 U.S. 519, 543 (1978) (''Absent constitutional constraints or extremely compelling circumstances the administrative agencies should be free to fashion their own rules of procedure and to pursue methods of inquiry capable of permitting them to discharge their multitudinous duties.'' (quotation marks omitted)); *United States ex rel. Knauff* v. *Shaughnessy,* 338 U.S. 537, 543 (1950) (''[T]he decision to admit or to exclude an alien may be lawfully placed with the President, who may in turn delegate the carrying out of this function to a responsible executive officer of the sovereign, such as the Attorney General.''); *Las Americas Immigrant Advoc. Ctr.* v. *Wolf,* 507 F. Supp. 3d 1, 18 (D.D.C. 2020).

[189] *See INS* v. *Stevic,* 467 U.S. 407, 428 & n.22 (1984); *Al-Fara* v. *Gonzales,* 404 F.3d 733, 743 (3d Cir. 2005) (''The 1967 Protocol is not self-executing, nor does it confer any rights beyond those granted by implementing domestic legislation.'').

[190] UNHCR, *Handbook on Procedures and Criteria for Determining Refugee Status* ¶ 189 (Jan. 1992 ed., reissued Feb. 2019), *https://www.unhcr.org/media/handbook-procedures-and-criteria-determining-refugee-status-under-1951-convention-and-1967.*

[191] *Id.*

Article 3 of the Convention, to mean 'if it is more likely than not that he would be tortured.'' '' (quoting the Senate resolution of ratification)). The CAT similarly does not prescribe screening requirements. As such, the United States has broad discretion in what procedures are appropriate to implement, through domestic law, to satisfy its non-refoulement obligations.[192]

The United States implements its obligations under the Refugee Protocol and the CAT through the INA and related rulemaking, and it provides specified procedures—including in the expedited removal process, as described above—for seeking asylum or other protection in the United States. The process outlined in this rule temporarily affords immigration officers the ability to refer noncitizens to an AO for a credible fear interview if the noncitizen manifests a fear of return, expresses an intention to apply for asylum, expresses a fear of persecution or torture, or expresses a fear of return to the noncitizen's country or country of removal. The Departments have concluded that the manifestation standard is consistent with their obligations (1) not to return noncitizens to countries where they would be persecuted; and (2) not to return noncitizens to countries where it is more likely than not that they would be tortured.[193]

In addition to changing to a ''manifestation'' standard, CBP is implementing operational changes to generally inform noncitizens subject to expedited removal that, if they have a fear of return, they should inform an immigration officer, and they will be referred to an AO for consideration of their fear claim. DHS believes that these operational changes and notice provisions, as implemented, are consistent with the notice provision in section 235(b)(1)(B)(iv) of the INA, 8 U.S.C. 1225(b)(1)(B)(iv).[194] Moreover, CBP will provide immigration officers with information on how to apply the manifestation standard, including that manifestation may occur verbally, non-verbally, or physically.

Upon implementation of this rule, signs will be posted in areas of CBP facilities where individuals are most likely to see those signs. The signs will provide clear direction to individuals that, in addition to being able to inform the inspecting immigration officers of urgent medical or other concerns, they should inform the inspecting immigration officer if they have a fear of return, and that, if they do, they will be referred for a screening. These signs will be in the languages spoken by the most common nationalities encountered by CBP and thus will likely be understood by those described in the Proclamation and likely subject to the provisions of this rule.[195]

Moreover, in CBP's large capacity facilities—where the vast majority of individuals subject to expedited removal undergo processing—a short video explaining the importance of raising urgent medical concerns, a need for food or water, or fear of return will be shown on a loop in the processing areas and will also be available in those languages most commonly spoken by those noncitizens encountered by CBP who may be described in the Proclamation and likely subject to the provisions of this rule.[196]

The video will also explain to noncitizens that, if they inform an immigration officer that they have a fear, an AO will conduct an interview to ask questions about their fear. Consistent with CBP's Language Access Plan, CBP provides language assistance services for those who may not speak one of those languages.[197] CBP immigration officers have extensive experience and training in identifying whether an individual requires a translator or interpreter or is unable to understand a particular language. In addition, CBP facilities have ''I Speak'' signs, which are signs that assist literate individuals to identify a preferred language from one of over 60 possible languages.[198] Furthermore, individuals who are unable to read the signs or communicate effectively in one of the languages in which the sign and video will be presented will be read the contents of the sign and video in a language they understand.[199]

[192] Although neither the Refugee Convention nor the Refugee Protocol nor the CAT includes specific screening requirements, the United States is bound not to return noncitizens from the United States to countries where they would be tortured, or, with limited exceptions, to countries where they would be persecuted on account of a protected ground. As discussed in detail above in Section III.A.1 of this preamble, the United States implements its non-refoulement obligations under Article 33 of the Refugee Convention (via the Refugee Protocol) through the statutory withholding of removal provision in section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3), not through the asylum provisions at section 208 of the INA, 8 U.S.C. 1158. And the United States implements its obligations under the CAT through regulations. *See* FARRA, Pub. L. 105–277, sec. 2242(b), 112 Stat. 2681, 2631–822 (8 U.S.C. 1231 note); 8 CFR 208.16(c), 208.17, 208.18, 1208.16(c), 1208.17, 1208.18.

[193] 136 Cong. Rec. 36198 (1990) (recording the Senate's advice and consent to the ratification of the CAT, subject to certain reservations, understandings, and declarations, including that the phrase in Article 3 of the CAT, '' 'where there are substantial grounds for believing that he would be in danger of being subjected to torture,' '' is understood to mean '' 'if it is more likely than not that he would be tortured' ''); *see also Pierre,* 502 F.3d at 115.

[194] DHS acknowledges that an argument could be made that the requirement in section 235(b)(1)(B)(iv) of the INA, 8 U.S.C. 1225(b)(1)(B)(iv), which states that DHS ''shall provide information concerning the asylum interview . . . to aliens who may be eligible,'' is not limited only to noncitizens who are eligible for a credible fear interview, but instead applies to noncitizens who are suspected of qualifying for expedited removal and ''may'' be eligible for an interview. In all events, DHS is providing information to noncitizens who are being processed for expedited removal about their right to seek asylum and protection in the United States. As explained below, DHS is posting signs on display for all noncitizens in CBP custody and including information in a video that will be on display for the vast majority of noncitizens in CBP custody, informing them that if they have a fear of return, they should inform an immigration officer and, if they do, an AO will conduct an interview and ask the noncitizens questions about any fear they may have. Noncitizens who indicate a fear of return will be given a more detailed written explanation of the credible fear interview process prior to being referred for the interview. That explanation will be translated into certain common languages or will be read to the noncitizen if required.

[195] Currently, these languages are English, Spanish, Mandarin, and Hindi.

[196] These large capacity facilities currently hold the vast majority of individuals in CBP custody. Although the videos will not be shown at smaller facilities, including small POEs and Border Patrol stations, these facilities house very few noncitizens who are subject to the asylum limitation. These small facilities will still post the relevant signs in the processing areas. And at these small facilities, resources are such that immigration officers will be able to devote a great deal of attention to observing individuals, including for any manifestations of fear or any indication that an individual requires assistance from a translator or reading assistance to understand the information provided at the facility, including the information provided on the signs. Immigration officers at these facilities are trained to provide such assistance as needed and will continue to do so under this rule.

[197] *See* CBP, *Language Access Plan* (Nov. 18, 2016), *https://www.dhs.gov/sites/default/files/publications/final-cbp-language-access-plan.pdf*; CBP, *Supplementary Language Access Plan* (Oct. 30, 2023), *https://www.dhs.gov/sites/default/files/publications/cbp-updated-language-access-plan-2020.pdf.*

[198] *See* CBP, *Language Access Plan* 7 (Nov. 18, 2016), *https://www.dhs.gov/sites/default/files/publications/final-cbp-language-access-plan.pdf; see also* DHS, *DHS Language Access Resources, https://www.dhs.gov/publication/dhs-language-access-materials* (last updated July 17, 2023); DHS, *I Speak . . . Language Identification Guide, https://www.dhs.gov/sites/default/files/publications/crcl-i-speak-poster-2021.pdf* (last updated Mar. 10, 2021).

[199] These videos and signs will be presented in a manner that is consistent with how CBP provides other important notifications to individuals in its facilities. CBP utilizes posters for other critical information, such as ensuring that individuals are on the lookout for those who may commit suicide, advising all children in custody of the amenities available to them (*e.g.,* food, water, medical care, blankets, and hygiene products), communicating its zero tolerance regarding sexual assault, and conveying critical information about oversight entities such as the Office of the Inspector General. CBP also has a video targeted towards UCs explaining the process that they will go through. These signs and videos are similarly posted in the

Continued

DHS's experience, based on the nature of CBP facilities and the utility of the existing signs, is that short, concise, and simple notifications are effective. This is because CBP holds individuals only for as long as it takes to complete inspection and processing, including conducting any basic medical screenings and making arrangements for transfer out of CBP custody. Particularly for those who are apprehended by USBP between POEs, noncitizens will go through a number of steps during their time in a CBP facility, including completion of processing paperwork, fingerprinting, and being interviewed by an inspecting immigration officer. In many USBP facilities, these steps occur at the same time as the facility provides showers and hygiene products, medical evaluations, and food and water. Given that noncitizens may move through other areas of the facility and do not remain in custody for a long period of time, DHS regularly places important signs in both the processing areas and the detention areas of its facilities, which are the locations where noncitizens spend time while being inspected or while in CBP custody; DHS is confident that noncitizens see these existing signs and that the new signs added as part of this rule are also likely to be seen. DHS has determined that more complicated videos and signs are less effective for conveying important information.

DHS acknowledges that these procedures represent a departure from the justification that the former Immigration and Naturalization Service (''INS'') provided, in 1997, when it adopted the current procedures in 8 CFR 235.3(b)(2)(i). At the time, INS explained that adopting these procedures would ''ensure that bona fide asylum claimants are given every opportunity to assert their claim[s],'' and that it was including the requirement that immigration officers must provide advisals about the credible fear process and ask questions about fear as ''safeguards'' to ''protect potential asylum claimants.'' *See* 62 FR at 10318–19. INS further explained that these procedures would ''not unnecessarily burden[] the inspections process or encourag[e] spurious asylum claims.'' *Id.* at 10318. While such procedures have remained in place since 1997, this fact alone is not an indication that they are required by the statute, and DHS maintains discretion to update the procedures in a manner consistent with the statute. *See FCC* v. *Fox Television Stations, Inc.,* 556 U.S. 502, 515 (2009) (holding that an agency changing an established rule need not justify the change with a more detailed justification than that supporting the original so long as it can show ''good reasons'' for the new policy). Given the extraordinary circumstances currently facing the Departments, DHS has determined it is reasonable to change the procedures here.

When the existing regulations were adopted in 1997, the situation at the border was different. In 1998 (the first full year that statistics concerning the expedited removal process were available), approximately 80,000 noncitizens were processed for expedited removal.[200] In that same year, AOs conducted fewer than 3,000 credible fear interviews [201] and IJ reviews numbered around 100.[202] Additionally, at that time, expedited removal was applied only to ''arriving aliens,'' noncitizens processed at a POE, not noncitizens encountered between POEs.[203] Expedited removal was not extended to certain noncitizens encountered after entering between POEs until 2004. *See* Designating Aliens for Expedited Removal, 69 FR 48877 (Aug. 11, 2004) (extending expedited removal to noncitizens encountered within 100 air miles of the border and within 14 days of entry). At that time, USBP apprehended approximately 1.1 million noncitizens between POEs annually.[204] The numbers have changed significantly since that time. In FY 2023, USBP apprehended more than 2 million noncitizens between POEs along the SWB.[205] In February 2024, USBP processed more than 33,000 individuals for expedited removal,[206] and USBP processed more than 28,000 in March 2024.[207] Since May 2023, USCIS has completed about 3,300 credible fear interviews per week of individuals encountered at and between SWB POEs,[208] and in FY 2023, IJs reviewed over 34,000 credible fear decisions.[209] These high levels of encounters and credible fear referrals impose a significant burden on the expedited removal process and have strained DHS and EOIR resources, substantially impairing the Departments' ability to deliver timely decisions and timely consequences. At a processing time of approximately 2 hours per person, USBP agents spent approximately 56,000 hours—the equivalent of approximately 2,333 calendar days—processing the approximately 28,000 expedited removal cases in March 2024 under the current process. High numbers, such as those giving rise to the Proclamation and this rule, increase the likelihood that USBP facilities will become quickly overcrowded.[210] This type of crowding in USBP facilities creates health and safety concerns for noncitizens and Government personnel.[211]

Additionally, compared to 1997, today's high levels of migration impose a severe strain on the credible fear process. AOs and IJs must devote substantial resources to credible fear interviews and reviews.[212] Despite the strengthened consequences in place at the SWB through the Circumvention of Lawful Pathways rule and the complementary measures that have led to record returns and removals, encounter levels and credible fear referrals are exceeding the capacity of

areas of CBP facilities where DHS is confident they are likely to be seen by noncitizens being processed.

[200] *See* INS, *1998 Statistical Yearbook of the Immigration and Naturalization Service* 203 (Nov. 1998), *https://www.dhs.gov/sites/default/files/publications/Yearbook_Immigration_Statistics_1998.pdf.*

[201] *See id.* at 91.

[202] EOIR, *Statistical Yearbook 2000,* at D1 (Jan. 2001), *https://www.justice.gov/sites/default/files/eoir/legacy/2001/05/09/SYB2000Final.pdf* (reporting that EOIR received 90 credible fear reviews in FY 1998).

[203] *See* 62 FR at 10318–19; *compare* INA 235(b)(1)(A)(i), 8 U.S.C. 1225(b)(1)(A)(i) (applying expedited removal to noncitizens arriving at ports of entry), *with* INA 235(b)(1)(A)(iii), 8 U.S.C. 1225(b)(1)(A)(iii) (permitting the application to designated noncitizens).

[204] CBP, *United States Border Patrol Nationwide Encounters Fiscal Year 1925–2020, https://www.cbp.gov/sites/default/files/assets/documents/2021-Aug/U.S.%20Border%20Patrol%20Total%20Apprehensions%20%28FY%201925%20-%20FY%202020%29%20%28508%29.pdf* (last accessed May 27, 2024).

[205] CBP, *Southwest Land Border Encounters, https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters* (last modified May 15, 2024).

[206] OHSS analysis of data downloaded from UIP on April 2, 2024.

[207] OHSS analysis of data downloaded from UIP on April 2, 2024.

[208] OHSS analysis of data downloaded from UIP on April 2, 2024.

[209] *See* EOIR, *Adjudication Statistics: Credible Fear and Reasonable Fear Review Decisions* (Oct. 12, 2023), *https://www.justice.gov/d9/pages/attachments/2018/10/26/7_credible_fear_review_and_reasonable_fear_review_decisions.pdf.*

[210] *See* Decl. of Matthew J. Hudak ¶¶ 11, 17, *Florida* v. *Mayorkas,* Case No. 3:22 cv 9962 (N.D. Fla. May 12, 2023) (Dkt. 13–1).

[211] *Id.*

[212] USCIS closed or adjudicated an estimated 135,000 credible fear interviews resulting from SWB encounters in FY 2023, up from an average of 52,000 from 2010 to 2019 and an average of 5,400 from 2005 to 2009. OHSS analysis of March 2024 OHSS Persist Dataset and Enforcement Lifecycle December 31, 2023. *See* OHSS, *Immigration Enforcement and Legal Processes Monthly Tables, https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables* (last updated May 10, 2024) (reflecting ever increasing numbers of credible fear interview screenings at the ''SW Border Credible Fear Screenings Referred to USCIS by citizenship'' tab); *see also* 88 FR at 31314, 31326, 31381.

the expedited removal process.[213] Therefore, DHS has determined that a different approach is needed here. The manifestation standard in the new rule is designed to reasonably help meet these challenges during emergency border circumstances. It is intended to help immigration officers process noncitizens more expeditiously, while still affording opportunities for those seeking protection to do so.

DHS acknowledges that, by implementing a manifestation standard in the circumstances outlined in this rule, it is temporarily eliminating the requirement to provide individualized advisals and ask affirmative questions via Forms I–867A and B. DHS has determined that, in light of the circumstances giving rise to the Proclamation and this rule, it is critical to have a system in place that more effectively and efficiently identifies those who may have a fear of return or indicate an intention to seek asylum. DHS is making the decision to use the manifestation standard consistent with the statute, as described above, and for the reasons outlined below. At bottom, based on DHS's long experience inspecting and interviewing individuals, DHS has determined that a manifestation approach is the most appropriate way to address emergency border circumstances while still sufficiently affording the ability to seek protection. Specifically, DHS makes this determination based on its significant experience relating to the inspection of individuals seeking entry and admission into the United States. DHS immigration officers have expertise observing and inspecting individuals, as they consistently encounter and inspect large numbers of people every day. In FY 2019, prior to COVID–19, for example, the approximately 28,000 officers of CBP's Office of Field Operations [214] processed more than 1.1 million people at POEs every day.[215] USBP's 20,000 agents [216] encountered more than 2 million people on the SWB in FY 2023.[217]

In addition, DHS, including through its predecessor agencies, has been implementing the expedited removal provisions since 1997. It therefore has nearly 30 years of experience completing the Form I–867A advisals and asking the questions on Form I–867B.[218] Based on this experience, it is DHS's determination that, when individuals are asked affirmative questions, such as those on Form I–867B, individuals are more likely to respond in the affirmative, even if they do not in fact have a fear of return or intention of seeking asylum. Moreover, based on this experience, DHS concludes that providing noncitizens with specific advisals on fear claims—particularly given the emergency context of this rule and because few if any other advisals are provided—would be suggestive and prompt many individuals to respond in the affirmative even if they do not have any actual fear or intention to seek asylum. For this reason, as well, DHS has made the determination, based on its experience and expertise inspecting noncitizens, to temporarily adjust its approach to individualized advisals and questions about fear.

As part of this approach, DHS is temporarily forgoing asking the fear questions on Form I–867B with respect to noncitizens who (1) are described in § 208.13(g), (2) are not described in section 3(b) of the Proclamation, and (3) are processed for expedited removal. DHS anticipates that this approach will likely lead to a higher proportion of those referred having colorable claims for protection. Based on the expertise of DHS in administering Form I–867B, it has determined that affirmative questions are suggestive and account for part of the high rates of referrals and screen-ins that do not ultimately result in a grant of asylum or protection.[219] DHS believes that those noncitizens who indicate a fear of return on their own, in the absence of suggestive questions, are more likely to be urgently seeking protection. Indeed, it is DHS's experience and assessment that asking questions is likely to lead individuals to answer yes, even if they do not actually have a fear of persecution or torture.[220] DHS acknowledges that there are mixed opinions on this point and that this may not be the case for all individuals, such that questioning may be helpful in order for some individuals to feel comfortable articulating a fear.[221] DHS recognizes

[213] *See* Decl. of Blas Nuñez-Neto ¶¶ 9–10, *E. Bay Sanctuary Covenant* v. *Biden,* No. 18 cv 6810 (N.D. Cal. June 16, 2023) (Dkt. 176–2); Decl. of Matthew J. Hudak ¶¶ 10–12, *Florida* v. *Mayorkas,* No. 3:22 cv 9962 (N.D. Fla. May 12, 2023) (Dkt. 13–1); Decl. of Enrique M. Lucero ¶ 7, *Innovation Law Lab* v. *Wolf,* No. 19–15716 (9th Cir. Mar. 3, 2020) (Dkt. 95–3).

[214] *See* CBP, *About CBP: Leadership & Organization, Executive Assistant Commissioners' Offices, https://www.cbp.gov/about/leadership-organization/executive-assistant-commissioners-offices* (last updated Jan. 30, 2024).

[215] *See* CBP, *On a Typical Day in 2019, CBP . . . , https://www.cbp.gov/newsroom/stats/typical-day-fy2019* (last modified May 11, 2022).

[216] *See* CBP, *About CBP: Leadership & Organization, Executive Assistant Commissioners' Offices, https://www.cbp.gov/about/leadership-organization/executive-assistant-commissioners-offices* (last updated Apr. 19, 2024).

[217] *See* CBP, *Southwest Land Border Encounters, https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters* (last modified May 15, 2024).

[218] *See* 62 FR at 10312, 10318–19.

[219] From 2014 through 2019, of total SWB encounters with positive fear determinations, only 18 percent of EOIR case completions ultimately resulted in a grant of protection or relief. OHSS Enforcement Lifecycle December 31, 2023.

[220] This is also reflected in the behavioral science concept of ''acquiescence,'' in which individuals tend to ''consistently agree to questionnaire items, irrespective of item directionality.'' Shane Costello & John Roodenburg, *Acquiescence Response Bias—Yeasaying and Higher Education,* 32 Australian Ed. & Dev. Pysch. 105, 105 (2015). Studies have shown that this bias is higher amongst those with lower education levels and from countries that score higher on scales of corruption or collectivism. *See, e.g.,* Beatrice Rammstedt, Daniel Danner & Michael Bosnjak, *Acquiescence Response Styles: A Multilevel Model Explaining Individual-Level and Country-Level Differences,* 107 Personality & Individual Differences 190 (2017); Seth J. Hill & Margaret E. Roberts, *Acquiescence Bias Inflates Estimates of Conspiratorial Beliefs and Political Misperceptions,* 31 Pol. Analysis 575 (2023).

[221] DHS acknowledges that some studies of the expedited removal process concluded that the Form I–867A information and the Form I–867B questions are important protections, and that failure to read the advisals led to lower referrals for credible fear interviews. *See, e.g.,* Allen Keller et al., *Study on Asylum Seekers in Expedited Removal as Authorized by Section 605 of the International Religious Freedom Act of 1998: Evaluation of Credible Fear Referral in Expedited Removal at Ports of Entry in the United States* 16–18 (2005), *https://www.uscirf.gov/sites/default/files/resources/stories/pdf/asylum_seekers/evalCredibleFear.pdf* (''USCIRF Report'') (finding that noncitizens who are read the information in Form I–867A are seven times more likely to be referred for a credible fear interview and ''the likelihood of referral for a Credible Fear interview was roughly doubled for each fear question asked''); *see also* U.S. Gov't Accountability Off., *Opportunities Exist to Improve the Expedited Removal Process,* No. GAO/GGD–00–176 (Sept. 2000). DHS acknowledges that one study concluded that there was ''little evidence'' that the advisals and fear questions prompted noncitizens to make fear claims, but rather most of the noncitizens whose cases were studied ''spontaneously expressed fear of returning to their home country.'' *See* USCIRF Report at 21. The same study noted that three quarters of those had been read the advisals on Form I–867A. *See id.* Given the small sample size (n=73) and the report's uncertain conclusion, this report does not alleviate CBP's long held ''concerns that [noncitizens] may be 'prompted' to express fears to officers by the I–867B fear questions.'' *Id.* As in 2005, at the time of the report, DHS continues to have such concerns, and DHS further believes that the individualized advisals on Form I–867A raise similar ''prompting'' concerns. And, even to the extent that the study concluded otherwise, DHS notes that, under the manifestation standard outlined in the rule, noncitizens continue to have the ability to affirmatively manifest a fear. Thus, considering the current situation at the border that gives rise to the Proclamation and this rule and the need to allocate limited resources to those urgently seeking protection, DHS believes that, notwithstanding the study's finding, the approach taken in this rule provides an appropriate standard for the emergency border circumstances at issue. As noted, CBP will be providing signs and videos advising, in a general matter, that individuals may express a fear of return. Accordingly, DHS has fully considered and weighed the contrary evidence and has concluded that the rule adopts the appropriate approach to help meet the challenge when emergency border circumstances are present.

that the manifestation standard, as with any other screening standard, could result in some noncitizens with meritorious claims not being referred to a credible fear interview. However, in light of the emergency border circumstances facing the Departments and addressed by the Proclamation and this rule, DHS believes the standard is appropriate and necessary. During emergency border circumstances, it is critical for the Departments to devote their processing and screening resources to those urgently seeking protection while quickly removing those who are not. DHS believes that the manifestation standard, rather than affirmative questioning, better achieves this balance in emergency border circumstances.

Additionally, DHS is eliminating the requirement that officers and agents read the individualized advisals on Form I–867A. DHS plans to replace these advisals with a generalized notice—for all individuals in CBP facilities—of the ability to raise a claim of fear of persecution or torture. DHS is making this change based on its experience suggesting that, like with the Form I–867B questions, individualized Form I–867A advisals would be suggestive and would likely lead many individuals to claim a fear of return when they otherwise would not, particularly given the emergency context of this rule and because there are few if any other advisals provided. Based on its experience, DHS determines that receiving these advisals on their own is also suggestive.[222] Thus, in the context of inspecting individuals who (1) are described in § 208.13(g), (2) are not described in section 3(b) of the Proclamation, and (3) are processed for expedited removal, DHS has determined not to require the provision of such suggestive advisals. DHS acknowledges that, like with the Form I–867B questions, there are studies that show that such advisals make it more likely that a noncitizen will indicate a fear of return.[223] However, based on DHS's experience, the nature of the emergency border circumstances facing the Departments, and the statutory requirements, DHS has determined that the approach taken here—eliminating the requirement to provide individualized advisals but providing signage and videos—is appropriate.[224]

Indeed, DHS notes that the manifestation standard has been used in other urgent and challenging situations to identify noncitizens with fear claims. This standard has long been used by the United States Coast Guard, a DHS component, to determine whether an at-sea protection screening interview is required for migrants interdicted at sea.[225] This standard was also adopted by the United States Government to screen family units during the pendency of the Title 42 public health Order, when the Government was similarly dealing with urgent, exigent circumstances—the global pandemic—while still allowing noncitizens an opportunity to seek protection.[226]

DHS believes that the manifestation standard is reasonably designed to identify meritorious claims even if a noncitizen does not expressly articulate a fear of return. Manifestations may be verbal, non-verbal, or physical.[227] A manifestation of fear may present with non-verbal or physical cues, through behaviors such as shaking, crying, fleeing, or changes in tone of voice, or through physical injuries consistent with abuse.[228] An individual who may not be comfortable answering a question about whether they have a fear of return may nevertheless manifest that fear through an unconscious behavior, which can be observed by the inspecting immigration officer, and the individual may then be referred for a fear screening. DHS acknowledges that, in some cases, these behaviors may reflect circumstances other than a fear of return—for instance, a noncitizen who has just arrived at the border may be physically tired, cold, hungry, and disoriented, which may present similarly to manifestation of fear. In such cases, DHS immigration officers will use their expertise and training to determine whether the noncitizen is manifesting a fear. If there is any doubt, however, immigration officers will be instructed to err on the side of caution and refer the noncitizen to an AO for a credible fear interview.

Moreover, DHS will provide immigration officers with information on how to apply the standard, which will build on their existing training and experience. Indeed, as noted above, CBP immigration officers (both USBP agents and CBP officers) have extensive experience interviewing and observing individuals. As a result of their experience and training, they have skills and expertise in interacting with individuals and observing human behavior and in determining appropriate follow up steps with regards to any behaviors or indicators of concern. For instance, upon encountering a group of individuals who purport to be a family, USBP agents will observe the individuals to determine whether they evidence typical familial behavior or whether there are any concerns about the validity of the asserted familial relationship or the safety of any children in the group. Agents and officers are also trained on identifying potential trafficking victims or victims of crimes and are trained on appropriate follow up action. Additionally, agents and officers frequently encounter individuals who may be vulnerable, including those in physical or medical distress or in need of humanitarian care, as well as those who may be seeking protection in the United States. Agents and officers can similarly use such skills and experiences to identify any manifestations of fear. Agents and officers will also receive information on how to apply the manifestation standard, including that manifestation may occur verbally, non-verbally, or physically. DHS believes that this experience, coupled with guidance, will help agents and officers effectively

[222] This determination is based, in part, on CBP's experience that the language in specific, individualized advisals often serves as a prompt for noncitizens to express a fear while in CBP custody. This is, in part, because CBP understands that TCOs coach noncitizens and advise them to listen for certain words in the language of particular advisals as a prompt to express a fear. While it is possible that TCOs will provide noncitizens information about how to manifest fear, even in the absence of affirmative advisals, CBP believes that, at least at the outset of the process, individuals without such a fear or intent to seek asylum are less likely to remember the information a TCO provided in the absence of individualized advisals. Additionally, CBP believes that individuals who do have a fear of return or intend to seek asylum will generally make such a claim even in the absence of such advisals.

[223] *See, e.g.,* USCIRF Report at 16–18.

[224] DHS considered whether to provide a short, individualized advisal to inform noncitizens of their ability to seek asylum, in addition to these signs and videos. But DHS determined that such a short, individualized advisal would be unlikely to convey information more effectively than the signs and videos that CBP already intends to use as a general notification, and that even a short advisal would take undue time to administer. Moreover, CBP assesses that the signs and videos providing general notification of the ability to seek asylum are less suggestive than short, individualized advisals would be.

[225] U.S. State Dep't, Bureau of Population, Refugees, and Migration, *Fact Sheet: U.S. Commemorations Pledges* (June 24, 2013), *https://2009-2017.state.gov/j/prm/releases/factsheets/2013/211074.htm* (notifying the public that U.S. Coast Guard personnel were provided updated training ''on identifying manifestations of fear by interdicted migrants'').

[226] *See Huisha-Huisha* v. *Mayorkas,* 27 F.4th 718, 732–33 (D.C. Cir. 2022); CBP, Office of Field Operations, *Processing of Noncitizens Manifesting Fear of Expulsion Under Title 42* (May 21, 2022); USBP, *Guidance Regarding Family Units Moving Forward Under Title 42* (May 21, 2022).

[227] *See* U.S. State Dep't, Bureau of Population, Refugees, and Migration, *Fact Sheet: U.S. Commemorations Pledges* (June 24, 2013), *https://2009-2017.state.gov/j/prm/releases/factsheets/2013/211074.htm* (noting implementation of training that ''demonstrates different ways a migrant might express a verbal or non-verbal manifestation of fear'').

[228] *Id.*

identify noncitizens with potential fear or asylum claims under a manifestation approach. Therefore, DHS believes that this rule remains consistent with the need to ''safeguard[]'' the rights of asylum seekers. *See* 62 FR at 10319. Because an immigration officer's observation of whether a noncitizen manifests a fear—rather than a noncitizen's answers to affirmative questions regarding asylum—will lead to a referral to an AO for a fear screening, this standard may result in a greater proportion of those referred to an AO being individuals with meritorious claims.

Additionally, the manifestation standard in the rule will enable DHS to streamline the process, allowing it to process noncitizens in a more expeditious manner during the emergency border circumstances identified in the Proclamation and this rule. In particular, DHS anticipates that omitting the requirement to complete Form I–867A and I–867B will save about 20 to 30 minutes per noncitizen, providing DHS with—based on the number of cases in March 2024—approximately 14,000 extra personnel hours per month.[229] This increased efficiency is critical for processing noncitizens in an expeditious way, and thus will better ensure that, given the immense challenges of irregular migration at the southern border, DHS's limited resources are used most effectively while still affording opportunities for noncitizens to seek asylum or protection. Indeed, this is particularly critical in the emergency border circumstances described in the Proclamation and the rule. As discussed above, given the number of noncitizens and the time it takes to process them during periods of heightened encounters, expediting the process is critical for avoiding overcrowding and ensuring safe conditions for those in custody.[230]

For all of these reasons, DHS believes that the ''manifestation of fear'' standard, as explained in the rule, will enable immigration officers to effectively identify noncitizens who require credible fear interviews while streamlining the process. During the emergency circumstances described in the Proclamation and the rule, it is important for immigration officers to expeditiously process and swiftly apply consequences to noncitizens while still affording access to protection. Here, the Departments are currently facing such emergency circumstances, as explained above in Sections III.B.1 and 2 of this preamble. DHS believes that the approach taken in the rule is the most appropriate one in light of the situation at the southern border, as explained in this rule and as discussed in the Proclamation, balancing the need to protect those who may wish to seek protection in the United States against an urgent need to use DHS resources effectively.

c. Raising the Standard for Protection Screening

Under this rule, if the AO determines that, in light of the limitation on asylum eligibility under 8 CFR 208.35(a), there is not a significant possibility that the noncitizen could establish eligibility for asylum, *see* INA 235(b)(1)(B)(v), 8 U.S.C. 1225(b)(1)(B)(v), the AO will enter a negative credible fear determination with respect to the noncitizen's asylum claim. *See* 8 CFR 208.35(b)(1)(i). The AO will then assess whether the noncitizen has established a reasonable probability of persecution (meaning a reasonable probability of being persecuted because of their race, religion, nationality, membership in a particular social group, or political opinion) or torture, with respect to the designated country or countries of removal identified pursuant to section 241(b)(2) of the INA, 8 U.S.C. 1231(b)(2).[231] *See* 8 CFR 208.35(b)(2)(i). Likewise, when reviewing a negative credible fear determination, where the IJ concludes that there is not a significant possibility that the noncitizen could establish eligibility for asylum in light of the limitation on asylum eligibility, the IJ will assess whether the noncitizen has established a reasonable probability of persecution because of a protected ground or torture. *See* 8 CFR 1208.35(b)(2)(ii).

The Departments have some discretion to articulate the screening standard for claims for statutory withholding of removal and protection under the CAT. As the Departments observed previously, ''Congress clearly expressed its intent that the 'significant possibility' standard be used to screen for asylum eligibility but did not express any clear intent as to which standard should apply to other applications.'' 88 FR at 11742. In addition, ''the legislative history regarding the credible fear screening process references only asylum.'' *Id.* at 11743. By contrast, section 241(b)(3) of the INA, 8 U.S.C. 1231(b)(3), and FARRA section 2242 are silent as to what screening procedures are to be employed, while the INA elsewhere confers broad discretionary authority to establish rules and procedures for implementing those provisions, *see, e.g.,* INA 103(a)(3), (g)(2), 8 U.S.C. 1103(a)(3), (g)(2).

Moreover, in past rules applying a ''reasonable possibility'' screening standard to claims for statutory withholding of removal or CAT protection, the Departments have noted that such a screening standard is used ''in other contexts where noncitizens would also be ineligible for asylum.'' 88 FR at 11743 (citing 8 CFR 208.31(c), (e)); *see also, e.g.,* Procedures for Asylum and Withholding of Removal; Credible Fear and Reasonable Fear Review, 85 FR 36264, 36270 (June 15, 2020) (referencing ''the established framework for considering whether to grant statutory withholding of removal or CAT protection in the reasonable fear context''). Under the Circumvention of Lawful Pathways rule, ''[i]f a noncitizen is subject to the lawful pathways condition on eligibility for asylum and not excepted and cannot rebut the presumption of the condition's applicability, there would not be a significant possibility that the noncitizen could establish eligibility for asylum.'' 88 FR at 11742. For those noncitizens, the Departments implemented a ''reasonable possibility of persecution or torture'' screening standard for statutory withholding of removal and protection under the CAT. *See* 8 CFR 208.33(b)(2)(ii), 1208.33(b)(2)(ii). The Departments similarly believe that those who enter across the southern border during the emergency border circumstances identified in the Proclamation and this rule and who are not described in section 3(b) of the Proclamation, do not establish an enumerated exception, and are unable to establish a significant possibility of eligibility for asylum should be screened for protection under a higher screening standard.

The Departments' experience with the Circumvention of Lawful Pathways rule has validated the Departments' choice to use an elevated screening standard to narrowly focus limited resources on those who are likely to be persecuted or tortured and to remove those who are unlikely to establish eligibility for statutory withholding of removal or CAT protection. Under that rule, which

[229] At a time savings of 30 minutes per noncitizen, multiplied by 28,466 noncitizens processed for expedited removal in March 2024, *see* OHSS analysis of data downloaded from UIP on April 2, 2024, DHS would save approximately 14,000 hours per month.

[230] *See* Decl. of Matthew J. Hudak ¶¶ 7, 17–22, *Florida* v. *Mayorkas,* No. 3:22–cv–9962 (N.D. Fla. May 12, 2023) (Dkt. 13–1).

[231] As noted above, DHS is also concurrently soliciting comment on the Application of Certain Mandatory Bars Notice of Proposed Rulemaking, which proposes that certain mandatory bars be considered at the screening stage under a reasonable possibility standard.

uses a ''reasonable possibility of persecution or torture'' screening standard for statutory withholding of removal and CAT protection claims, the Departments have processed record numbers of noncitizens through expedited removal and have seen a significant decrease in the rate at which noncitizens receive positive credible fear determinations, showing greater operational efficiencies.[232] Between May 12, 2023, and March 31, 2024, USCIS completed more than 152,000 credible fear interviews resulting from SWB expedited removal cases—this is more than twice as many interviews during the span of ten and a half months than the 75,000 interviews resulting from SWB encounters that USCIS averaged each year from FY 2014 to FY 2019.[233] Between May 12, 2023, and March 31, 2024, 52 percent (approximately 57,000) of those who were subject to the rule's presumption were able to establish a credible fear of persecution or torture under the ''reasonable possibility'' standard,[234] compared to an 83 percent credible fear screen-in rate in the pre-pandemic period of 2014 to 2019.[235] From 2014 through 2019, of SWB expedited removal cases with positive fear determinations, less than 25 percent of EOIR case completions ultimately resulted in a grant of protection or relief.[236]

Screening under the ''reasonable possibility'' standard has allowed the Departments to screen out and swiftly remove additional noncitizens whose claims are unlikely to succeed at the merits stage. Although fewer noncitizens are screened in under the ''reasonable possibility'' standard applied in the context of the Circumvention of Lawful Pathways rule, that screen-in rate remains significantly higher than the grant rate for ultimate merits adjudication for SWB expedited removal cases that existed prior to the rule.[237] Under the emergency border circumstances described in the Proclamation and this rule, the Departments' limited resources must be focused on processing those who are most likely to be persecuted or tortured if removed, and overall border security and immigration systems efficiencies outweigh any challenges related to training on a new screening standard and a possible marginal increase in interview length resulting from the application of a new standard in screening interviews. Likewise, the benefits of this rule, which is consistent with all statutory and regulatory requirements and the United States' international law obligations, outweigh any potential marginal increase in the likelihood that a meritorious case would fail under the raised screening standard. Swiftly removing noncitizens without meritorious claims is critical to deterring noncitizens from seeking entry under the belief that they will be released and able to remain in the United States for a significant period. *See, e.g.,* 88 FR at 31324 (discussing the success of the CHNV parole processes as being in part due to imposing consequences for failing to use a lawful pathway, namely swift removal); 88 FR at 11713 (noting that in the 60 days immediately following DHS's resumption of routine repatriation flights to Guatemala and Honduras, average daily encounters fell by 38 percent for Guatemala and 42 percent for Honduras).[238]

To allow for swift removals in the case of those noncitizens who the Departments are confident are unlikely to meet their ultimate burden to establish eligibility for statutory withholding of removal or protection under the CAT, the Departments have decided to raise the screening standard to ''reasonable probability of persecution or torture'' during the emergency border circumstances described in the Proclamation and this rule. The Departments define this ''reasonable probability'' standard as ''substantially more than a reasonable possibility, but somewhat less than more likely than not.'' 8 CFR 208.35(b)(2)(i), 1208.35(b)(2)(ii). Under this standard, a noncitizen would be screened in if they provide credible testimony [239] and set forth a credible claim with sufficient specificity for an AO or IJ to be persuaded that there is a reasonable probability that the noncitizen would be persecuted or tortured so as to qualify for statutory withholding of removal or CAT protection in an ultimate merits adjudication.

The Departments view the difference between the ''reasonable possibility'' standard and the new ''reasonable probability'' standard as being that the new standard requires a greater specificity of the claim in the noncitizen's testimony before the AO or the IJ. In particular, although claims based on general fears of return may at times be found to meet the ''reasonable possibility'' standard where evidence in the record of country conditions

[232] Decl. of Blas Nuñez-Neto ¶ 7, *M.A.* v. *Mayorkas,* No. 1:23–cv–01843 (D.D.C. Oct. 27, 2023) (Dkt. 53–1). The screen-in rate refers to the percentage of cases with a positive fear determination calculated by dividing the number of cases that receive a positive fear determination by the total number of determinations made (*i.e.,* positive and negative fear determinations). *See id.* ¶ 7 n.2.

[233] Pre-May 12, 2023, data from OHSS Enforcement Lifecycle Dataset December 31, 2023; post-May 11, 2023, data from OHSS analysis of data downloaded from UIP on April 2, 2024.

[234] OHSS analysis of data downloaded from UIP on April 2, 2024. At this time, data on EOIR's grant rate under the Circumvention of Lawful Pathways rule is not available because only a small number of cases processed under that rule have been completed. From May 12 through November 30, 2023 (the most recent data for which fully linked records are available), a total of 61,000 SWB expedited removal cases have been referred to EOIR for section 240 removal proceedings, including 1,400 with case completions (2.2 percent). In addition, cases that are already completed are a biased sample of all future completions because in years since FY 2014, the median processing time for cases resulting in relief or other protection from removal has been, on average, about six times longer than the median processing time for cases resulting in removal orders, so reporting on the small data set of already completed cases would yield a relief rate that is artificially low. OHSS analysis of OHSS Enforcement Lifecycle Dataset December 31, 2023 and OHSS analysis of EOIR data as of January 31, 2024.

[235] OHSS Enforcement Lifecycle Dataset as of December 31, 2023.

[236] OHSS Enforcement Lifecycle Dataset as of December 31, 2023.

[237] DHS OHSS Enforcement Lifecycle Dataset as of December 31, 2023.

[238] *See also, e.g.,* Muzaffar Chishti et al., *At the Breaking Point: Rethinking the U.S. Immigration Court System,* Migration Pol'y Inst., at 11 (2023), *https://www.migrationpolicy.org/sites/default/files/publications/mpi-courts-report-2023_final.pdf* (''In the case of noncitizens crossing or arriving at the U.S.-Mexico border without authorization to enter, years-long delays create incentives to file frivolous asylum claims that further perpetuate delays for those eligible for protection, undermining the integrity of the asylum system and border enforcement.''); Doris Meissner, Faye Hipsman, & T. Alexander Aleinikoff, *The U.S. Asylum System in Crisis: Charting a Way Forward,* Migration Pol'y Inst., at 9 (2018), *https://www.migrationpolicy.org/sites/default/files/publications/MPI-AsylumSystemInCrisis-Final.pdf* (''Incentives to misuse the asylum system may also be reemerging. For example, over the past five years, the number of employment authorization documents (EADs) approved for individuals with pending asylum cases that have passed the 180-day mark increased from 55,000 in FY 2012 to 270,000 in FY 2016, and further to 278,000 in just the first six months of FY 2017. This high and growing level of EAD grants may suggest that, as processing times have grown, so too have incentives to file claims as a means of obtaining work authorization and protection from deportation, without a sound underlying claim to humanitarian protection.'').

[239] Credible testimony alone is sufficient in a credible fear screening, and AOs are trained to ask questions to elicit testimony to assist the noncitizen in meeting their burden with testimony alone. Although testimony alone could certainly meet the burden, it is not required that the burden be met solely through testimony. And even though corroborating evidence is not required, AOs will consider any additional evidence the noncitizen presents. Additionally, AOs are trained to conduct interviews of individuals with persecution or non-persecution-related injuries, traumas, or conditions that may impact their ability to provide testimony for themselves.

indicates instances of persecution or torture within the country, such claims are less likely to be sufficient under the ''reasonable probability'' standard when the noncitizen cannot provide greater detail in their statements and information as to the basis for their individual claim.

The Departments frequently see such general claims of fear that lack specificity at both the screening and merits stage. However, generalized fear of persecution is ultimately not sufficient to establish a claim. *See Sharma* v. *Garland,* 9 F.4th 1052, 1060 (9th Cir. 2023) (''[A]dverse country conditions are not sufficient evidence of past persecution, for the obvious reason that '[t]o establish past persecution, an applicant must show that he as individually targeted on account of a protected ground rather than simply the victim of generalized violence.' '' (quoting *Hussain* v. *Rosen,* 985 F.3d 634, 646 (9th Cir. 2012))); *Prasad* v. *INS,* 101 F.3d 614, 617 (9th Cir. 1996) (stating that to establish past persecution, ''[i]t is not sufficient to show [the applicant] was merely subject to the general dangers attending a civil war or domestic unrest''); *Al Fara* v. *Gonzales,* 404 F.3d 733, 740 (3d Cir. 2005) (''[G]enerally harsh conditions shared by many other persons do not amount to persecution. . . . [H]arm resulting from country-wide civil strife is not persecution on account of an enumerated statutory factor.'' (quotation marks omitted)); *see also Debab* v. *INS,* 163 F.3d 21, 27 (1st Cir. 1998) (citing cases).

Moreover, to establish ultimate eligibility for CAT protection, the noncitizen must demonstrate an individualized risk of torture—not a general possibility of it. *See Escobar-Hernandez* v. *Barr,* 940 F.3d 1358, 1362 (10th Cir. 2019) (''[P]ervasive violence in an applicant's country generally is insufficient to demonstrate the applicant is more likely than not to be tortured upon returning there.''); *Bernard* v. *Sessions,* 881 F.3d 1042, 1047 (7th Cir. 2018) (''Evidence of generalized violence is not enough; the IJ must conclude that there is a substantial risk that the petitioner will be targeted specifically.''); *Lorzano-Zuniga* v. *Lynch,* 832 F.3d 822, 830–31 (7th Cir. 2016) (''[G]eneralized violence or danger within a country is not sufficient to make a claim that it is more likely than not that a petitioner would be tortured upon return to his home country.''); *Alvizures-Gomes* v. *Lynch,* 830 F.3d 49, 55 (1st Cir. 2016) (country reports demonstrating overall corruption and ineffectiveness of Guatemalan authorities ''do not relieve [the applicant] of the obligation to point to specific evidence indicating that he, personally, faces a risk of torture because of these alleged shortcomings''); *Delgado-Ortiz* v. *Holder,* 600 F.3d 1148, 1152 (9th Cir. 2010) (''Petitioners' generalized evidence of violence and crime in Mexico is not particular to Petitioners and is insufficient to meet th[e] standard [for eligibility for CAT protection].'').

Under the ''reasonable possibility'' standard, a noncitizen presenting a claim based on general civil strife is sometimes found to pass the screening stage even where they provide only general testimony about their fear of harm. For example, a noncitizen may meet the ''reasonable possibility'' standard where he expresses a fear of being killed by the government upon his return to his native country, United States Government reports indicate the country may engage in human rights abuses, and the noncitizen has been involved in anti-government political activism for years, even absent specific information as to an individualized threat against the noncitizen or any other individuals who have been threatened or harmed. But to meet the ''reasonable probability'' standard, the noncitizen would either need to explain with some specificity why he thinks he, in particular, is likely to be harmed, or the record would have to reflect some specific information regarding the treatment of anti-government political activists similarly situated to the applicant. Such claims are assessed on a case-by-case basis. As an example, however, were the noncitizen to credibly state that he knew, and to provide details about, people who are similarly situated to him who have been killed, harmed, or credibly threatened, that testimony may be sufficient to meet the ''reasonable probability'' standard because it provides more specificity as to why the noncitizen believes he would be harmed. The Departments believe that the ''reasonable probability'' standard, by requiring additional specificity, will better identify claims that are likely to be meritorious in a full adjudication while screening out those whose claims are not likely to prevail.[240]

The Departments are confident that AOs and IJs can apply this heightened standard effectively to identify those who are likely to have viable claims on the merits while mitigating the possibility that those with a viable claim would be screened out. The level of specificity and certainty that the ''reasonable probability'' standard requires remains lower than the ultimate merits standard, and AOs and IJs have the training and experience necessary to elicit the information required to determine whether a case is sufficiently specific to meet the ''reasonable probability'' standard.[241] This is particularly the case because, in implementing such training, USCIS expects to adapt existing training, including on the ultimate merits standard, to prepare AOs on the ''reasonable probability'' screening standard, since the way evidence is evaluated remains the same, save for the degree of specificity required. AOs especially have significant training in non-adversarial interview techniques and are required to elicit testimony from the noncitizen—in effect, to help the noncitizen meet their burden through testimony alone.[242] If upon such questioning a noncitizen is unable to provide specific facts that lead the AO or IJ to believe that the noncitizen would be able to meet their burden with more opportunity to prepare, such claims are unlikely to prevail at the merits stage.

Moreover, this heightened screening standard targets information—specificity based on the noncitizen's own knowledge—that should generally be available at the screening stage. A noncitizen at the screening stage generally would have information regarding their fear of harm, such as whom they are afraid of and why, and an AO will elicit information regarding the claim that either is sufficiently specific to satisfy the heightened screening standard or is not. Credible

[240] Although the Departments believe the standard will better identify claims that are likely to be meritorious, for now the Departments do not seek to apply the ''reasonable probability'' standard outside the context of this rule—that is, to those who do not establish a significant possibility of eligibility for asylum because of the limitation on asylum eligibility or, if the limitation is rendered inoperative by court order, to those who are ineligible for asylum under the Circumvention of Lawful Pathways rule, *see* 8 CFR 208.35(b)(2)(i) and (3), 1208.35(b)(2)(iii) and (4)—because in this rule the Departments are addressing emergency border circumstances rather than regulating to change the status quo. The Departments may consider such changes in future rulemaking.

[241] USCIS, *RAIO Directorate—Officer Training: Interviewing—Eliciting Testimony* (Dec. 20, 2019); EOIR, *Fact Sheet: Immigration Judge Training* (June 2022), *https://www.justice.gov/eoir/page/file/1513996/dl?inline.*

[242] USCIS, *RAIO Directorate—Officer Training: Interviewing—Introduction to the Non-Adversarial Interview* (Dec. 20, 2019). As described in a previous rule, AOs have experience in ''country conditions and legal issues, as well as nonadversarial interviewing techniques,'' and they have ''ready access to country conditions experts.'' Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers, 86 FR 46906, 46918 (Aug. 20, 2021).

testimony alone can satisfy the noncitizen's burden and is sometimes the only available evidence of persecution or torture. *See, e.g., Matter of Mogharrabi,* 19 I&N Dec. 439, 443 (BIA 1987). In most cases, noncitizens would have such information at the screening stage, and the Departments expect—and logic suggests—that such information could be shared through testimony. Instances of past harm or those that inform a future fear of return that caused a noncitizen to seek protection generally occur before entry and would not be expected to develop after the fact of entry or after the screening stage. Hence, the Departments believe that this standard will screen out claims that are likely to fail at the merits stage and poses only a minimal risk of screening out claims that could ultimately succeed. For example, if a noncitizen does not know who harmed or would harm them or why, in the Departments' experience, AOs and IJs will often be able to determine—depending on the facts of the case—that it is unlikely that the noncitizen will be able to provide answers to those critical questions at the merits stage.

In addition, AOs and IJs also receive training in, and have substantial experience weighing, country conditions, which will further help them assess whether and under what circumstances the lack of specificity in a noncitizen's testimony indicates that they have little prospect of meeting their ultimate burden.[243] For example, it may be the case that where a noncitizen expresses only generalized fear of harm based on their ethnicity, but country conditions confirm serious, ongoing harm in the form of widespread, systematic persecutory acts by government institutions targeting individuals who are similarly situated to the noncitizen, adjudicators will rely on that information to deem the ''reasonable probability'' standard satisfied.

AOs, supervisory AOs, and IJs receive training and have experience applying asylum, statutory withholding of removal, and CAT protection screening standards and in applying and reviewing decisions related to the ultimate asylum (for USCIS and EOIR) and statutory withholding of removal and CAT protection (for EOIR) merits standards, so they are well-suited to be able to identify in a screening whether the information the noncitizen has provided is sufficiently specific to lead them to believe that the noncitizen may be able to establish eligibility at the merits stage.[244] Moreover, all credible fear determinations must be concurred upon by a supervisory AO before they become final to ensure quality and consistency and will be subject to de novo IJ review if requested by the noncitizen. *See* 8 CFR 235.3(b)(7), 235.15(b)(2)(i)(B), 1208.35(b).

Although AOs, supervisory AOs, and IJs will have to be trained on applying the new ''reasonable probability of persecution or torture'' standard, the standard as explained above is not a significant departure from the types of analyses AOs, supervisory AOs, and IJs conduct on a daily basis. Rather, it is a matter of degree—to meet the ''reasonable probability of persecution or torture'' standard, the noncitizen must present more specificity than is required to meet the ''reasonable possibility of persecution or torture'' standard, but not so much as to establish ultimate eligibility for protection. Indeed, to meet the ultimate standard, noncitizens may still be required to provide more evidence—whether testimonial or documentary.

The Departments do not believe that applying the ''reasonable probability of persecution or torture'' standard will increase the time required for credible fear interviews by any great margin. AOs generally ask similar questions to elicit information from noncitizens during screening interviews regardless of the standard they will apply to the information elicited. The difference will be whether the information provided as a result of those questions reaches the required level of specificity. That said, there may be cases where an AO believes that the noncitizen may be able to meet the ''reasonable probability of persecution or torture'' standard after answering a few additional questions. But even if there is a marginal increase in the length of some interviews, the Departments believe that the interest in swift removal of those unlikely to establish eligibility for protection during emergency border circumstances outweighs the risk of some interviews taking longer.[245] This is because a higher standard will be more likely to create a deterrent: Those less likely to establish eligibility for statutory withholding of removal or CAT protection will be swiftly removed rather than being released and waiting years for a hearing, or in some cases, absconding and remaining in the United States unlawfully. And this deterrent effect could lead to lower encounter levels as noncitizens and smugglers realize that the process is functioning

[243] USCIS, *RAIO Directorate—Officer Training: Decision Making* (Dec. 20, 2019); USCIS, *RAIO Directorate—Officer Training: Interviewing—Eliciting Testimony* (Dec. 20, 2019); USCIS, *RAIO Directorate—Officer Training: Interviewing—Introduction to the Non-Adversarial Interview* (Dec. 20, 2019); 86 FR at 46918. IJs ''receive extensive training upon entry on duty, annual training, and periodic training on specialized topics as necessary.'' Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers, 87 FR 18078, 18170 (Mar. 29, 2022); *see also* EOIR, *Fact Sheet: Immigration Judge Training* (June 2022), *https://www.justice.gov/eoir/page/file/1513996/dl?inline.* Moreover, IJs are required to maintain professional competence in the law, U.S. Dep't of Justice, Ethics and Professionalism Guide for Immigration Judges § IV (Jan. 26, 2011), *https://www.justice.gov/sites/default/files/eoir/legacy/2013/05/23/EthicsandProfessionalismGuideforIJs.pdf,* which necessarily includes the elements required to establish eligibility for relief or entitlement to protection from removal, *id.* Consistent with their role in adjudicating asylum and related protection applications, IJs have long been able to take administrative notice of commonly known facts, including country conditions evidence. *See* 8 CFR 208.12 (1997) (stating that the adjudicator may rely on information from a variety of sources ranging from the Department of State to credible international organizations or academic institutions); 8 CFR 208.1(a) (1997) (stating this part shall apply to all applicants for asylum whether before an AO or an IJ). Federal Government country conditions reports, such as the U.S. Department of State country conditions reports, are longstanding, credible sources of information to which IJs often look. *See, e.g., Sowe* v. *Mukasey,* 538 F.3d 1281, 1285 (9th Cir. 2008) (''U.S. Department of State country reports are the most appropriate and perhaps the best resource for information on political situations in foreign nations.'' (quotation marks omitted)); *Xiao Ji Chen* v. *U.S. Dep't of Justice,* 471 F.3d 315, 341 (2d Cir. 2006) (Department of State country reports are ''usually the best available source of information on country conditions'' (quotation marks omitted)).

[244] *See* USCIS, *RAIO Directorate—Officer Training: Note Taking* (Feb. 12, 2024); USCIS, *RAIO Directorate—Officer Training: Interviewing—Survivors of Torture and Other Severe Trauma* (Nov. 2, 2023); USCIS, *RAIO Directorate—Officer Training: Children's Claims* (Dec. 20, 2020); USCIS, *RAIO Directorate—Officer Training: Interviewing—Introduction to the Non-Adversarial Interview* (Dec. 20, 2019); USCIS, *RAIO Directorate—Officer Training: Interviewing—Eliciting Testimony* (Dec. 20, 2019); USCIS, *RAIO Directorate—Officer Training: Cross-Cultural Communication and Other Factors That May Impede Communication at an Interview* (Dec. 20, 2019); USCIS, *RAIO Directorate—Officer Training: Detecting Possible Victims of Trafficking* (Dec. 20, 2019); USCIS, *RAIO Directorate—Officer Training: Interviewing—Working With an Interpreter* (Dec. 20, 2019); EOIR, *Fact Sheet: Immigration Judge Training* (June 2022), *https://www.justice.gov/eoir/page/file/1513996/dl?inline.*

[245] In Section III.B.3.b of this preamble, the Departments conclude that there is a need to streamline immigration officers' processing of noncitizens through expedited removal while the Proclamation's suspension and limitation on entry is in effect. That reasoning is not inconsistent with the reasoning here. Because AOs interview only a subset of noncitizens processed through expedited removal, the Departments believe at most a portion of those noncitizens' credible fear interviews may be longer, and, as noted, any marginal increase in the time it takes to conduct some interviews is outweighed by improving deterrence and avoiding erroneous screen-ins, which result in noncitizens being added to the backlog of immigration cases and being released into and remaining in the United States for a significant period of time.

more effectively.[246] Screening out those unlikely to establish eligibility for protection has the added benefit of saving United States Government resources overall because fewer noncitizens who are unlikely to establish eligibility for protection will be placed into section 240 removal proceedings before EOIR, which as of the end of December 2023 had a backlog of more than 2.7 million cases.[247]

In developing this rule, the Departments considered the possibility that the application of different screening standards to ''the same or a closely related set of facts'' might result in inefficiencies. *See* 87 FR at 18091; *see also* 88 FR at 11746. The Departments note, however, that under this rule, that is unlikely to be the case. The facts relevant to whether a noncitizen is subject to the rule's limitation on asylum eligibility will only rarely be relevant to the inquiry into whether the noncitizen has a fear of persecution or torture. For example, whether the noncitizen faced an acute medical emergency that excepts them from the rule under 8 CFR 208.35(a)(2)(i)(A) or 1208.35(a)(2)(i)(A) will not likely be relevant to whether the noncitizen has a fear of persecution or torture in their designated country of removal and so only the ''reasonable probability'' standard will be applied to the facts relevant to their persecution or torture claim. And where a noncitizen meets such an exception, they will continue to be eligible to pursue asylum in addition to any claim of persecution or torture, and those claims will all be considered only under the ''significant possibility'' standard. Similarly, whether a noncitizen faced an imminent and extreme threat to life and safety that excepts them from the rule under 8 CFR 208.35(a)(2)(i)(B) or 1208.35(a)(2)(i)(B) will involve an evaluation of the discrete set of circumstances at the time of the noncitizen's arrival at the border, and will not likely be relevant to whether the noncitizen has a fear of persecution or torture in their designated country of removal. The question of an imminent threat relates to the situation immediately prior to the noncitizen's entry into the United States, rather than necessarily any fear of persecution or torture. Thus, the Departments do not believe there will generally be a need to apply multiple standards to the same set of facts.

d. The Scope of This Rule

The Departments have decided to tie the application of this IFR, including the limitation on asylum eligibility, to emergency border circumstances. The suspension and limitation on entry applies beginning at 12:01 a.m. eastern time on June 5, 2024. The suspension and limitation on entry will be discontinued 14 calendar days after the Secretary makes a factual determination that there has been a 7-consecutive-calendar-day average of less than 1,500 encounters, as defined by the Proclamation, but excluding noncitizens determined to be inadmissible at a SWB POE. If encounters increase again (including during the 14-calendar-day period), the suspension and limitation will apply again (or continue to apply, as applicable) after the Secretary makes a factual determination that there has been a 7-consecutive-calendar-day average of more than 2,500 encounters, as defined by the Proclamation, but excluding noncitizens determined to be inadmissible at a SWB POE. These thresholds are consistent with those set forth in sections 2(a) and (b) of the Proclamation.[248] In order to maximize the consequences for those who cross unlawfully or without authorization, DHS endeavors to deliver consequences swiftly to the highest proportion of individuals who fail to establish a legal basis to remain the United States. This includes, subject to available resources, referring the maximum number of eligible individuals possible into expedited removal to quickly adjudicate their claims. However, as described below, DHS has been limited in its ability to do so as a result of capacity and resource constraints. The number of people who can be processed for expedited removal is dependent on the Departments' resources and can be impacted by several factors, including limited detention beds and holding capacity;[249] the presence or absence of sufficient AOs to conduct credible fear interviews for all those who claim a fear or indicate an intent to apply for asylum; the availability of IJs to review negative fear findings; and the ability to repatriate individuals ordered removed in a timely manner—an option that is not always available because, among other things, it relies on independent decisions made by foreign governments.

Sustained high encounter rates threaten to overwhelm the Departments' ability to effectively process, detain, and remove the migrants encountered, as appropriate, in a timely manner. *See* 88 FR at 31316. The President has determined that the suspension and limitation on entry is necessary to manage encounter levels. The Departments have determined that emergency border circumstances described in the Proclamation and this rule necessitate this rule's limitation on asylum eligibility and changes to the referral process and screening standard because, in such circumstances, DHS lacks the capacity to deliver timely consequences, and absent this rule, must resort to large-scale releases of noncitizens pending section 240 removal proceedings, which leads to significant harms and threatens to incentivize further migration by individuals who recognize the

[246] *See* Muzaffar Chishti et al., *At the Breaking Point: Rethinking the U.S. Immigration Court System,* Migration Pol'y Inst., at 11 (2023), *https://www.migrationpolicy.org/sites/default/files/publications/mpi-courts-report-2023_final.pdf* (''In the case of noncitizens crossing or arriving at the U.S.-Mexico border without authorization to enter, years-long delays create incentives to file frivolous asylum claims that further perpetuate delays for those eligible for protection, undermining the integrity of the asylum system and border enforcement.''); Doris Meissner, Faye Hipsman, & T. Alexander Aleinikoff, *The U.S. Asylum System in Crisis: Charting a Way Forward,* Migration Pol'y Inst., at 9 (2018), *https://www.migrationpolicy.org/sites/default/files/publications/MPI-AsylumSystemInCrisis-Final.pdf* (''Incentives to misuse the asylum system may also be reemerging. For example, over the past five years, the number of employment authorization documents (EADs) approved for individuals with pending asylum cases that have passed the 180-day mark increased from 55,000 in FY 2012 to 270,000 in FY 2016, and further to 278,000 in just the first six months of FY 2017. This high and growing level of EAD grants may suggest that, as processing times have grown, so too have incentives to file claims as a means of obtaining work authorization and protection from deportation, without a sound underlying claim to humanitarian protection.'').

[247] *See* EOIR, *Adjudication Statistics: Pending Cases, New Cases, and Total Completions* (Jan. 18, 2024), *https://www.justice.gov/eoir/media/1344791/dl?inline.*

[248] The 14-day waiting period prior to a discontinuation provides time for the Departments to complete processing of noncitizens encountered during emergency border circumstances and to confirm that a downward trend in encounters is sustained. The absence of a similar waiting period prior to a reactivation reflects the operational exigencies in a circumstance in which there has been a 7-consecutive-calendar-day average of more than 2,500 encounters and is necessary to avoid a surge to the border in advance of a reactivation. As the Departments have explained, the preliminary data pulled from DHS's operational systems have not undergone a full validation process. *See supra* note 5. But a rapid policy and operational response to emergency border circumstances requires relying on this more recent data when making factual determinations consistent with sections 2(a) and 2(b) of the Proclamation. Hence, the data used to make these factual determinations may differ somewhat from the more definitive numbers that ultimately emerge from DHS's full validation process.

[249] *See, e.g.,* Consolidated Appropriations Act, 2024, Public Law 118–47, 138 Stat. 460, 598 (2024). The joint explanatory statement states that the bill provides ''$5,082,218,000 for Enforcement and Removal Operations (ERO)'' and ''$355,700,000 for 41,500 beds for the full fiscal year and inflationary adjustments to support current detention facility operations.'' 170 Cong. Rec. H1807, H1812 (daily ed. Mar. 22, 2024).

limitations on the ability to deliver timely consequences.[250]

DHS simply lacks sufficient resources to detain and conduct credible fear interviews for the number of noncitizens arriving each day who claim a fear of return when processed through expedited removal. This mismatch in available resources and encounters creates stress on the border and immigration systems and forces DHS to rely on processing pathways outside of expedited removal—limiting DHS's ability to swiftly deliver consequences on individuals who do not have a legal basis to remain in the United States.[251] The Departments have determined that the 1,500-encounter threshold is a reasonable proxy for when the border security and immigration system is no longer over capacity and the measures adopted in this rule are not necessary to deal with such circumstances.

At the outset, it is important to put the threshold in context. From FY 2000 through FY 2008, USBP encounters between POEs averaged approximately 3,000 per day, routinely including monthly averages over 3,500 for a few months most springs.[252] The vast majority (94 percent) of individuals encountered by USBP during this period were Mexican nationals, and very few of those who were processed for expedited removal claimed a fear of return or an intent to seek asylum during that process—fewer than one percent of all CBP SWB encounters.[253] As a result, DHS and its predecessor agency were able to swiftly remove or voluntarily return the vast majority of those encountered at the SWB using comparatively few resources. *See* 88 FR at 11708, 11716.

From FY 2009 through FY 2020, USBP encounters between POEs declined substantially from these historical highs, averaging approximately 1,200 per day, and daily USBP encounters between the POEs averaged less than 3,500 per day in all but one month of that 12-year period—May 2019 when USBP encounters peaked at 4,300 during that year's surge.[254] Within that 12-year stretch, there were only four months (from March through June 2019) with average encounters between the POEs even above 2,500 per day.[255] In fact, for the 15 years prior to March 2021, DHS did not experience a single month with more than 5,000 total average daily encounters.[256] However, during that time, the demographics of these encounters changed significantly, with nationals from the northern Central American countries steadily increasing as a proportion of encounters, becoming a majority of individuals encountered between POEs for the first time in history in 2017—a trend that continued until 2020. Starting in 2014, families and UCs increased as a proportion of USBP encounters as well, reaching a high of 65 percent of encounters in 2019.[257] Finally, and as described in greater detail in Section III.B.1 of this preamble, from 2021 to 2023, there was a historic surge in migration from other countries in the Western Hemisphere and from Eastern Hemisphere countries, which, for the first time ever, accounted for more than half of the encounters at the border in 2023—with Mexican nationals accounting for just 29 percent of encounters, an all-time low.[258]

The change in the nationalities and demographics being encountered at the border has coincided with a dramatic increase in the number of individuals who claim fear when they are processed at the border. Between 2005 and 2015, the proportion of noncitizens encountered by CBP and processed for expedited removal who claimed fear ranged from 5 percent at the low end to 26 percent at the high end.[259] Driven by the changing demographics at the border, both the percentage of those processed for expedited removal as well as the percentage of those processed for expedited removal who claimed a fear of return or an intent to seek asylum generally increased during this time frame.[260] This, in turn, has resulted in a steep increase in the number of credible fear interviews that USCIS is required to conduct.[261]

In 2023, a record 59 percent of encounters at and between POEs on the SWB that were processed for expedited removal resulted in fear claims. From 2016 to 2023, the percentage of SWB encounters processed for expedited removal who claimed a fear dipped below 41 percent just once, in FY 2020, the first year of the COVID–19

[250] *See* Section III.B.2 of this preamble. The Departments acknowledge that, despite the protections preserved by the rule and the available exceptions, the provisions adopted by this rule will result in the denial of some asylum claims that otherwise may have been granted and, as with all screening mechanisms, there is some risk that a case that might otherwise warrant protection might not proceed to a merits adjudication. However, in light of the emergency circumstances facing the Departments and addressed in the Proclamation and this rule, the Departments believe these measures are appropriate and necessary. And given the Departments' experience with asylum and protection screenings and adjudications, the Departments believe the rule's provisions will produce accurate outcomes, although the Departments believe the rule continues to be justified even if that expectation turns out to be misplaced in close cases.

[251] *See* CBP, *Custody and Transfer Statistics* (May 15, 2024), *https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics* (detailing the number of individuals processed for expedited removal compared to another processing disposition, including section 240 proceedings).

[252] OHSS analysis of March 2024 OHSS Persist Dataset. Total CBP encounters (at and between POEs) also averaged approximately 3,000 per day from FY 2004 to FY 2008; data on encounters at POEs are not available prior to FY 2004.

[253] OHSS analysis of March 2024 OHSS Persist Dataset.

[254] OHSS analysis of March 2024 OHSS Persist Dataset. Total CBP encounters (at and between POEs) averaged approximately 1,500 per day during this period. For most of this period (from FY 2009 through FY 2018), the share of encounters processed for expedited removal and the share of those processed through expedited removal making fear claims generally increased, so that during FY 2018, 41 percent of SWB encounters were processed for expedited removal and 45 percent of those processed for expedited removal made fear claims, yielding an all-time high of 18 percent of all encounters making fear claims. OHSS analysis of March 2024 OHSS Persist Dataset. Data on the exact number of SWB encounters processed for expedited removal who made fear claims is not available for years prior to FY 2013, but OHSS estimates that the vast majority (84 percent) of all fear claims made in prior years were made by SWB encounters. Even if 100 percent of fear claims made before FY 2013 were made by SWB encounters, FY 2018 would represent the all-time highest percentage of all encounters making fear claims.

[255] OHSS analysis of March 2024 OHSS Persist Dataset. Total CBP encounters (at and between POEs) also averaged approximately 2,700 per day and 2,600 per day in February and July 2019, respectively.

[256] OHSS analysis of March 2024 OHSS Persist Dataset.

[257] OHSS analysis of March 2024 OHSS Persist Dataset. Northern Central Americans accounted for 54 percent of encounters between POEs in 2017. Northern Central Americans' proportion of encounters between POEs continued to increase until it reached 71 percent of USBP encounters in 2019 but dropped at the onset of the pandemic, in 2020, to less than 26 percent. *See also* OHSS, *Immigration Enforcement and Legal Processes Monthly Tables, https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables* (last updated May 10, 2024) (''CBP SW Border Encounters by Citizenship'').

[258] OHSS analysis of OIS Yearbook of Immigration Statistics 1980–1999 and OHSS analysis of March 2024 OHSS Persist Dataset. *See also* OHSS, *Immigration Enforcement and Legal Processes Monthly Tables, https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables* (last updated May 10, 2024) (''CBP SW Border Encounters by Citizenship''). Nationality breakouts of border encounters are not available prior to 1980, but Mexicans accounted for 97 percent of encounters for all of 1980 through 1999 and never accounted for less than 96 percent in any fiscal year during that period.

[259] OHSS analysis of March 2024 OHSS Persist Dataset.

[260] The percentage of those processed via expedited removal fell again in 2019 due to resource constraints. OHSS analysis of March 2024 OHSS Persist Dataset.

[261] The share of noncitizens encountered by CBP at and between POEs who were processed through expedited removal increased from 6 percent in FY 2005 to between 39 and 47 percent each year from FY 2012 to FY 2018, but then dropped in FY 2019 because DHS was unable to scale up expedited removal processing in proportion to the substantial increase in USBP encounters. OHSS analysis of March 2024 OHSS Persist Dataset.

pandemic.[262] The global COVID–19 pandemic briefly interrupted this trend, which has continued after the lifting of the Title 42 public health Order in May 2023. Between May 12, 2023, and the end of March 2024, DHS processed a record number of individuals through expedited removal as it sought to maximize the consequences at the border, and 54 percent of noncitizens processed for expedited removal indicated a fear of persecution or intent to seek asylum.[263] As part of DHS's comprehensive effort to impose strengthened consequences at the border after the lifting of the Title 42 public health Order, USCIS reassigned a significant number of AOs to conduct credible fear interviews, which resulted in USCIS completing a record number of such interviews. In fact, USCIS conducted more interviews from SWB encounters during the span of ten and a half months after the lifting of the Title 42 public health Order than in any full fiscal year prior to 2023, and twice as many as the annual average from FY 2010 to FY 2019.[264]

As DHS transitioned from the enforcement of the Title 42 public health Order at the border to full use of its title 8 authorities after May 11, 2023, DHS's capacity constraints—and the impact of those constraints on DHS's ability to impose consequences on noncitizens who cross unlawfully or without authorization—have come increasingly into focus. Given these real resource constraints, DHS has had to make hard choices about whom it can prioritize for detention or refer into expedited removal.[265] As a result of a lack of sufficient holding spaces, detention beds, and AOs, DHS has only been able to refer certain noncitizens into expedited removal—which, as detailed above, is the most efficient tool available under title 8 authorities to impose swift consequences for irregular migration. This means that DHS cannot impose consequences swiftly or predictably on most people encountered at the border, feeding the narrative pushed by smugglers that irregular migrants will be able to stay in the United States.[266]

The expedited removal process requires the outlay of significant Government resources. When a noncitizen in expedited removal indicates an intention to seek asylum or a fear of persecution, rather than being swiftly removed, they are referred to an AO for a credible fear interview and may seek review of any negative screening by an IJ—all of which takes time and Government resources. As described in further detail above, DHS has made significant process enhancements to reduce the overall time it takes for individuals to proceed through this process. However, the availability of sufficient numbers of AOs to conduct credible fear interviews is critical to DHS's ability to quickly adjudicate fear claims and deliver consequences to those who do not have a credible fear of persecution or torture.

As described above, Congress has failed to provide the additional resources requested for USCIS that would have increased the number of AOs that are available to conduct credible fear interviews for SWB cases. This reality, combined with increases in encounters at the border, and increases in the proportion of noncitizens processed for expedited removal who claim fear of return, means that DHS cannot impose consequences swiftly or predictably on most people whom DHS encounters. Due to its resource constraints, the majority of individuals USBP encountered since May 11, 2023, were ultimately placed in section 240 removal proceedings,[267] undercutting the effectiveness of the previous measures that have been implemented. This reality contributes to the vicious cycle described above in which increasing numbers of releases lead to increased migration, fueled by the narrative, pushed by smugglers, that migrants who are encountered at the border will be allowed to remain and work in the United States for long periods of time.

As a result of the changes to the nationalities and demographics being encountered at the border, and the associated increase in the rate of claiming fear by individuals encountered, the amount of resources required to deliver consequences quickly through referrals into expedited removal for the vast majority of individuals who claimed a fear in 2000 (when DHS's predecessor agency averaged 3,000 to 7,000 daily encounters between POEs) or in 2010 (when DHS averaged 1,000 to 2,000 daily encounters between POEs) was far lower than the amount of resources required to manage the same number of encounters today.[268]

Of course, as noted above, DHS has been experiencing much higher encounter levels,[269] and simply does not have the resources it would need to place into expedited removal the majority of those encountered by USBP who are amenable to such processing. Similarly, DHS has never had the resources to detain every individual encountered at the border through the pendency of their immigration removal proceedings—even during FY 2009 through FY 2020, when average encounters between POEs on the SWB were 1,200 a day. Encounters between POEs on the SWB are now more than triple that level, resulting in overcrowded USBP facilities, an immigration detention system that has regularly been at capacity, and an asylum system that has been crippled by enormous backlogs and cannot deliver timely decisions.[270] When DHS does not

[262] OHSS analysis of March 2024 OHSS Persist Dataset.

[263] OHSS analysis of data downloaded from CBP UIP on April 2, 2024.

[264] OHSS analysis of data downloaded from CBP UIP on April 2, 2024. Data on the exact number of SWB encounters processed for expedited removal who made fear claims is only available since FY 2013; for the years prior to FY 2013 there was no full fiscal year in which the total number of USCIS fear claims was equal to the number of fear claims completed for SWB encounters processed for expedited removal between May 12, 2023, and March 31, 2024.

[265] ICE, *Fiscal Year 2023 ICE Annual Report* 17–18 (Dec. 29, 2023), *https://www.ice.gov/doclib/eoy/iceAnnualReportFY2023.pdf.*

[266] March 2024 OHSS Persist Dataset.

[267] OHSS analysis of March 2024 OHSS Persist Dataset.

[268] March 2024 OHSS Persist Dataset. The most notable change has been the rising share of non-Mexican nationals as a share of encounters, with Mexican nationals accounting for 98 percent of USBP encounters in FY 2000 and 89 percent in 2010. OHSS Persist Database March 31, 2024; *see also* OHSS, *Immigration Enforcement and Legal Processes Monthly Tables, https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables* (last updated May 10, 2024) (''CBP SW Border Encounters by Citizenship'' and ''CBP SW Border Encounters by Family Status'').

[269] Even as compared to the 2,000 to 7,000 daily encounters between POEs in 2000, the corresponding numbers in the recent past have been higher. In FY 2023, there were 3,300 to 7,300 such daily encounters, and from October 2023 through March 2024, the corresponding numbers are 4,000 to 8,300. March 2024 OHSS Persist Dataset.

[270] *See* OHSS analysis of data downloaded from UIP on April 2, 2024. CBP completed approximately 1.7 million total encounters at the SWB in FY 2021, 2.4 million in FY 2022, and 2.5 million in FY 2023, with each year exceeding the previous record high of 1.6 million in FY 2000. *See* OHSS analysis of March 2024 OHSS Persist Dataset. In December 2023, CBP also completed a single-month record of 302,000 encounters, almost one and a half times as many as the highest monthly number recorded prior to 2021 (209,000 in March 2000) based on records available in the OHSS Persist Dataset for FY 2000 to the present. Although some of the increase in encounters is explained by higher-than-normal numbers of repeat encounters of the same individual during the period in which noncitizens were expelled pursuant to the CDC's Title 42 public health Order, OHSS analysis of the March 2024 OHSS Persist Dataset indicates that unique encounters were also at record high levels. *See also* OHSS, *Immigration Enforcement and Legal Processes Monthly Tables, https://www.dhs.gov/ohss/topics/immigration/enforcement-and-legal-processes-monthly-tables* (last updated May 10, 2024) (''CBP SW Border Encounters by Citizenship'' and ''CBP SW Border Encounters by Family Status'').

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have the capacity to process individuals through expedited removal or detain noncitizens to await their proceedings, releasing individuals into the interior of the United States is generally the only option that is left.[271] The need to release individuals at the border has increased over time and peaked during surges.

By contrast, when encounters (excluding UCs from non-contiguous countries and noncitizens determined to be inadmissible at a SWB POE) are below 1,500 per day, DHS will be able to refer most individuals it encounters into expedited removal and deliver a swift consequence to the majority of individuals it encounters who do not establish a legal basis to remain in the United States—in the form of a return or removal. Given limited congressional appropriations and agency funding levels, DHS has a finite capacity to deliver such consequences at the border, which is reflected in the number of individuals that can be processed through expedited removal on any given day. As detailed above, DHS over the past year has significantly streamlined the expedited removal process and has set records in terms of individuals placed in expedited removal by CBP at the SWB and credible fear interviews conducted by AOs. Given current resources, however, and in the absence of congressional action, there is a limit on how many people can be put through the process—and that limit directly informs the 1,500 threshold.

From May 12, 2023, through March 2024, USBP has referred a daily average of over 900 individuals encountered at the SWB into the expedited removal process.[272] During the same period, about 17 percent of individuals encountered between POEs voluntarily returned to Mexico, had their removal orders reinstated at the border, or were subject to administrative removal pursuant to INA 238(b), 8 U.S.C. 1228(b).[273] This means that, at the 1,500-encounter level and assuming a similar level of voluntary repatriations and reinstatements, DHS would be able to refer for expedited removal more than 70 percent of the individuals who are not quickly repatriated.[274] As discussed previously, of those individuals encountered by USBP and placed into expedited removal from May 12, 2023 to March 31, 2024, 65 percent have been quickly removable—either because they do not claim a fear, or because they are found not to have a credible fear and are ordered removed.[275] This means that, at 1,500 daily encounters between POEs, and assuming similar fear claim rates, DHS would be able to quickly remove the majority of the people it processes at the border on any given day who have no legal basis to remain in the United States.[276]

Simply put, at 1,500 daily encounters, DHS would be able to swiftly deliver a consequence to enough individuals to meaningfully impact migratory decisions and deter unlawful entries. DHS would also be able to minimize releases of those who are amenable to expedited removal or transfer them to ICE custody pending immigration proceedings. By contrast, above 2,500 encounters—the level at which the Proclamation and the rule would again apply—DHS's ability to impose such consequences is significantly lower and decreases rapidly as encounters increase beyond that level. At the 2,500-encounter level and assuming a similar level of voluntary repatriations and reinstatements described above, DHS would be able to place just 43 percent of the individuals who are not quickly repatriated into expedited removal—significantly less than the 70 percent under the 1,500-encounter threshold.[277] This would, in turn, lead to a significant degradation of DHS's ability to impose consequences at the border for individuals who do not establish a legal basis to remain in the United States, with DHS only able to quickly remove or return substantially less than half of the individuals it encounters.[278] Moreover, the percentage of people who can be referred to expedited removal and ultimately be quickly removed if they do not establish a legal basis to remain decreases rapidly as encounters increase beyond 2,500 given the baseline constraints outlined above.

This difficulty in imposing swift consequences on individuals without a legal basis to remain in the United States during periods of elevated

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CBP held an average of 21,863 noncitizens in custody each day during December 2023, averaging 104 percent of CBP's daily custody capacity (21,042) roughly each day for the entire month. OHSS analysis of data downloaded from UIP on February 14, 2024.

EOIR had a backlog of over 2.7 million cases that were pending in the immigration courts at the end of the first quarter of FY 2024. *See* EOIR, *Adjudication Statistics: Pending Cases, New Cases, and Total Completions* (Jan. 18, 2024), *https://www.justice.gov/eoir/media/1344791/dl?inline; see also* Ariel G. Ruiz-Soto et al., *Shifting Realities at the U.S.-Mexico Border: Immigration Enforcement and Control in a Fast-Evolving Landscape,* Migration Pol'y Inst., at 1 (Jan. 2024), *https://www.migrationpolicy.org/sites/default/files/publications/mpi-contemporary-border-policy-2024_final.pdf* (''Insufficiently equipped to respond effectively to these and likely future changes, U.S. immigration agencies must perpetually react and shift operations according to their strained capacity and daily changes in migrant arrivals.''); UNHCR, *Global Trends: Forced Displacement in 2022,* at 2, 8–9, 12 (June 14, 2023), *https://www.unhcr.org/global-trends-report-2022* (showing rapid global increases in forcibly displaced persons and other persons in need of international protection in 2021 and 2022, and projecting significant future increases).

[271] Consistent with the Departments' conclusion in the Circumvention of Lawful Pathways rule, the Departments believe the emergency border circumstances described in the Proclamation and this rule cannot be addressed by relying on the programmatic use of its contiguous territory return authority at section 235(b)(2)(C) of the INA, 8 U.S.C. 1225(b)(2)(C), due to resource constraints and foreign affairs considerations. *See* 88 FR at 31370; 88 FR at 11731.

[272] OHSS analysis of data downloaded from UIP on April 2, 2024.

[273] Based on comprehensive CBP processing dispositions for single adults, family units, and UCs from contiguous countries encountered May 12, 2023 to March 31, 2024; data downloaded from UIP on April 2, 2024.

[274] At 1,500 single adult, family unit, and UC from contiguous countries encounters between POEs per day and with 17 percent of such encounters voluntarily returning to Mexico or subject to reinstatement of a removal order or administrative removal, 1,250 encounters would not be subject to rapid repatriation, including 1,240 who would potentially be amenable to expedited removal. Further, assuming that CBP could process 900 people for expedited removal, the agency would have the ability to place 72 percent of people not subject to rapid repatriation and 73 percent of potentially amenable single adults and family units into expedited removal. OHSS analysis of data downloaded from UIP on April 2, 2024. Applying the rule even more broadly based on a lower threshold would also raise countervailing considerations, *see supra* note 250, and so the Departments have struck the balance reflected in the rule.

[275] OHSS analysis of data downloaded from UIP on April 2, 2024.

[276] At 1,500 encounters of single adults, family units, and UCs from contiguous countries per day and assuming similar shares of encounters accept voluntary return or are subject to reinstatement of removal or administrative removal, about 250 people would be repatriated with one of these dispositions. Further, assuming 900 encounters would be processed for expedited removal, and that 65 percent of expedited removal encounters would be quickly removable, about 590 would be repatriated pursuant to an expedited removal order or withdrawal, yielding a total of about 830 repatriations (sums do not add due to rounding), or 56 percent of encounters.

[277] At 2,500 single adult, family unit, and UC from contiguous countries encounters between POEs per day and with 17 percent of such encounters voluntarily returning to Mexico or subject to reinstatement of a removal order or administrative removal, 2,080 encounters would not be subject to rapid repatriation. Further, assuming that CBP could process 900 people for expedited removal, the agency would have the ability to place 43 percent of people not subject to rapid repatriation into expedited removal. OHSS analysis of data downloaded from UIP on April 2, 2024.

[278] At 2,500 encounters of single adults, family units, and UCs from contiguous countries per day and assuming similar shares of encounters accept voluntary return or are subject to reinstatement of removal or administrative removal, about 420 people would be repatriated with one of these dispositions. Further, assuming 900 encounters would be processed for expedited removal, and that 65 percent of expedited removal encounters would be quickly removable, about 590 would be repatriated pursuant to an expedited removal order or withdrawal, yielding a total of about 1,010 repatriations (sums do not add due to rounding), or 40 percent of encounters.

encounters is borne out by both recent experience, which is detailed in Sections III.B.1 and 2 of this preamble, and by historical data. DHS historical data also clearly show the dichotomy between the outcomes for individuals processed at the border at the 1,500- and 2,500-encounter levels. DHS data show that releases from CBP custody as a share of encounters have generally been highest during periods of sustained high-encounter levels, and lowest when encounters have been at 1,500 or below. For example, from FY 2013 through FY 2019, months with average daily USBP encounters of fewer than 1,500 per day resulted in a minimal level of releases due to capacity constraints at the border.[279] During the 2013 to 2019 pre-pandemic period, USBP encounters only exceeded 1,500 per day for a sustained period from October 2018 to August 2019. During that 7-year stretch, months in which daily encounters were between 1,500 and 2,500 resulted in an average of 210 individuals released each day, while months in which daily encounters exceeded 2,500 resulted in approximately 1,300 releases each day with CBP releasing as many as 46 percent of the individuals it processed pending section 240 removal proceedings.[280]

It is important to note, however, the demographics and nationalities encountered at the border significantly impact DHS's ability to impose timely consequences and the number of people who are ultimately released by CBP pending section 240 removal proceedings. This is especially true for periods when CBP has encountered more UCs, family units, or individuals from countries to which it is difficult to effectuate removals. During the 2013 to 2019 time frame—which forms the basis for the analysis in the preceding paragraph—the vast majority of encounters at the border were from Mexico, El Salvador, Guatemala, and Honduras—countries that are comparatively easy to return people to.[281] Today, a much higher proportion of SWB encounters are from other countries that are comparatively much more difficult to return people to, including record numbers from the Eastern Hemisphere.[282] At the same time, the proportion of encounters involving family units and UCs, although still high, is lower today than it was during periods of high numbers of encounters and releases in FY 2019.[283] Although shifting demographics affect the Departments' capacity to deliver timely decisions and timely consequences at varying levels of encounters, it remains clear that with the challenging demographics being encountered today, DHS would have the ability to deliver a timely consequence to the majority of people it processes at the border when encounters are below 1,500—supporting the decision to suspend the application of the rule when DHS reaches that level of encounters over a 7-day average. Likewise, as discussed above, the Departments have concluded that it is reasonable to apply the rule when encounter levels rise above a 7-day average of 2,500 due to the sharp decrease in their ability to swiftly impose meaningful consequences at the border once encounters exceed that level.

Lastly, it is important to note that using a single threshold—for example, 1,500 encounters—to activate or deactivate the measures in this rule would pose significant challenges and not be operationally viable. Having a single threshold would likely lead to scenarios where the rule would be regularly activated and deactivated as the 7-day average rose above and below 1,500, which would have significant operational impacts for CBP, ICE, and USCIS, and be confusing for government personnel, migrants, and other key stakeholders. For example, the Departments will need to notify and provide guidance to their personnel to apply the provisions of this rule in connection with each activation and deactivation. These actions represent a burden on staff time and resources that would have negative operational impacts if activation or deactivation happened regularly. CBP and ICE will also face scenarios in which they would have many people in their custody some of whom would be subject to and others of whom would not be subject to the provisions of this rule, and CBP and ICE will need to keep track of which individuals needed to be processed under which procedures—something that could become extraordinarily complex and unwieldy if the rule were to be activated and deactivated regularly. Legal service providers and migrants would similarly face a great deal of confusion about when the provisions of this rule were in effect based upon a single threshold of 1,500 encounters to activate or deactivate the measures in this rule. The burden of tracking, identifying, and applying different standards that change back and forth over a matter of days is significantly more complex for USCIS personnel as they consider protection claims.

For all of these reasons, it is important to ensure that there is a clear division between the levels at which the rule is deactivated and when it is activated. And to ensure that stakeholders are aware of when the rule is deactivated and activated, DHS will notify the public about Secretarial determinations of the encounter levels described in sections 2(a) and 2(b) of the Proclamation. As noted above, the 2,500-encounter level is a good proxy for when DHS's ability to quickly impose consequences at the border for individuals who do not establish a legal basis to remain is becoming so degraded that it is likely to further incentivize additional unlawful crossings. It also has the benefit of increasing the time that would elapse between deactivations and activations, allowing DHS to ensure that its personnel are not having to constantly switch back and forth between different procedures.[284]

The exclusion of those determined to be inadmissible at a SWB POE from the 1,500- and 2,500-encounter thresholds is also reasonable in light of recent policy decisions, processing experience, and operational needs. Since May 12, 2023, SWB daily POE encounters have averaged 1,650—largely because DHS has been incentivizing individuals to present at POEs in a safe, orderly manner.[285] This number has stayed relatively constant compared to the number of encounters between POEs, which have varied widely, from a low of 2,554 on May 21, 2023, to a high of 10,822 on December 18, 2023.[286] The predictability in the number of POE encounters, paired with the processing efficiencies gained by the widespread use of the CBP One app, improves CBP's

[279] For FY 2013 to FY 2019, in months with fewer than 1,500 encounters between POEs, USBP released an average of 11 encounters per day. OHSS analysis of March 2024 OHSS Persist Dataset.

[280] OHSS analysis of March 2024 OHSS Persist Dataset.

[281] OHSS analysis of March 2024 OHSS Persist Dataset.

[282] OHSS analysis of March 2024 OHSS Persist Dataset.

[283] UCs and family units accounted for 65 percent of USBP encounters in FY 2019, compared to 45 percent in FY 2024 through March. OHSS analysis of March 2024 OHSS Persist Dataset.

[284] The Departments recognize that, due to the rule's approach, at a given encounter level between 1,500 and 2,500 encounters per day—such as 2,000 encounters a day—whether the rule applies will be path dependent. If encounters have been above 2,500, the rule will apply. If encounters have been below 1,500, the rule will not apply. This is a necessary consequence of providing the clear division that the Departments have deemed necessary, and the Departments assess that adopting this approach best balances the relevant considerations.

[285] OHSS analysis of March 2024 OHSS Persist Dataset.

[286] OHSS analysis of March 2024 OHSS Persist Dataset.

ability to manage encounters at POEs. The vast majority of noncitizens who present at a SWB POE have done so after having registered with the CBP One app.[287] Because such individuals have registered with the CBP One app, CBP can process these individuals more efficiently and in a more orderly way than individuals encountered between POEs.[288] This is a critical element of our strategy to encourage the use of safe, orderly, and lawful pathways, as described above, to incentivize noncitizens to seek out lawful pathways instead of attempting to cross into the United States irregularly. CBP officers will determine the most appropriate processing disposition on a case-by-case basis, although DHS expects to generally issue such individuals an NTA for removal proceedings under section 240 of the INA.

In short, DHS has assessed that the emergency border circumstances that are described by the Proclamation and this rule—and that the President has concluded warrant the step of suspending and limiting entry—reasonably capture the capacity of the border security and immigration systems to deliver consequences in a timely manner to individuals who cross unlawfully or without authorization. Thus, the Departments have determined to tie the application of the rule's provisions to the date that the Proclamation takes effect, and to include a mechanism to temporarily halt the application of the rule's provisions when encounters between POEs reach 1,500 and to restart the application of its provisions if they once again rise above 2,500. Because the Departments intend for certain provisions of this rule to remain in effect in the event a court enjoins or otherwise renders inoperable the Proclamation, the Departments intend for the Secretary of Homeland Security to continue to make the factual determinations regarding the 1,500 and 2,500 thresholds described in this rule and in sections 2(a) and 2(b) of the Proclamation, even if the Proclamation is enjoined, in order to provide continuity during emergency border circumstances. Lastly, the Proclamation may be revoked by the President upon a determination that it is no longer needed.[289]

C. Section-by-Section Description of Amendments

1. 8 CFR 208.13 and 1208.13

DHS and DOJ are adding a paragraph (g) to the end of 8 CFR 208.13 and 1208.13, respectively, *Establishing asylum eligibility,* to explain when a noncitizen is potentially subject to this IFR's limitation on asylum eligibility and credible fear screening procedures and how this limitation and its associated procedures interact with the Lawful Pathways condition referenced in paragraph (f) of 8 CFR 208.13 and 1208.13. Paragraph (g) refers the reader to the new regulatory provisions at 8 CFR 208.35 and 1208.35 that establish the limitation on eligibility for asylum where a noncitizen entered the United States across the southern border during emergency border circumstances.

2. 8 CFR 208.35

DHS is adding to 8 CFR part 208, *Procedures for Asylum and Withholding of Removal,* a new subpart D, *Eligibility for Aliens Who Enter the United States During Emergency Border Circumstances.* Within subpart D, DHS is adding a new § 208.35, *Limitation on asylum eligibility and credible fear procedures for those who enter the United States during emergency border circumstances.* This section sets forth a new limitation on asylum eligibility and screening procedures related to the application of such limitation in expedited removal proceedings and the conduct of credible fear screenings during the emergency border circumstances. This provision applies notwithstanding any contrary provision of part 208.

Section 208.35 consists of the following provisions:

Paragraph (a) sets forth the limitation on asylum eligibility. Under the rule, a noncitizen is ineligible for asylum if the noncitizen is described in § 208.13(g) and not described in section 3(b) of the Proclamation. This approach is consistent with the general policy of the Proclamation and rule and provides important exceptions that continue to incentivize the use of safe, orderly, and lawful pathways, such as for those who arrive in the United States at a southwest land border POE pursuant to a process approved by the Secretary of Homeland Security.[290]

Paragraph (a)(2) contains provisions regarding an exception to the limitation on asylum eligibility that aligns with the means for rebutting the presumption of asylum ineligibility in the Circumvention of Lawful Pathways rule. *See* 8 CFR 208.33(a)(3)(i), 1208.33(a)(3)(i). The exception applies if the noncitizen, or the noncitizen's family member as described in § 208.30(c) with whom the noncitizen is traveling, demonstrates by a preponderance of the evidence exceptionally compelling circumstances, including that, at the time of entry, the noncitizen or a member of the noncitizen's family as described in § 208.30(c) with whom the noncitizen is traveling:

- Faced an acute medical emergency;
- Faced an imminent and extreme threat to life or safety, such as an imminent threat of rape, kidnapping, torture, or murder; or
- Satisfied the definition of ''victim of a severe form of trafficking in persons'' provided in 8 CFR 214.11.

Paragraph (a)(2)(ii) makes clear that where a noncitizen establishes one of the above, they shall necessarily have established exceptionally compelling circumstances. This exception for exceptionally compelling circumstances limits the potential adverse effects of the limitation on asylum eligibility on certain particularly vulnerable populations, and family members with whom they are traveling, without undermining the key policy imperative to disincentivize irregular migration during a time when encounters are above certain benchmarks.[291] Paragraph (a)(2)(iii) deems those who have established exceptionally compelling circumstances for purposes of this asylum limitation or who are described in the provisions of the Proclamation as being excepted from its suspension and limitation on entry as having established exceptionally compelling circumstances for purposes of the Lawful Pathways condition. This provision is intended to simplify administration of this asylum limitation while it and the Circumvention of

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[287] OHSS analysis of March 2024 OHSS Persist Dataset.

[288] *See, e.g.,* 88 FR at 11719.

[289] The Departments have not sought to apply the rule even after any revocation of the Proclamation by the President, because the Departments expect that any such revocation would only follow consultation with the Departments regarding the policy and operational implications of such an action. Moreover, a decision by the President would reflect important changed circumstances, and the Departments would want to take into account those changed circumstances in assessing the appropriate policy as to the issues covered by this rule.

[290] *See* DHS, *Fact Sheet: Department of State and Department of Homeland Security Announce Additional Sweeping Measures To Humanely Manage Border through Deterrence, Enforcement, and Diplomacy* (May 10, 2023), *https://www.dhs.gov/news/2023/05/10/fact-sheet-additional-sweeping-measures-humanely-manage-border.*

[291] *See, e.g.,* 88 FR at 31325 (''These exceptions and opportunities for rebuttal are meant to ensure that migrants who are particularly vulnerable, who are in imminent danger, or who could not access the lawful pathways provided are not made ineligible for asylum by operation of the rebuttable presumption. Those who are not excepted from and are unable to rebut the presumption of ineligibility may still pursue statutory withholding of removal and protection under the CAT.'').

Lawful Pathways rule are both operative.

Paragraph (b) prescribes procedures for considering the limitation on asylum eligibility during the credible fear screening process and for applying the ''reasonable probability'' standard in the event the Proclamation or the limitation on asylum eligibility are rendered inoperable by court order. Under paragraph (b)(1), the AO will first determine whether there is a significant possibility that the noncitizen is eligible for asylum in light of the limitation on asylum eligibility in paragraph (a). The paragraph sets forth three possible procedural scenarios depending on the AO's findings. First, where the AO determines that the noncitizen is subject to the limitation on asylum eligibility under paragraph (a)—including that there is not a significant possibility, *see* INA 235(b)(1)(B)(iii), 8 U.S.C. 1225(b)(1)(B)(iii),[292] that the noncitizen could establish an exception under section 3(b) of the Proclamation—and that there is not a significant possibility that the noncitizen could establish an exception to the limitation under paragraph (a)(2), the AO will enter a negative credible fear determination with respect to the noncitizen's asylum claim and continue to consider the noncitizen for potential eligibility for statutory withholding of removal and CAT protection under the procedures in paragraph (b)(2), as described below. *See* 8 CFR 208.35(b)(1)(i). Second, where the AO determines that the noncitizen is not subject to this IFR's limitation on asylum eligibility because there is a significant possibility that the noncitizen could establish that they are not described in § 208.13(g), the AO will follow the procedures for credible fear interviews relating to the Lawful Pathways condition in § 208.33(b). *See id.* 208.35(b)(1)(ii). This provides that those noncitizens who are not subject to the Proclamation because they did not enter during emergency border circumstances are processed under the provisions governing the Lawful Pathways condition—and under § 208.33(b)(1)(ii), if the noncitizen is not subject to that condition, they will be screened for a significant possibility of eligibility for statutory withholding of removal or CAT protection consistent with § 208.30.[293] Third, where the AO determines that the noncitizen is not subject to this IFR's limitation on asylum eligibility because there is a significant possibility that the noncitizen could establish either that they are described in section 3(b) of the Proclamation or exceptionally compelling circumstances exist under paragraph (a)(2), the AO will conduct the screening consistent with 8 CFR 208.30. *See id.* 208.35(b)(1)(iii).

If the AO determines that the noncitizen is subject to paragraph (a) and cannot establish a significant possibility that they will be able to establish exceptionally compelling circumstances by a preponderance of the evidence per paragraph (a)(2), the AO will then assess whether the noncitizen has established a reasonable probability of persecution (meaning a reasonable probability of being persecuted because of their race, religion, nationality, membership in a particular social group, or political opinion) or torture, with respect to the designated country or countries of removal identified pursuant to section 241(b) of the INA, 8 U.S.C. 1231(b). *See* 8 CFR 208.35(b)(2)(i). As noted above, for purposes of this section, reasonable probability means substantially more than a reasonable possibility, but somewhat less than more likely than not, that the noncitizen would be persecuted because of his or her race, religion, nationality, membership in a particular social group, or political opinion, or tortured, with respect to the designated country or countries of removal. *See id.*

If the noncitizen establishes a reasonable probability of persecution or torture with respect to the designated country or countries of removal, DHS will issue a positive credible fear determination and follow the procedures in § 208.30(f). *See id.* 208.35(b)(2)(ii). Under § 208.30(f), USCIS may issue an NTA for removal proceedings under section 240 of the INA, or, in its discretion, retain the application for an asylum merits interview pursuant to § 208.2(a)(1)(ii). Under the regulations governing the asylum merits interview process, where USCIS exercises its discretion to retain jurisdiction over an application for asylum of a noncitizen found to have a credible fear of persecution or torture pursuant to § 208.30(f), the written record of the positive credible fear determination is treated as the asylum application. 8 CFR 208.3(a)(2). Under this IFR, however, noncitizens who are subject to the limitation on asylum eligibility under 8 CFR 208.35(a), and fail to show a significant possibility of being able to establish an exception by a preponderance of the evidence at the credible fear interview, will receive a negative credible fear determination with respect to their application for asylum, pursuant to § 208.35(b)(1)(i), but could go on to receive a positive credible fear determination with respect to a potential claim for statutory withholding of removal or protection under the CAT at the reasonable probability of persecution or torture standard. *See id.* 208.35(b)(2).

In the event that USCIS were to exercise its discretion to place such a case into the asylum merits interview process, the credible fear record in that case would have found the applicant unable to establish eligibility for asylum under § 208.35(a) and the positive determination would be based only on a potential statutory withholding of removal or protection under the CAT claim. USCIS may thus need supplementary information to constitute an application for asylum, as the asylum claim may not have been fully explored in the credible fear record given that the AO determined the applicant would have been ineligible for asylum based on the rule's limitation on asylum eligibility. Therefore, § 208.35(b)(2)(ii) allows USCIS to require a noncitizen who received a negative credible fear determination with respect to their application for asylum pursuant to § 208.35(b)(1)(i), but whose application is nonetheless retained by USCIS for asylum merits interview proceedings, to submit an asylum application to USCIS within 30 days of service of the positive credible fear determination, to ensure that there is a record of their potential asylum claim to serve as a substantive asylum application. For purposes of the filing and receipt date, the date of service of the positive credible fear determination will continue to serve as the date of filing pursuant to § 208.3(a)(2); however, if USCIS requires the submission of an asylum application, the timelines laid out in § 208.9(a)(1) and § 208.9(e)(2) may be delayed up to 15 days, considering the need to allow extra time for the submission of an asylum application to USCIS following service of the positive credible fear determination. *See id.* 208.35(b)(2)(ii). Under this IFR, if the applicant does not submit the

[292] In the Circumvention of Lawful Pathways rule, the Departments described how AOs would apply the limitation on asylum eligibility at issue there consistent with the statutory ''significant possibility'' standard. *See* 88 FR at 31380. That discussion in the Circumvention of Lawful Pathways rule also applies to AOs' application of the limitation on asylum eligibility created by this IFR. As explained above in Section III.B.3.a of this preamble, AOs will rarely have grounds to reach a different result from the CBP immigration officers as to the application of the Proclamation or its exceptions.

[293] In such cases, consistent with the Circumvention of Lawful Pathways rule, DHS would also have discretion to refer the noncitizen to EOIR for section 240 removal proceedings. *See Matter of E–R–M– & L–R–M–*, 25 I&N Dec. 520 (BIA 2011); *see also* 88 FR at 31348.

application within the time period required, USCIS will refer the noncitizen to section 240 removal proceedings before an IJ. USCIS does not foresee that it would be a prudent use of resources to place such cases into the asylum merits interview process, considering that USCIS has a finite number of AOs, and it is more efficient at present to assign work in a manner that maximizes the number of credible fear interviews USCIS can conduct at the border. Nevertheless, the IFR preserves the flexibility for USCIS to exercise its discretion to potentially place such cases into the asylum merits interview process (albeit with the potential addition of a supplementary application for asylum) should available resources and circumstances ever be such that it would be prudent to place such cases into the asylum merits interview process.

If the noncitizen fails to establish a reasonable probability of persecution or torture with respect to all designated countries of removal, the AO will provide the noncitizen with a written notice of decision and inquire whether the noncitizen wishes to have an IJ review the negative credible fear determination. *See id.* 208.35(b)(2)(iii). If the noncitizen indicates on the Record of Negative Fear that they request IJ review of the adverse finding, *see id.* 208.35(b)(2)(iv), the AO will serve the noncitizen with a Notice of Referral to Immigration Judge, *see id.* 208.35(b)(2)(v). *See* 88 FR at 11747; 88 FR at 31423. The record of determination, including copies of the Notice of Referral to Immigration Judge, the AO's notes, the summary of the material facts, and other materials upon which the AO based their determination regarding the applicability of the condition on asylum eligibility (which, in cases where the limitation on asylum eligibility created by this IFR applies, includes materials showing the relevant known entry date), will be provided to the IJ with the negative determination. *See* 8 CFR 208.35(b)(2)(v). The IJ would then review the case consistent with § 1208.35, described below.

If, following IJ review, the IJ makes a positive credible fear determination under § 1208.35(b)(2)(iii) or § 1208.35(b)(4), the case will proceed under § 1208.30(g)(2)(iv)(B). *See id.* 208.35(b)(2)(v)(A). The IJ may vacate the Notice and Order of Expedited Removal and refer the case back to DHS for further proceedings consistent with 8 CFR 1208.2(a)(1)(ii). *See id.* 1208.30(g)(2)(iv)(B). Alternatively, DHS may commence section 240 removal proceedings, during which time the noncitizen may file an application for asylum, statutory withholding of removal, and CAT protection in accordance with § 1208.4(b)(3)(i). *See id.* 1208.30(g)(2)(iv)(B).

If the IJ makes a negative credible fear determination, however, the case will be returned to DHS for removal of the noncitizen. *See id.* 208.35(b)(2)(v)(B). Consistent with the purpose of the expedited removal process and this IFR, there would be no appeal from the IJ's decision and DHS would not accept requests for reconsideration. *See id.* USCIS may, however, in its sole discretion, reconsider a negative determination. *See id.;* 88 FR at 11747; 88 FR at 31418–19.

Paragraph (b)(3) applies in the event that the limitation on asylum eligibility in paragraph (a) is rendered inoperative by court order. In such circumstance, those who enter during emergency border circumstances and who are found not to have a significant possibility of eligibility for asylum because of the Lawful Pathways condition will be screened for eligibility for statutory withholding of removal and CAT protection under the ''reasonable probability'' screening standard. This will ensure continued applicability of that standard during emergency border circumstances, even absent the rule's limitation on asylum eligibility. The Departments acknowledge that under this approach, not all who would have been subject to the higher screening standard if the limitation remained in force would be subject to it in the event of an injunction—*i.e.,* those who do not travel through a country other than their country of citizenship, nationality, or, if stateless, last habitual residence; those excepted from the Lawful Pathways condition under the exceptions at 8 CFR 208.33(a)(2)(ii)(A) and (C); those excepted from the Lawful Pathways condition because they present at a POE without a pre-scheduled time and place and demonstrate that it was not possible to access or use the DHS scheduling system due to language barrier, illiteracy, significant technical failure, or other ongoing and serious obstacle; and those who enter across the maritime borders covered by the Proclamation that are not covered by the Lawful Pathways condition. The Departments have adopted a somewhat narrower scope for the standard to avoid a circumstance where AOs and IJs would be required to analyze both the applicability of the Lawful Pathways condition and then also whether the noncitizen would otherwise be subject to the rule's limitation—which could complicate and increase the time required to conduct credible fear screenings. The Departments believe the approach adopted strikes the right balance between the interest in applying the screening standard to those to whom it would otherwise apply and administrability in the event the limitation on asylum eligibility is rendered inoperative by court order. The Departments request comment on whether to expressly expand this provision to also apply to those who are found not to have a significant possibility of eligibility for asylum because they are barred from asylum due to a mandatory bar to asylum eligibility if the rule Application of Certain Mandatory Bars in Fear Screenings, 89 FR 41347 (May 13, 2024), is finalized.

Paragraph (c) contains a family unity provision that parallels and serves the same purposes as the DOJ family unity provision in the Circumvention of Lawful Pathways rule. *See* 8 CFR 1208.33(c). The paragraph specifies that a noncitizen who would be eligible for asylum but for the limitation on eligibility set forth in the IFR, the condition set forth in the Circumvention of Lawful Pathways rule, or both, may meet the family unity exception where the other requirements are met. The expressly permissive, discretionary nature of this provision, which owes in part to the considerations described earlier in this section with respect to asylum merits interviews, distinguishes it from the parallel DOJ provision in the Circumvention of Lawful Pathways rule and the parallel DOJ provision described in the next section of this preamble.

Paragraph (d) mirrors 8 CFR 208.33(c) and 1208.33(d) and specifies the ongoing applicability of the limitation on asylum eligibility by providing that it shall apply to ''any asylum application'' that is filed by a covered noncitizen ''regardless of when the application is filed and adjudicated.'' *Id.* 208.35(d)(1). The Departments have excepted from this ongoing application of the limitation on asylum eligibility certain noncitizens who enter the United States during emergency border circumstances while under the age of 18 and who later seek asylum as principal applicants so long as the asylum application is filed after the period of time described in § 208.13(g) during which the noncitizen entered. *See id.* 208.35(d)(2). Commenters on the Circumvention of Lawful Pathways rule raised concerns about the impact of that rule on children who arrive as part of a family unit and who are thus subject to the decision-making of their parents. 88 FR at 31320. The Departments decided to adopt a provision excepting

such children from that rule in certain circumstances after the two-year period ends. *See* 8 CFR 208.33(c)(2), 1208.33(d)(2). The Departments recognized that children who enter with their families are generally traveling due to their parents' decision-making. 88 FR at 31320. The Departments believe that these considerations are also relevant to this rule and have decided to adopt a similar approach as that adopted in the Circumvention of Lawful Pathways rule.

The Departments considered whether to except family units, or children who are part of family units, from the limitation on asylum eligibility entirely. The Departments decline to adopt such an approach. Excepting all family units that include minor children could incentivize families who otherwise would not make the dangerous journey and cross unlawfully to do so. And excepting only the child could inadvertently lead to the separation of a family in many cases because every child would have to be treated separately from their family during the credible fear screening, as they would not be subject to the limitation but their parents could be. Although accompanied children remain subject to the limitation on asylum eligibility generally, the Departments have determined that the limitation should not apply to them in any application for asylum they file after the relevant period, but only if they apply as a principal (as opposed to a derivative) applicant.

The Departments also considered applying a specific calendar date to this provision, similar to the approach taken by the Departments in the Circumvention of Lawful Pathways rule.[294] The Departments determined that such a provision would be challenging to implement because the Departments have not identified a date certain upon which emergency border circumstances are expected to discontinue. The Departments believe that the key purpose of an asylum application waiting period—protecting against any perceived incentive for family units to migrate irregularly—is adequately served by a requirement that the applicable period of emergency border circumstances is no longer in place at the time of application. For that same reason, the Departments do not believe it is necessary to make this exception unavailable during any period of emergency border circumstances; instead, this exception will be available after the end of the emergency border circumstance during which the applicant entered. Because noncitizens will not know in advance when the emergency border circumstance will end, and when another emergency border circumstance might occur, the approach adopted in the rule addresses noncitizens' incentives without restricting this exception more than is necessary.

The Departments believe this approach balances the interest in ensuring the limitation has an impact on behavior, while at the same time recognizing the special circumstance of children who enter in a manner that triggers the limitation, likely without intending to do so or being able to form an understanding of the consequences. Specifically, if the Departments were to extend this exception to children who filed as a derivative, the Departments would risk incentivizing families to seek to prolong their proceedings to file their asylum applications after the end of the circumstances leading to the suspension and limitation on entry, undermining the Departments' interest in efficient adjudications. In addition, any family that did so would be able to avoid the applicability of the limitation entirely, by virtue of the rule's family unity provision. The Departments have decided not to include such a broad exception, in light of the urgent need to gain efficiencies in the expedited removal process and dissuade entry during the circumstances described in the Proclamation and this rule.

Finally, DHS is including a severability clause in this provision. *See* 8 CFR 208.35(e). If any provision of this section, § 235.15, or the Proclamation is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, DHS intends that the provision be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding is that the provision is wholly invalid and unenforceable, in which event the provision should be severed from the remainder of this section and the holding should not affect the remainder of this section or the application of the provision to persons not similarly situated or to dissimilar circumstances. Indeed, in this rule, the Departments have sought to avoid describing ''emergency border circumstances'' as the time period during which the Proclamation is in effect, because the Departments intend for certain provisions of this rule to remain in effect in the event a court enjoins or otherwise renders inoperable the Proclamation or this rule's limitation on asylum eligibility. This approach is consistent with the nature of the rule as an emergency measure and reflects DHS's determination that the limitation on asylum eligibility will improve the border security and immigration systems' capacity to safely process migrants during the circumstances described in the Proclamation and this rule. For example, even in the absence of the limitation on asylum eligibility, as expressly set forth in paragraph (b)(3), the Department intends that the ''reasonable probability'' standard be used for screening for eligibility for statutory withholding of removal and CAT protection for those who would have been subject to the limitation on asylum if they are otherwise unable to establish a credible fear of persecution for asylum purposes, including but not limited to because they are subject to the Lawful Pathways rebuttable presumption. Similarly, even in the absence of the new provision at 8 CFR 235.15 discussed below, the changes made in § 208.35 are expected to prove helpful in the emergency circumstances described by the Proclamation and the rule. *See id.* 208.35(e).

3. 8 CFR 1208.35

Like DHS's addition to 8 CFR part 208, DOJ is adding to 8 CFR part 1208, *Procedures for Asylum and Withholding of Removal,* a new subpart D, *Eligibility for Aliens Who Enter the United States During Emergency Border Circumstances.* Within subpart D, DOJ is adding a new § 1208.35, *Limitation on asylum eligibility and credible fear procedures for those who enter the United States during emergency border circumstances.* This section sets forth a new limitation on asylum eligibility and procedures related to IJ review of credible fear determinations in expedited removal proceedings during emergency border circumstances. This provision applies notwithstanding any contrary provision in EOIR's regulations. Section 1208.35 consists of the following provisions:

Paragraph (a) mirrors new § 208.35(a), discussed above.

Paragraph (b) provides procedures for credible fear determinations. Under these procedures, when a noncitizen has requested IJ review of an AO's negative credible fear determination, the IJ will evaluate the case de novo, taking into account the credibility of the statements made by the noncitizen in support of the noncitizen's claim and such other facts as are known to the IJ. *See* 8 CFR 1208.35(b)(1). The paragraph sets forth three possible procedural scenarios depending on the IJ's determinations. First, where the IJ determines that the

[294] Under that rule, the Lawful Pathways condition does not apply to certain asylum applications filed after May 11, 2025—two years after that rule's initial issuance. 8 CFR 208.33(c)(2), 1208.33(d)(2); 88 FR at 31449.

noncitizen is not subject to this IFR's limitation on asylum eligibility because there is a significant possibility that the noncitizen could establish that they are not described in § 1208.13(g), the IJ will follow the procedures for credible fear interviews relating to the Lawful Pathways condition in § 1208.33(b). *See id.* 1208.35(b)(2)(i).[295] This provides that those noncitizens who did not enter during emergency border circumstances are processed under the provisions governing the Lawful Pathways condition—and under § 1208.33(b)(2)(i), if the noncitizen is not subject to that condition they will be screened for a significant possibility of eligibility for statutory withholding of removal or CAT protection consistent with § 208.30. Second, where the IJ determines that the noncitizen is not subject to this IFR's limitation on asylum eligibility because there is a significant possibility that the noncitizen could establish either that they are described in section 3(b) of the Proclamation or exceptionally compelling circumstances exist under paragraph (a)(2), the IJ will follow the procedures in 8 CFR 1208.30. *See id.* 1208.35(b)(2)(ii). Third, where the IJ determines that the IFR's limitation on asylum eligibility applies—including that there is not a significant possibility that the noncitizen could establish an exception under section 3(b) of the Proclamation—and that there is not a significant possibility that the noncitizen could establish an exception under paragraph (a)(2) of the limitation, the IJ will apply the Circumvention of Lawful Pathways rule's procedures set forth in § 1208.33(b)(2)(ii), except that the IJ will apply a ''reasonable probability'' standard to parallel the standard adopted by DHS. *See id.* 1208.35(b)(2)(iii).

Paragraph (b)(4), mirrors new § 208.35(b)(3), discussed above.

Paragraph (c) contains a family unity provision that parallels and serves the same purposes as the family unity provision in the Circumvention of Lawful Pathways rule. *See id.* 1208.33(c), 1208.35(c). The paragraph specifies that a noncitizen who would be eligible for asylum but for the limitation on eligibility set forth in the IFR, the condition set forth in the Circumvention of Lawful Pathways rule, or both, may meet the family unity exception where the other requirements are met.

Paragraph (d) mirrors new § 208.35(d), discussed above.

Paragraph (e) contains a severability provision that serves a similar purpose to the provision in § 208.35(e) described above. If any provision of this section or the Proclamation is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, DOJ intends that the provision be construed so as to continue to give the maximum effect to the provision permitted by law, unless such holding is that the provision is wholly invalid and unenforceable, in which event the provision should be severed from the remainder of this section and the holding should not affect the remainder of this section or the application of the provision to persons not similarly situated or to dissimilar circumstances. This approach is consistent with the nature of the rule as an emergency measure and reflects DOJ's determination that the limitation on asylum eligibility will improve the border security and immigration systems' capacity to safely process migrants during the circumstances described in the Proclamation and this rule. For example, as set forth explicitly in paragraph (b)(4), even in the absence of the limitation on asylum eligibility, the Department intends that the ''reasonable probability'' standard be used for screening for eligibility for statutory withholding of removal and CAT protection for those who would have been subject to the limitation on asylum if they are otherwise unable to establish a credible fear of persecution for asylum purposes, including but not limited to because they are subject to the Lawful Pathways rebuttable presumption. *See id.* 1208.35(e).

4. 8 CFR 235.15

DHS is adding to 8 CFR part 235, *Inspection of Persons Applying for Admission,* a new § 235.15, *Inadmissible aliens and expedited removal during emergency border circumstances.* New 8 CFR 235.15 will further streamline aspects of the expedited removal process by effectively replacing paragraphs (b)(2)(i) and (b)(4)(i) of 8 CFR 235.3 for those individuals described in § 235.3(b)(1)(i) or (ii) and who are described in § 208.13(g) but not described in section 3(b) of the Proclamation. *See* 8 CFR 235.15. The changes would not affect implementation of 8 CFR 235.3(b)(4)(ii) or any other portion of 8 CFR 235.3. *See id.* The changes are as follows.

First, under 8 CFR 235.3(b)(2)(i), the record of proceeding includes a sworn statement using Form I–867AB, *Record of Sworn Statement in Proceedings under Section 235(b)(1) of the Act.* Under the existing regulations, the examining immigration officer reads (or has read) to the noncitizen all information contained on Form I–867A. Following questioning and recording of the noncitizen's statement regarding identity, alienage, and inadmissibility, the examining immigration officer records the noncitizen's response to the questions contained on Form I–867B, and has the noncitizen read (or has read to the noncitizen) the statement, and the noncitizen signs and initials each page of the statement and each correction, if any.

DHS is adding a new 8 CFR 235.15(b)(2)(i) to apply to certain noncitizens instead of this current process during emergency border circumstances. Under this procedure, Forms I–867A and I–867B will no longer be mandated in such circumstances. Instead, the immigration officer shall advise the individual of the charges against them on the Form I–860 and give him or her an opportunity to respond to those charges. *See* 8 CFR 235.15(b)(2)(i)(B). This provision does not require that the response be done through a sworn statement. *See id.* Consistent with current regulations, however, the inspecting officer must obtain supervisory concurrence of an expedited removal order in accordance with § 235.3(b)(7). *Id.* Moreover, consistent with current regulations, the examining immigration official shall serve the noncitizen with Form I–860, and the noncitizen shall be required to sign the form acknowledging receipt. *Id.* The new 8 CFR 235.15(b)(2)(i) no longer mandates that the signature occur on the reverse, but preserves the requirement that the noncitizen be required to sign, allowing greater flexibility for location of signature blocks on the document. *See id.* 235.3(b)(2)(i). The new provision maintains the requirement that interpretative assistance shall be used if necessary to communicate with the noncitizen. *Id.* 235.3(b)(2)(i)(B). The new 8 CFR 235.15(b)(2)(i) also allows for greater flexibility regarding how DHS records the information that supports the finding that the noncitizen is inadmissible and subject to expedited removal. This operational flexibility is consistent with the President's determination that emergency border circumstances are present such that the suspension and limitation on entry is warranted.

[295] As explained above regarding AOs, the discussion in the Circumvention of Lawful Pathways rule regarding how AOs would apply the limitation on asylum eligibility at issue there consistent with the statutory ''significant possibility'' standard, *see* 88 FR at 31380, is equally applicable to IJs' application of the limitation on asylum eligibility created by this IFR. As explained above in Section III.B.3.a of this preamble, IJs will rarely have grounds to reach a different result from the CBP immigration officers as to the application of the Proclamation or its exceptions.

Second, under 8 CFR 235.3(b)(4), if a noncitizen subject to the expedited removal provisions indicates an intention to apply for asylum, or expresses a fear of persecution or torture, or a fear of return to his or her country, the inspecting officer does not proceed further with removal of the noncitizen until the noncitizen has been referred for an interview by an AO in accordance with 8 CFR 208.30.

Instead of this current process, DHS is adding a new 8 CFR 235.15(b)(4), applicable to those who (1) are described in § 208.13(g), (2) are not described in section 3(b) of the Proclamation, and (3) are processed for expedited removal. Under this provision the immigration officer would refer the noncitizen to an AO if the noncitizen manifests a fear of return or affirmatively expresses an intention to apply for asylum, or affirmatively expresses a fear of persecution or torture, or a fear of return to his or her country or the country of removal.

Third, under 8 CFR 235.3(b)(4)(i), the referring officer provides the noncitizen with a written disclosure on Form M–444, *Information About Credible Fear Interview,* describing (1) the purpose of the referral and description of the credible fear interview process; (2) the right to consult with other persons prior to the interview and any review thereof at no expense to the United States Government; (3) the right to request a review by an IJ of the AO's credible fear determination; and (4) the consequences of failure to establish a credible fear of persecution or torture. New 8 CFR 235.15(b)(4) will simply require that an immigration officer provide ''a written disclosure describing the purpose of the referral and the credible fear interview process; the right to consult with other persons prior to the interview and any review thereof at no expense to the United States Government; the right to request a review by an IJ of the AO's credible fear determination; and the consequences of failure to establish a credible fear of persecution or torture.'' 8 CFR 235.15(b)(4)(i)(B). Thus, while maintaining the substance of the information that must be provided to the noncitizen, the regulation removes the requirement that it be on a particular form, allowing for greater flexibility in how the information is distributed.

Finally, DHS is including a severability clause in this provision. *See id.* 235.15(g). DHS believes that each of these changes can function sensibly without the others, given that each change is independently seeking to provide greater flexibility during a time when the suspension and limitation on entry is in effect, while still protecting the important ability of individuals to seek protection from removal. DHS further believes that even if a court order enjoins or vacates the Proclamation or provisions other than § 235.15 of this rule, the provisions in § 235.15 can continue to apply to those described in § 208.13(g) and not described in section 3(b) of the Proclamation, even if they cannot be subject to those provisions by operation of such court order.

IV. Statutory and Regulatory Requirements

A. Administrative Procedure Act

Under the Administrative Procedure Act (''APA''), agencies must generally provide ''notice of proposed rule making'' in the **Federal Register** and, after such notice, ''give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments.'' 5 U.S.C. 553(b) and (c). The APA further provides that the required publication or service of a substantive rule shall be made not less than 30 days before its effective date, except in certain circumstances. *Id.* 553(d). Consistent with the APA, the Departments have not invoked these procedures because (1) this rule involves a foreign affairs function of the United States and thus is excepted from such requirements, *id.* 553(a)(1), and (2) the Departments have found good cause to proceed with an immediately effective interim final rule, *id.* 553(b)(B), 553(d)(3), for the reasons explained below. At the same time, the Departments seek and welcome post-promulgation comments on this IFR.

1. Foreign Affairs

This rule is excepted from the APA's notice-and-comment and delayed-effective-date requirements because it involves a ''foreign affairs function of the United States.'' 5 U.S.C. 553(a)(1). Courts have held that this exception applies when the rule in question ''is clearly and directly involved in a foreign affairs function.'' [296] In addition, although the text of the APA does not require an agency invoking this exception to show that such procedures may result in ''definitely undesirable international consequences,'' some courts have required such a showing. *Rajah* v. *Mukasey,* 544 F.3d 427, 437 (2d Cir. 2008) (quotation marks omitted).[297] This rule satisfies both standards.

The United States' border management strategy is predicated on the belief that migration is a shared responsibility among all countries in the region—a fact reflected in the intensive and concerted diplomatic outreach on migration issues that DHS and the Department of State have made with partners throughout the Western Hemisphere. This strategy includes the Los Angeles Declaration on Migration and Protection, which was joined by leaders during the Summit of the Americas on June 10, 2022, and has been endorsed by 22 countries.[298] Under the umbrella of this framework, the United States has been working closely with its foreign partners to manage the unprecedented levels of migration that countries throughout the region have recently been experiencing, including on efforts to: expand access to, and increase, lawful pathways, such as the Safe Mobility Office initiative; [299] conduct joint enforcement efforts, such as the Darién Campaign with Colombia and Panama and the mirrored patrols [300] with the Government of Mexico along

[296] *E.B.* v. *U.S. Dep't of State,* 583 F. Supp. 3d 58, 63 (D.D.C. 2022) (cleaned up); *see Mast Indus., Inc.* v. *Regan,* 596 F. Supp. 1567, 1582 (Ct. Int'l. Trade 1984); *see also Am. Ass'n of Exps. & Imps.* v. *United States,* 751 F.2d 1239, 1249 (Fed. Cir. 1985) (holding that the exception applies where a rule is ''linked intimately with the Government's overall political agenda concerning relations with another country'').

[297] *See, e.g., Rajah,* 544 F.3d at 437 (''There are at least three definitely undesirable international consequences that would follow from notice and comment rulemaking. First, sensitive foreign intelligence might be revealed in the course of explaining why some of a particular nation's citizens are regarded as a threat. Second, relations with other countries might be impaired if the government were to conduct and resolve a public debate over why some citizens of particular countries were a potential danger to our security. Third, the process would be slow and cumbersome, diminishing our ability to collect intelligence regarding, and enhance defenses in anticipation of, a potential attack by foreign terrorists.''); *see also Yassini* v. *Crosland,* 618 F.2d 1356, 1360 n.4 (9th Cir. 1980) (''For the [foreign affairs] exception to apply, the public rulemaking provisions should provoke definitely undesirable international consequences.''). *But see E.B.,* 583 F. Supp. 3d at 64–66 (rejecting the ''provoke definitely undesirable international consequences'' standard).

[298] *See* Los Angeles Declaration on Migration and Protection, *Endorsing Countries, https://losangelesdeclaration.com/endorsing-countries* (last visited May 27, 2024).

[299] *See* U.S. Dep't of State, *Safe Mobility Initiative, https://www.state.gov/refugee-admissions/safe-mobility-initiative* (last visited May 27, 2024).

[300] *See* CBP, *Readout: U.S.-Mexico meeting on joint actions to further enhance border security* (Sept. 24, 2023), *https://www.cbp.gov/newsroom/national-media-release/readout-us-mexico-meeting-joint-actions-further-enhance-border* (noting that CBP encouraged mirrored patrols); U.S. Dep't of State, *Third Meeting of the U.S.-Mexico High-Level Security Dialogue—Fact Sheet* (Oct. 13, 2023), *https://www.state.gov/third-meeting-of-the-u-s-mexico-high-level-security-dialogue/* (noting that ''CBP and INM regularly coordinate enforcement efforts at the border through mirrored patrols,'' which suggests that those patrols were occurring).

our shared border;[301] and share information, technical assistance, and best practices.[302] The United States and endorsing countries continue to progress and expand upon our shared commitments made under this framework.[303]

This international coordination has yielded important results. A number of foreign partners, including Mexico, Panama, and Colombia, announced significantly enhanced efforts to enforce their borders in the days leading up to the end of the Title 42 public health Order.[304] These governments recognized that the United States was taking measures to strengthen border enforcement, specifically through application of the Circumvention of Lawful Pathways rule along with other complementary measures, and committed to taking their own actions to address irregular migratory flows in the region.[305] Additionally, immediately prior to the transition from DHS processing under the Title 42 public health Order to processing under title 8 authorities, the Government of Mexico announced that it had independently decided to accept the return into Mexico of nationals from CHNV countries under title 8 processes.[306] However, in the intervening months, Mexico and other partners' resources have been significantly strained by sustained high encounter levels, and at different times enforcement by our partners has been disrupted, leading to surges at our own border.[307]

In public messaging, the Government of Mexico linked its decision to accept return into Mexico of CHNV nationals to the success of the CHNV parole processes framework under the Title 42 public health Order,[308] which combined expansion of lawful pathways and processes for nationals of these countries with a meaningful consequence framework, and which reduced irregular border crossings.[309] Sustaining and, as appropriate, ramping up efforts to improve border security and stem arrivals to the southern border is a critical element of the United States' ongoing diplomatic approach to migration management with partners in the region. This has been a key component of our diplomacy, as regional partner countries have regularly encouraged DHS to take steps to address migratory flows, including by channeling intending migrants into expanded lawful pathways and processes. For example, following the development of the parole process for Venezuelans announced in October 2022—an approach that was subsequently expanded to include processes for Cuban, Haitian, and Nicaraguan nationals in January 2023—regional partners urged the United States to continue building on this approach, which imposed consequences for irregular migration alongside the availability of a lawful, safe, and orderly process for migrants to travel directly to the United States.[310] Following the announcement of the Venezuela parole process in October 2022 and the subsequent announcement of the Cuba, Haiti, and Nicaragua parole processes in January 2023, migration flows through the region and at the U.S.-Mexico border slowed. *See* 88 FR at 31317 (''DHS estimates that the drop in CHNV encounters in January through March was almost four times as large as the number of people permitted entry under the parole processes.'').

The United States has continued to build on this historic expansion of lawful pathways and processes, which include the humanitarian parole processes for CHNV nationals;[311] efforts to expand labor pathways and dedicate a set number of visas to nationals of countries in the hemisphere;[312] the implementation of new Family Reunification Parole (''FRP'') processes for certain nationals of Colombia, Ecuador, El Salvador, Guatemala, and Honduras; and the modernization of FRP processes for certain nationals of Cuba and Haiti.[313]

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[301] *See* DHS, *Trilateral Statement* (Apr. 11, 2023), *https://www.dhs.gov/news/2023/04/11/trilateral-joint-statement.*

[302] *See, e.g., Creating a Comprehensive Regional Framework To Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum Seekers at the United States Border,* Exec. Order 14010, 86 FR 8267, 8270 (Feb. 2, 2021); The White House, *Los Angeles Declaration on Migration and Protection* (June 10, 2022), *https://www.whitehouse.gov/briefing-room/statements-releases/2022/06/10/los-angeles-declaration-on-migration-and-protection/;* The White House, *Fact Sheet: U.S.-Mexico High-Level Security Dialogue* (Oct. 8, 2021), *https://www.whitehouse.gov/briefing-room/statements-releases/2021/10/08/fact-sheet-u-s-mexico-high-level-security-dialogue/;* U.S. Dep't of State, *Fact Sheet: Third Meeting of the U.S.-Mexico High-Level Security Dialogue* (Oct. 13, 2023), *https://www.state.gov/third-meeting-of-the-u-s-mexico-high-level-security-dialogue/.*

[303] *See* The White House, *Fact Sheet: Third Ministerial Meeting on the Los Angeles Declaration On Migration and Protection in Guatemala* (May 7, 2024),

[304] Kathia Martínez, *US, Panama and Colombia Aim to Stop Darien Gap Migration,* AP News (Apr. 11, 2023), *https://apnews.com/article/darien-gap-panama-colombia-us-migrants-cf0cd1e9de2119208c9af186e53e09b7;* Camilo Montoya-Galvez, *Mexico Will Increase Efforts To Stop U.S.-Bound Migrants as Title 42 Ends, U.S. Officials Say,* CBS News (May 10, 2023), *https://www.cbsnews.com/news/title-42-end-border-mexico-efforts-us-bound-migrants/.*

[305] 88 FR at 31444.

[306] *See* The White House, *Mexico and United States Strengthen Joint Humanitarian Plan on Migration* (May 2, 2023), *https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/02/mexico-and-united-states-strengthen-joint-humanitarian-plan-on-migration/;* DHS, *Fact Sheet: Data From First Six Months of Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans Shows that Lawful Pathways Work* (July 25, 2023), *https://www.dhs.gov/news/2023/07/25/fact-sheet-data-first-six-months-parole-processes-cubans-haitians-nicaraguans-and.*

[307] *See* Charles G. Ripley III, *Crisis Prompts Record Emigration from Nicaragua, Surpassing Cold War Era,* Migration Pol'y Inst. (Mar. 7, 2023), *https://www.migrationpolicy.org/article/record-emigration-nicaragua-crisis;* James Fredrick, *Mexico Feels Pressure of Relentless Migration from South America,* N.Y. Times (Sept. 21, 2023) (''Similar scenes are playing out across the country as Mexico's immigration system strains under a tide of people desperately trying to go north. The relentless surge has led to a hodgepodge response in Mexico ranging from shutting down railways heading north to the busing of people to areas with fewer migrants.''); Megan Janetsky & Javier Córdoba, *Central America scrambles as the international community fails to find solution to record migration,* AP News (Oct. 20, 2023), *https://apnews.com/article/costa-rica-migration-darien-gap-biden-420e2d1219d403d7feec6463a6e9cdae* (noting the resources pull migration flows place on certain Central American countries); María Verza, *Mexico halts deportations and migrant transfers citing lack of funds,* AP News (Dec. 4, 2023), *https://apnews.com/article/mexico-immigration-migrants-venezuela-17615ace23d0677bb443d8386e254fbc* (observing that the ''head of Mexico's immigration agency . . . ordered the suspension of migrant deportations and transfers due to a lack of funds''); Valerie Gonzalez & Elliot Spagat, *The US sees a drop in illegal border crossings after Mexico increases enforcement,* AP News (Jan. 7, 2024), *https://apnews.com/article/mexico-immigration-enforcement-crossings-drop-b67022cf0853dca95a8e0799bb99b68a* (noting the disruption in enforcement that resulted from Mexico's lack of funding and quoting Andrew Selee, President of the Migration Policy Institute, as saying that ''[t]he U.S. is able to lean on Mexico for a short-term enforcement effect at the border, but the long-term effects are not always clear'').

[308] *See* Gobierno de México, *México y Estados Unidos fortalecen Plan Humanitario Conjunto sobre Migración* (May 2, 2023), *https://www.gob.mx/presidencia/prensa/mexico-y-estados-unidos-fortalecen-plan-humanitario-conjunto-sobre-migracion?state=published* (characterizing the effort of the Government of Mexico as a successful joint initiative and expressing the Government's commitment to continue to accept migrants back into Mexico on humanitarian grounds).

[309] *See id.* (describing a significant reduction in irregular migration following the implementation of CHNV parole processes, which pair an expansion of lawful pathways with consequences for irregular migration).

[310] *See* 88 FR at 31444; The White House, *Mexico and United States Strengthen Joint Humanitarian Plan on Migration* (May 2, 2023), *https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/02/mexico-and-united-states-strengthen-joint-humanitarian-plan-on-migration/.*

[311] *See* USCIS, *Processes for Cubans, Haitians, Nicaraguans, and Venezuelans* (Sept. 20, 2023), *https://www.uscis.gov/CHNV.*

[312] *See* DHS & U.S. Dep't of Labor, *Temporary Rule—Exercise of Time-Limited Authority To Increase the Numerical Limitation for FY 2024 for the H–2B Temporary Nonagricultural Worker Program and Portability Flexibility for H–2B Workers Seeking To Change Employers,* 88 FR 80394 (Nov. 17, 2023).

[313] DHS, *DHS Modernizes Cuban and Haitian Family Reunification Parole Processes* (Aug. 10,

Concurrently, the Governments of Colombia and Panama have made significant efforts to combat smuggling networks operating on both sides of the Darién Gap.[314] The Government of Mexico has likewise increased enforcement along its southern border and the transit routes north.[315] These enforcement campaigns have been implemented at substantial cost for those governments and, as with United States Government actions, reflect our shared regional responsibility to manage migration.[316]

Given the particular challenges facing the United States and its regional partners at this moment, the Departments assess that it is critical that the United States continue to lead the way in responding to ever-changing and increasing migratory flows, and that this regulatory effort and the Presidential Proclamation—and the strong consequences they will impose at the border—will send an important message to the region that the United States is prepared to put in place appropriate measures to prepare for and, if necessary, respond to ongoing migratory challenges.

In addition to this IFR's clear and direct involvement in foreign affairs, the Departments believe that conducting a notice-and-comment process and providing a delayed effective date on this rule likely would lead to a surge to the border before the Departments could finalize the rule, which would adversely impact the United States' foreign policy priorities. Prior to the end of the Title 42 public health Order, regional partners expressed great concern about the misperception that the end of the Order would mean an open U.S. border and result in a surge of irregular migration flowing through their countries as migrants sought to enter the United States. *See* 88 FR at 31444. One foreign partner, for example, expressed the strong concern that the formation of caravans during the spring of 2022 was spurred by rumors—and the subsequent official announcement—of the anticipated end of the Title 42 public health Order. *See id.* This view is consistent with the views of other regional partner countries that have repeatedly emphasized the ways in which U.S. policy announcements have a direct and immediate impact on migratory flows through their countries. *See id.* Such effects are precisely the kind of ''definitely undesirable international consequences'' that the Departments seek to avoid.

The surge about which many foreign leaders were concerned happened sooner than expected. In the weeks leading up to the lifting of the Title 42 public health Order, hemispheric migration spiked. Entries into the Darién jungle by migrants staged in Colombia began increasing in the months leading up to May 12, 2023, from a little more than 24,600 in January 2023, to more than 40,000 in April 2023 immediately before the Order lifted.[317] And as described more fully above, total CBP encounters at the SWB increased to then-record levels in the days immediately preceding May 12, 2023, a situation that was fueled by noncitizens seeking to enter the United States before new policies were put into effect, as well as by smuggling organizations that disseminated misinformation.[318] The scale of regional migration in those weeks strained the immigration processes of all the affected countries, including those of the United States.

As noted above, the United States saw a similar scale of migration at the end of 2023. The surge in December 2023 led the United States Government and the Government of Mexico to hold a series of engagements at the highest levels—including between the countries' Presidents and Cabinet Members—to address the shared challenge of migration confronting both countries.[319] These conversations included commitments by both governments to continue to expand efforts to coordinate enforcement actions on both sides of the border.[320] January, February, and March are typically slower months, but since these engagements, and the joint operational actions that resulted, there has been a decrease in USBP encounters at the border, as discussed in Section III.B.1 of this preamble.

The record-breaking hemispheric migration throughout the region has deeply affected governments from South America all the way to the U.S.-Mexico border. Panama has been encountering record numbers of migrants transiting one of the most dangerous smuggling corridors on the planet, the Darién Jungle.[321] Colombia, Peru, and Ecuador have hosted around 3 million,[322] over 1.5 million,[323] and more than 475,000 Venezuelans,[324] respectively, while Costa Rica has recently hosted hundreds of thousands of Nicaraguans.[325] Mexico has received record-breaking numbers of

2023), *https://www.dhs.gov/news/2023/08/10/dhs-modernizes-cuban-and-haitian-family-reunification-parole-processes.*

[314] *See* Kathia Martínez, *US, Panama, and Colombia aim to stop Darien Gap migration,* AP News (Apr. 11, 2023), *https://apnews.com/article/darien-gap-panama-colombia-us-migrants-cf0cd1e9de2119208c9af186e53e09b7;* Juan Zamorano & Christopher Sherman, *Explainer: Panama launches operation against smugglers in Darien Gap,* AP News (June 3, 2023), *https://apnews.com/article/panama-colombia-darien-gap-migrants-d0ec93c4d4ddc91f34e31c704b4cf8ae.*

[315] *See, e.g.,* Associated Press, *U.S. Border Arrests Decline Amid Increased Enforcement in Mexico,* NPR (Apr. 13, 2024), *https://www.npr.org/2024/04/13/1244590706/mexico-border-arrests-fall-march* (''Mexico detained migrants 240,000 times in the first two months of the year, more than triple from the same period of 2023, sending many deeper south into the country to discourage them from coming to the United States. While Mexico hasn't released figures for March, U.S. officials have said Mexican enforcement is largely responsible for recent declines.'').

[316] *See, e.g.,* The White House, Press Release, *Mexico and United States Strengthen Joint Humanitarian Plan on Migration* (May 2, 2023), *https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/02/mexico-and-united-states-strengthen-joint-humanitarian-plan-on-migration/.*

[317] *See* Servicio Nacional de Migración Panamá, *Estadisicas, Tránsito Irregular por Darién 2023, https://www.migracion.gob.pa/inicio/estadisticas.*

[318] *See* Valerie Gonzalez, *Migrants rush across US border in final hours before Title 42 expires,* AP News (May 11, 2023), *https://apnews.com/article/immigration-border-title-42-mexico-asylum-8c239766c2cb6e257c0220413b8e9cf9* (noting that ''[m]any migrants were acutely aware of looming policy changes as they searched Thursday for an opportunity to turn themselves over to U.S. immigration authorities before the 11:59 EDT deadline . . . [and] [e]ven as migrants were racing to reach U.S. soil before the rules expire, Mexican President Andrés Manuel López Obrador said smugglers were sending a different message . . . [and] offering to take migrants to the United States and telling them the border was open starting Thursday'').

[319] *See supra* Section III.B.1 of this preamble.

[320] *See, e.g.,* White House, *Readout of Homeland Security Advisor Dr. Liz Sherwood-Randall's Trip to Mexico* (Feb. 7, 2024), *https://www.whitehouse.gov/briefing-room/statements-releases/2024/02/07/readout-of-homeland-security-advisor-dr-liz-sherwood-randalls-trip-to-mexico/;* Amna Nawaz, *Mexico's foreign secretary discusses what her country is doing to ease border crisis,* PBS News Hour (Jan. 25, 2024), *https://www.pbs.org/newshour/show/mexicos-foreign-secretary-discusses-what-her-country-is-doing-to-ease-border-crisis* (quoting Foreign Secretary Bárcena as describing ''much more law enforcement to bring down the pressure in the border'' by Mexico in the preceding weeks).

[321] *See* Nick Paton Walsh et al., *On one of the world's most dangerous migrant routes, a cartel makes millions off the American dream,* CNN (Apr. 17, 2023), *https://www.cnn.com/2023/04/15/americas/darien-gap-migrants-colombia-panama-whole-story-cmd-intl/index.html;* Diana Roy, *Crossing the Darién Gap: Migrants Risk Death on the Journey to the U.S.,* Council on Foreign Rels. (Feb. 1, 2024), *https://www.cfr.org/article/crossing-darien-gap-migrants-risk-death-journey-us;* Mallory Moench, *Volume of Migrants Crossing the Dangerous Darién Gap Hit Record High in 2023,* Time (Dec. 22, 2023), *https://time.com/6547992/migrants-crossing-darien-gap-2023.*

[322] *See* UNHCR, *Colombia Country Operations* (2024), *https://reporting.unhcr.org/operational/operations/colombia.*

[323] *See* UNHCR, *Peru Country Operations* (2024), *https://reporting.unhcr.org/operational/operations/peru.*

[324] *See* UNHCR, *Ecuador Country Operations* (2024), *https://reporting.unhcr.org/operational/operations/ecuador.*

[325] *See* UNHCR, *Costa Rica Country Operations* (2024), *https://reporting.unhcr.org/operational/operations/costa-rica.*

asylum applications in addition to the enforcement efforts it is undertaking.[326]

As described more fully above, DHS's internal projections suggest that SWB encounters may once again reach extremely elevated levels in the weeks to come, averaging in the range of approximately 3,900 to approximately 6,700 encounters at and between POEs per day from July to September, not including an additional 1,450 noncitizens per day who are expected to be encountered at POEs after making appointments though the CBP One app.[327] Regional migration trends support these projections. For example, between January and April 2024, UNHCR tracked 139,000 irregular entries, up from 128,000 for the same months in 2023 and a seven-fold increase over that period in 2022.[328] Moreover, as noted above, the Government of Mexico has been receiving record-breaking numbers of asylum applications—reflecting the large number of migrants currently in Mexico.

The weeks leading up to May 12, 2023, demonstrated that when migrants anticipate major changes in border policy, there is the potential to ignite a rush to the border to arrive before the changes take effect.[329] Any delay between announcement of this rule and its implementation through notice and comment would almost certainly trigger a surge in migration that would undermine the principal goal of this entire effort: to reduce migratory flows to our border, and throughout the region.

The Departments believe that the emergency measures being taken here are needed to help address this regional challenge, and that any decrease in migration that results will help relieve the strain not just on the U.S.-Mexico border but on countries throughout the hemisphere. The actions the United States is taking in this regulation demonstrate a commitment to addressing irregular migration in the region, even as foreign partners have been taking actions themselves that are aligned with a shared interest in reducing migration. The IFR changes key procedures to significantly streamline and strengthen the consequences delivered for unlawful or unauthorized entry at the southern border. The actions the Departments are taking are directly responsive to the shared challenge the United States and its regional partners are confronting and, equally important, it is critical to implement these actions without a lengthy period of advance notice before the actions go into effect.

2. Good Cause

The Departments have also found good cause to forego the APA's notice-and-comment and delayed-effective-date procedures. *See* 5 U.S.C. 553(b)(B), (d)(3). Such procedures are impracticable because the delays associated with such procedures would unduly postpone implementation of a policy that is urgently needed to avert significant public harm. Such procedures are likewise contrary to the public interest because an advance announcement of this rule would seriously undermine a key goal of the policy: It would incentivize even more irregular migration by those seeking to enter the United States before the rule would take effect.

First, the ''impracticable'' prong of the good cause exception ''excuses notice and comment in emergency situations . . . or where delay could result in serious harm.'' [330] Findings of impracticability are ''inevitably fact- or context-dependent,'' [331] and when reviewing such findings, courts generally consider, among other factors, the harms that might have resulted while the agency completed standard rulemaking procedures [332] and the agency's diligence in addressing the problem it seeks to address.[333]

The critical need to immediately implement more effective border management measures is described at length in the Presidential Proclamation of June 3, 2024, Securing the Border, and in Section III.B of this preamble. Despite the strengthened consequences in place at the SWB, including the Circumvention of Lawful Pathways rule and other measures, the United States Government continues to contend with exceptionally high levels of irregular migration along the southern border, including record-high total USBP encounter levels on the SWB as recently as December 2023.[334] DHS's ability to manage this increase in encounters has been significantly challenged by the substantial number of noncitizens processed for expedited removal and expressing a fear of return or an intent to seek asylum; rather than being swiftly removed, these noncitizens are referred to an AO for a credible fear interview and can seek IJ review of an AO's negative credible fear determination, which requires additional time and resources.

[326] *See* UNHCR, *Operational Update: Mexico* (Dec. 2023), *https://reporting.unhcr.org/mexico-operational-update-6421;* UNHCR, *Fact Sheet, Mexico* (Nov. 2023), *https://data.unhcr.org/en/documents/download/105202* (''From January to October 2023, Mexico received over 127,796 asylum applications, the highest ever number of asylum claims received in this time frame.''); Daina Beth Solomon & Lizbeth Diaz, *Mexico seeks to curb 'abuse' of asylum system by migrants who do not plan to stay,* Reuters (Feb. 13, 2023), *https://www.reuters.com/world/americas/mexico-seeks-curb-abuse-asylum-system-by-migrants-who-do-not-plan-stay-2023-02-13/* (''Mexico has the world's third highest number of asylum applications after the United States and Germany, reflecting growing numbers of refugee seekers that have strained resources at the Mexican Commission for Refugee Assistance.'').

[327] OHSS Southwest Border Encounter Projection, April 2024. Note that the OHSS encounter projection excludes encounters of people who have registered with the CBP One app along with administrative encounters at POEs (*i.e.,* encounters in which removal proceedings are not considered), but includes non-CBP One enforcement encounters at POEs, which have averaged about 190 per day since May 2023. *See also* CBP, *CBP One*™ *Appointments Increased to 1,450 Per Day* (June 30, 2023), *https://www.cbp.gov/newsroom/national-media-release/cbp-one-appointments-increased-1450-day.*

[328] *See supra* note 122.

[329] Decl. of Blas Nuñez-Neto ¶¶ 9–10, *E. Bay Sanctuary Covenant* v. *Biden,* No. 4:18–cv–06810–JST (N.D. Cal. June 16, 2023) (Dkt. 176–2); Decl. of Matthew J. Hudak ¶ 11, *Florida* v. *Mayorkas,* No. 3:22–cv–9962 (N.D. Fla. May 12, 2023) (Dkt. 13–1).

[330] *Jifry* v. *FAA,* 370 F.3d 1174, 1179 (D.C. Cir. 2004); *see, e.g., id.* (upholding a claim of good cause to address ''a possible imminent hazard to aircraft, persons, and property within the United States'' (quotation marks omitted)); *Haw. Helicopter Operators Ass'n* v. *FAA,* 51 F.3d 212, 214 (9th Cir. 1995) (upholding a claim of good cause to address 20 air tour accidents over a four-year period, including recent incidents indicating that voluntary measures were insufficient to address the threat to public safety).

[331] *Mid-Tex Elec. Co-op, Inc.* v. *FERC,* 822 F.2d 1123, 1132 (D.C. Cir. 1987); *see Petry* v. *Block,* 737 F.2d 1193, 1203 (D.C. Cir. 1984) (when evaluating agency ''good cause'' arguments, ''it is clear beyond cavil that we are duty bound to analyze the entire set of circumstances''). Courts have explained that notice-and-comment rulemaking may be impracticable, for instance, where air travel security agencies would be unable to address threats, *Jifry,* 370 F.3d at 1179, if ''a safety investigation shows that a new safety rule must be put in place immediately,'' *Util. Solid Waste Activities Grp.* v. *EPA,* 236 F.3d 749, 754 (D.C. Cir. 2001) (ultimately finding that not to be the case and rejecting the agency's argument), or if a rule was of ''life-saving importance'' to mine workers in the event of a mine explosion, *Council of S. Mountains, Inc.* v. *Donovan,* 653 F.2d 573, 581 (D.C. Cir. 1981).

[332] *See Util. Solid Waste Activities Grp.,* 236 F.3d at 754–55 (explaining that ''a situation is 'impracticable' when an agency finds that due and timely execution of its functions would be impeded by the notice otherwise required in § 553, as when a safety investigation shows that a new safety rule must be put in place immediately'' (cleaned up)).

[333] *See, e.g., Tri-Cty. Tel. Ass'n, Inc.* v. *FCC,* 999 F.3d 714, 720 (D.C. Cir. 2021) (''[T]his is not a case of unjustified agency delay. The Commission *did* act earlier, . . . [and t]he agency needed to act again . . . .'').

[334] According to March 2024 OHSS Persist Dataset and OHSS analysis of historic CBP data for encounters prior to FY 2000, USBP completed 250,000 encounters along the SWB in December 2023, higher than any previous month on record. *See also* OHSS, *2022 Yearbook of Immigration Statistics,* tbls. 33 & 35, *https://www.dhs.gov/ohss/topics/immigration/yearbook.*

Without adequate resources and tools to keep pace, the Departments cannot deliver timely decisions and timely consequences to all noncitizens encountered at the SWB who do not establish a lawful basis to remain. Instead, DHS is forced to place many of these individuals into the backlogged immigration court system, a process that can take several years to result in a decision or consequence.[335] Even then, it can take weeks, months, or years to execute a removal order depending upon the facts of the individual case.[336]

Quite simply, these historic levels of encounters and fear claims, combined with limited resources and tools to manage them, create a vicious cycle: The expectation of a lengthy stay in the United States and the inability to impose consequences for irregular migration close in time to entry inspires more people to make the dangerous journey north to take their chances at the border.[337] The USCIS affirmative asylum backlog has reached almost 1.2 million cases and is growing.[338] At the end of the first quarter of FY 2024, there were over 2.7 million cases pending in the immigration courts.[339] During FY 2023, IJs completed more cases than they ever had before in a single year, but more than twice as many cases were received by the immigration courts as were completed.[340]

Absent changes promulgated in this rule, recent encounter trends both in the region and at our southern border indicate a risk of further exceeding the Departments' capacity to effectively process, detain, and remove, as appropriate, the noncitizens encountered, and exacerbating perceived incentives to migrate now. As noted above, DHS's current internal projections suggest that total encounters will average in the range of 3,900 to approximately 6,700 encounters at and between POEs per day from July to September, not including an additional 1,450 noncitizens per day who are expected to be encountered at POEs after making appointments though the CBP One app.[341] Even at the low end of such projections, such a volume of encounters would likely result in thousands of migrants per day being referred to section 240 removal proceedings; their cases would further exacerbate the immigration court backlog and perceived incentives to migrate irregularly, and would take many years to complete. Such harms would be mitigated by the additional measures put in place by this rule. If implementation of the rule is delayed, by contrast, the harms of such an increase would be immediate and substantial, even if such an increase would only last for the months needed to complete a very rapid notice-and-comment rulemaking. Thus, it is impracticable to delay the measures in this rule for even a few months to allow for notice and an opportunity to comment and a delayed effective date. In the interim, the heightened levels of migration and forced displacement that have resulted in the President's determination to apply the suspension and limitation on entry and the Departments adopting the provisions in this rule would further strain resources, risk overcrowding in USBP stations and border POEs in ways that pose significant health and safety concerns, and create a situation in which large numbers of migrants [342]—only a small proportion of whom are likely to be granted asylum or other protection—would be encouraged to put their lives in the hands of dangerous organizations to make the hazardous journey north based on a perceived lack of immediate consequences. The Departments must immediately safeguard their ability to enforce our Nation's immigration laws in a timely way and at the scale necessary with respect to those who seek to enter without complying with our laws. This rule does just that.

Furthermore, current trends in migration, including through the Darién jungle between Colombia and Panama, indicate that a significant increase in encounters may be imminent. Between January and April 2024, UNHCR tracked 139,000 irregular entries, up from 128,000 for the same months in 2023 and a seven-fold increase over that period in 2022.[343] And the Departments believe that most of those migrants are on their way to seek entry into the United States.[344] Based on historical trends, the Departments expect that many of these migrants may already be proximate to the SWB, giving the Departments insufficient time to seek public comment and delay the effective date of this rule without immediate and substantial harm to U.S. interests. Indeed, as of May 2024, CBP estimates that there are more than 40,000 non-Mexican migrants in northern Mexico, proximate to the SWB, in addition to more than 100,000 such migrants in central and southern Mexico. These

[335] *See supra* note 25.

[336] OHSS analysis of March 2024 OHSS Persist Dataset.

[337] *See, e.g.,* Jordan, *supra* note 27.

[338] OHSS analysis of USCIS Global Affirmative Data as of March 31, 2024. Almost all of this backlog is the result of cases filed since FY 2015. From FY 2015 through FY 2023, an average of 156,000 affirmative asylum cases were filed per year, versus an average of 49,000 cases completed. In FY 2024 through March 31, 2024, 191,000 cases have been filed versus 78,000 cases completed. OHSS analysis of USCIS Global Affirmative Data as of March 31, 2024.

[339] *See* EOIR, *Caseload: Pending Cases* (Jan. 18, 2024), *https://www.justice.gov/eoir/media/1344791/dl?inline.*

[340] *See id.;* EOIR, *New Cases and Total Completions-Historical, https://www.justice.gov/eoir/media/1344801/dl?inline* (Jan. 18, 2024).

[341] OHSS Encounter Projections, April 2024. Note that the OHSS encounter projection excludes encounters of people who have registered with the CBP One app along with administrative encounters at POEs (*i.e.,* encounters in which removal proceedings are not considered), but includes non-CBP One enforcement encounters at POEs, which have averaged about 190 per day since May 2023. *See also* CBP, *CBP One™ Appointments Increased to 1,450 Per Day* (June 30, 2023), *https://www.cbp.gov/newsroom/national-media-release/cbp-one-appointments-increased-1450-day* (last modified July 14, 2023).

[342] Decl. of Matthew J. Hudak, *Florida* v. *Mayorkas,* No. 3:22–cv–9962 (N.D. Fla. May 12, 2023) (Dkt. 13–1).

[343] *See supra* note 122.

[344] *See* Sergio Martínez-Beltrán, *Despite a Fortified Border, Migrants Will Keep Coming, Analysts Agree. Here's Why.,* NPR, (Apr. 22, 2024), *https://www.npr.org/2024/04/22/1244381584/immigrants-border-mexico-asylum-illegal-immigration* (''[Analysts] keep a close eye on the Darién Gap in Panama and the borders between Central American countries, two key points to gauge the number of people venturing up north. 'In most countries (outward) migration has increased . . . particularly in Venezuela, and that's not really reflected yet in the U.S. numbers,' said [one analyst]. . . . Despite Mexico's cracking down on migrants, [the analyst] said people are still making their way up north, even if they need to pause for months at different points during their journey. 'There must be a huge number of people from Venezuela bottled up in Mexico right now,' he said.''); Diana Roy, *Crossing the Darién Gap: Migrants Risk Death on the Journey to the U.S.,* Council on Foreign Rels. (Feb. 1, 2024), *https://www.cfr.org/article/crossing-darien-gap-migrants-risk-death-journey-us* (''The surge across the Darién Gap is reflected in an influx at the southern U.S. border, where U.S. border authorities reported that they apprehended close to 2.5 million people during fiscal year 2023, a record high, while northern cities such as New York are also struggling to manage the arrivals.''); Mallory Moench, *Volume of Migrants Crossing the Dangerous Darién Gap Hit Record High in 2023,* Time (Dec. 22, 2023), *https://time.com/6547992/migrants-crossing-darien-gap-2023/* (''Laurent Duvillier, UNICEF's spokesperson for Latin America and the Caribbean based in Panama, tells TIME that many—driven to leave their homes by poverty, crime, or discrimination—aim to seek asylum in the U.S. or Canada, though they may never get there. This analysis is supported by refugee protection organization HIAS, with a spokesperson telling TIME that, by the group's estimations, between 90 to 95% of those crossing the Darién Gap aim to reach the U.S.''); Ariel G. Ruiz Soto, *Record-Breaking Migrant Encounters at the U.S.-Mexico Border Overlook the Bigger Story,* Migration Pol'y Inst. (Oct. 2022), *https://www.migrationpolicy.org/news/2022-record-migrant-encounters-us-mexico-border* (''Record flows of extracontinental migrants through the Darien Gap jungle that connects Colombia to Panama foreshadow increases in migration through Central America and Mexico. The 28,000 Venezuelan migrants who trekked through the deadly jungle in August were mostly en route to the United States; with more than 34,000 Venezuelans recorded at the Darien Gap in September, it is very likely that many of them will be reaching the U.S.-Mexico border soon.'').

numbers show that a very large number of migrants would likely have the ability and the incentive to travel to the U.S. border, and the Departments assess that announcing this rule in advance would likely yield the type of surges described in connection with prior changes in significant border policies affecting the availability of asylum for large numbers of migrants. For these reasons, consistent with the President's judgment, and given the emergency circumstances facing the Departments, the Departments assess that it would be impracticable to delay the policies set forth in this rule to allow time to complete notice-and-comment rulemaking or delay the rule's effective date.

Second, under the ''contrary to the public interest'' prong of the good cause exception, it has long been recognized that agencies may use the good cause exception, and need not take public comment in advance, where significant public harm would result from the notice-and-comment process.[345] If, for example, advance notice of a coming price increase would immediately produce market dislocations and lead to serious shortages, advance notice need not be given.[346] A number of cases follow this logic in the context of economic regulation.[347] The same logic applies here, where the Departments are responding to exceedingly serious challenges at the border, and advance announcement of this response—which will increase the Departments' ability to swiftly process and remove, as appropriate, more noncitizens who enter the United States irregularly—would significantly increase the incentive, on the part of migrants and others (such as smugglers), to engage in actions that would compound those very challenges. For the same reasons, ''the [need] for immediate implementation'' outweighs the ''principles'' underlying the requirement for a 30-day delay in the effective date, justifying the Departments' finding of good cause to forego it.[348] The Departments' experience has been that in some circumstances when official public announcements have been made regarding significant upcoming changes in immigration laws and procedures that would impact how individuals are processed at the border, such as changes that restrict access to immigration benefits to those attempting to enter the United States along the U.S.-Mexico land border, there have been dramatic increases in the numbers of noncitizens who enter or attempt to enter the United States—including, most recently, in the days preceding the lifting of the Title 42 public health Order in May 2023.[349] This is not only because, generally, would-be migrants respond to real and perceived incentives created by border management and immigration policies, such that many choose to seek entry under a border processing regime they think is preferable, prior to the implementation of a new system, including increasing the speed of their transit north in an effort to arrive before the implementation of any such measure. Additionally, smugglers routinely prey on migrants by spreading rumors, misrepresenting facts, or creating a sense of urgency to induce migrants to make the journey by overemphasizing the significance of recent or upcoming policy developments, among other tactics, and do so particularly when there is a change announced in U.S. policy, as highlighted by the many examples described below.[350]

The acuteness of such concerns is borne out by the facts. An influx of migrants occurred in the days following the November 15, 2022, court decision that, had it not been stayed on December 19, 2022, would have resulted in the lifting of the Title 42 public health Order effective December 21, 2022.[351] Leading up to the Order's expected termination date, migrants gathered in various parts of Mexico, including along the SWB, waiting to cross the border once the Title 42 public health Order was lifted.[352] According to internal Government sources, smugglers were also expanding their messaging and recruitment efforts, using the expected lifting of the Title 42 public health Order to claim that the border was open, thereby seeking to persuade would-be migrants to participate in expensive and dangerous human smuggling schemes. 88 FR at 31315. In that one-month period following the court decision, total CBP encounter rates jumped from an average of 7,800 per week (in mid-November) to over 9,100 per week (in mid-December), a change not predicted by normal seasonal effects.[353]

Similarly, on February 28, 2020, the Ninth Circuit lifted a stay of a

[345] *See, e.g., Mack Trucks, Inc.* v. *EPA,* 682 F.3d 87, 95 (D.C. Cir. 2012) (noting that the ''contrary to the public interest'' prong of the ''good cause'' exception ''is appropriately invoked when the timing and disclosure requirements of the usual procedures would defeat the purpose of the proposal—if, for example, announcement of a proposed rule would enable the sort of financial manipulation the rule sought to prevent . . . [or] in order to prevent the amended rule from being evaded'' (cleaned up)); *DeRieux* v. *Five Smiths, Inc.,* 499 F.2d 1321, 1332 (Temp. Emer. Ct. App. 1974) (''[W]e are satisfied that there was in fact 'good cause' to find that advance notice of the freeze was 'impracticable, unnecessary, or contrary to the public interest' within the meaning of § 553(b)(B). . . . Had advance notice issued, it is apparent that there would have ensued a massive rush to raise prices and conduct 'actual transactions'—or avoid them—before the freeze deadline.'').

[346] *See, e.g., Nader* v. *Sawhill,* 514 F.2d 1064, 1068 (Temp. Emer. Ct. App. 1975) (''[W]e think good cause was present in this case based upon [the agency's] concern that the announcement of a price increase at a future date could have resulted in producers withholding crude oil from the market until such time as they could take advantage of the price increase.'' (quotation marks omitted)).

[347] *See, e.g., Chamber of Com. of U.S.* v. *S.E.C.,* 443 F.3d 890, 908 (D.C. Cir. 2006) (''The ['good cause'] exception excuses notice and comment in emergency situations, where delay could result in serious harm, or when the very announcement of a proposed rule itself could be expected to precipitate activity by affected parties that would harm the public welfare.'' (citations omitted)); *Mobil Oil Corp.* v. *Dep't of Energy,* 728 F.2d 1477, 1492 (Temp. Emer. Ct. App. 1983) (''On a number of occasions . . . , this court has held that, in special circumstances, good cause can exist when the very announcement of a proposed rule itself can be expected to precipitate activity by affected parties that would harm the public welfare.'').

[348] *Omnipoint Corp.* v. *FCC,* 78 F.3d 620, 630 (D.C. Cir. 1996) (cleaned up).

[349] *See supra* Sections III.B.1 and III.B.2 of this preamble.

[350] *See* Nick Miroff & Carolyn Van Houten, *The Border is Tougher to Cross Than Ever. But There's Still One Way into America,* Wash. Post (Oct. 24, 2018), *https://www.washingtonpost.com/world/national-security/theres-still-one-way-into-america/2018/10/24/d9b68842-aafb-11e8-8f4b-aee063e14538_story.html;* Valerie Gonzalez, *Migrants rush across US border in final hours before Title 42 expires,* AP News (May 11, 2023), *https://apnews.com/article/immigration-border-title-42-mexico-asylum-8c239766c2cb6e257c0220413b8e9cf9* (''Even as migrants were racing to reach U.S. soil before the rules expire, Mexican President Andrés Manuel López Obrador said smugglers were sending a different message. He noted an uptick in smugglers at his country's southern border offering to take migrants to the United States and telling them the border was open starting Thursday.'').

The Departments recognize that there has been reporting on the possibility of the policies set forth in the Proclamation and this IFR since February with no apparent month-over-month increase in encounters. *See, e.g.,* Myah Ward, *Biden considering major new executive actions for migrant crisis,* Politico (Feb. 21, 2024), *https://www.politico.com/news/2024/02/21/biden-considering-major-new-executive-actions-for-southern-border-00142524.* But such reporting about vague, possible plans differs significantly from officially proposed policy changes with timelines provided for implementation, such as those mentioned below.

[351] *See Huisha-Huisha* v. *Mayorkas,* 642 F. Supp. 3d 1 (D.D.C. 2022), *stay granted, Arizona* v. *Mayorkas,* __S. Ct. __, 2022 WL 17750015 (U.S. Dec. 19, 2022); DHS, *Statement by Secretary Mayorkas on Planning for End of Title 42* (Dec. 13, 2022), *https://www.dhs.gov/news/2022/12/13/statement-secretary-mayorkas-planning-end-title-42.*

[352] *See, e.g.,* Leila Miller, *Asylum Seekers Are Gathering at the U.S.-Mexico Border. This Is Why,* L.A. Times (Dec. 23, 2022), *https://www.latimes.com/world-nation/story/2022-12-23/la-fg-mexico-title-42-confusion.*

[353] OHSS analysis of March 2024 OHSS Persist Dataset. Month-over-month change from November to December for all of FY 2013 to FY 2022 averaged negative two percent.

nationwide injunction of the Migrant Protection Protocols (''MPP''), a program implementing the Secretary's contiguous return authority under section 235(b)(2)(C) of the INA, 8 U.S.C. 1225(b)(2)(C).[354] Almost immediately, hundreds of migrants began massing at POEs across the southern border and attempting to immediately enter the United States, creating a severe safety hazard that forced CBP to temporarily close POEs in whole or in part.[355] Many others requested immediate entry into the country through their counsel, while others attempted to illegally cross the southern border between the POEs.[356] Absent immediate and resource-intensive action taken by CBP, the number of migrants gathered at the border, whether at or between the POEs, could have increased dramatically, especially considering there were approximately 25,000 noncitizens who were in removal proceedings pursuant to MPP without scheduled court appearances, as well as others in Mexico who could have become aware of CBP's operational limitations and sought to exploit them.[357] And while CBP officers took action to resolve the sudden influx of migrants at multiple POEs and prevent further deterioration of the situation at the border, in doing so they were diverted away from other critical responsibilities of protecting national security, detecting and confiscating illicit materials, and guarding efficient trade and travel.[358]

This same phenomenon occurred in the days leading up to the end of the Title 42 public health Order on May 12, 2023, when DHS saw a historic surge in migration as smugglers falsely advertised that those arriving before the Order ended and the Circumvention of Lawful Pathways rule took effect would be allowed to remain in the United States.[359] This surge culminated with what were then the highest recorded USBP encounter levels in U.S. history over the days immediately preceding May 12, which placed significant strain on DHS's operational capacity at the border.[360] Encounters between POEs (which excludes arrival of inadmissible individuals scheduled through the CBP One app, who appear at POEs) almost doubled from an average of approximately 4,900 per day the week ending April 11, 2023, to an average of approximately 9,500 per day the week ending May 11, 2023, including an average of approximately 10,000 daily encounters immediately preceding the termination of the public health Order (from May 8 to May 11).[361] The sharp increase in USBP encounters during the 30 days preceding May 12 represented the largest month-over-month increase in almost two decades—since January 2004.[362]

Meanwhile, the current backlogs and inefficiencies in our border security and immigration systems render DHS unable to effect removals and apply consequences at a sufficient scale to deter migration by those whose claims may not ultimately succeed.[363] This, too, serves as an incentive for migrants to take a chance. And sudden influxes, which result in part from smugglers' deliberate actions, overload scarce United States Government resources dedicated to border security that, as reflected above, are already stretched extremely thin.[364] This rule is specifically designed to allow the United States Government to deliver consequences more swiftly, and with a reduced resource burden, during such an influx.

In a more manageable steady-state environment, when encounters surge in specific sectors, DHS manages its detention capacity using the other tools at its disposal, such as lateral decompression flights and similar efforts.[365] But the increase in SWB encounters preceding the end of the Title 42 public health Order and the increase in border encounters that occurred in December 2023 were far-reaching across multiple sectors of the SWB and significantly greater than what DHS resources and operations are designed to handle. They raised detention capacity concerns anew. At that point, DHS faced an urgent situation, including a significant risk of overcrowding in its facilities. Given the nature of its facilities, increased numbers and times in custody increase the likelihood that USBP facilities will become quickly overcrowded.[366] Crowding, particularly given the way that USBP facilities are necessarily designed, increases the potential risk of health and safety concerns for noncitizens and Government personnel.[367]

The Departments assess that there would be a significant risk of such an urgent situation occurring if they undertook notice-and-comment procedures for this rule or delayed its effective date. As demonstrated by the Departments' experience with the end of the Title 42 public health Order and MPP, significant shifts in U.S. border policies lead to an increase in migrants coming to the SWB that risks overwhelming the Departments' resources and operations. This rule is likewise a significant shift in U.S. border policy that affects the vast majority of noncitizens arriving at the southern border who do not have documents sufficient for lawful admission—a shift that may be viewed as similar to the end of the Title 42 public health Order and MPP. In addition, unlike the Lawful Pathways rebuttable presumption, the limitation on asylum eligibility in this rule would affect Mexican migrants, which may provide an additional perceived incentive for such migrants—who constitute a large and geographically proximate potential population [368]—to rush to the border during a notice-and-comment period. Finally, such a surge in migration would come at a time when our border security and immigration systems' resources are already stretched thin and severely backlogged.[369]

[354] *See Innovation Law Lab* v. *Wolf,* 951 F.3d 1073, 1077, 1095 (9th Cir. 2020), *vacated as moot sub nom. Innovation Law Lab* v. *Mayorkas,* 5 F.4th 1099 (9th Cir. 2021).

[355] *See* Decl. of Robert E. Perez ¶¶ 4–15, *Innovation Law Lab,* No. 19–15716 (9th Cir. Mar. 3, 2020) (Dkt. 95–2).

[356] *Id.* ¶¶ 4, 8.

[357] *Id.* ¶ 14.

[358] *Id.* ¶ 15.

[359] Decl. of Blas Nuñez-Neto ¶ 9, *E. Bay Sanctuary Covenant* v. *Biden,* No. 4:18–cv–06810–JST (N.D. Cal. June 16, 2023) (Dkt. 176–2). Conversely, as noted above, smugglers also messaged that the border would be open starting on May 12. *See* Valerie Gonzalez, *Migrants rush across US border in final hours before Title 42 expires,* AP News (May 11, 2023), *https://apnews.com/article/immigration-border-title-42-mexico-asylum-8c239766c2cb6e257c0220413b8e9cf9.* This conflicting messaging underscores smuggling organizations' tendency to deceptively message on changes in border policy to lure vulnerable migrants to pay for their services.

[360] Decl. of Blas Nuñez-Neto ¶ 9, *E. Bay Sanctuary Covenant* v. *Biden,* No. 4:18–cv–6810–JST (N.D. Cal. June 16, 2023) (Dkt. 176–2).

[361] *Id.*

[362] *Id.*

[363] *See* EOIR, *Adjudication Statistics: Pending Cases* (Jan. 18, 2024), *https://www.justice.gov/eoir/media/1344791/dl?inline.*

[364] Decl. of Enrique Lucero ¶¶ 6–8, *Innovation Law Lab* v. *Wolf,* No. 19–15716 (9th Cir. Mar. 3, 2020) (Dkt. 95–3); Decl. of Robert E. Perez ¶ 15, *Innovation Law Lab,* No. 19–15716 (9th Cir. Mar. 3, 2020) (Dkt. 95–2).

[365] *See* 88 FR at 11715.

[366] Decl. of Matthew J. Hudak ¶¶ 6, 14, 17, *Florida* v. *Mayorkas,* No. 3:22–cv–9962 (N.D. Fla. May 12, 2023) (Dkt. 13–1).

[367] *Id.* ¶ 17.

[368] U.S. Census Bureau, *Mexico, https://www.census.gov/popclock/world/mx* (last visited May 27, 2024).

[369] *See, e.g.,* Ariel G. Ruiz-Soto et al., *Shifting Realities at the U.S.-Mexico Border: Immigration Enforcement and Control in a Fast-Evolving Landscape,* Migration Pol'y Inst., at 1 (rev. Jan. 2024), *https://www.migrationpolicy.org/sites/default/files/publications/mpi-contemporary-border-policy-2024_final.pdf* (''Insufficiently equipped to respond effectively to these and likely future changes, U.S. immigration agencies must perpetually react and shift operations according to their strained capacity and daily changes in migrant arrivals.''); The White House, *Fact Sheet: White*

Continued

Therefore, the Departments believe that a gap between when this rule is made public and when it becomes effective would create the same incentive for migrants to come to the United States before the rule takes effect.

The Departments' determination here is consistent with past practice. For example, in the Circumvention of Lawful Pathways rule, the Departments undertook a notice-and-comment rulemaking while the Title 42 public health Order remained in effect,[370] but invoked the good cause exception (as well as the foreign affairs exception) to bypass a delayed effective date that would have resulted in a gap between the end of the Title 42 public health Order and the implementation of the rule. *See* 88 FR at 31445–47. The Departments noted that such a gap ''would likely result in a significant further increase in irregular migration,'' and that such an increase, ''exacerbated by an influx of migrants from countries such as Venezuela, Nicaragua, and Cuba, with limited removal options, and coupled with DHS's limited options for processing, detaining, or quickly removing such migrants, would unduly impede DHS's ability to fulfill its critical and varied missions.'' *Id.* at 31445.

Similarly, when implementing the parole process for Venezuelans, DHS implemented the process without prior public procedures,[371] and witnessed a drastic reduction in irregular migration by Venezuelans.[372] The process by which eligible Venezuelans could receive advance travel authorization to present at a POE was accompanied by a policy that those who entered the United States outside this process or who entered Mexico illegally after the date of announcement would be ineligible for parole under this process, and was conditioned on Mexico continuing to accept the expulsion or removal of Venezuelan nationals seeking to irregularly enter the United States between POEs. *See* 87 FR at 63508. Thus, had the parole process been announced prior to a lengthy notice-and-comment period, it likely would have resulted in thousands of Venezuelan nationals attempting to cross the United States and Mexican borders before the ineligibility criteria went into effect, and before the United States was able to return Venezuelan nationals to Mexico in large numbers.

DHS also concluded in January 2017 that it was imperative to give immediate effect to a rule designating Cuban nationals arriving by air as eligible for expedited removal because ''[p]re-promulgation notice and comment would . . . endanger[ ] human life and hav[e] a potential destabilizing effect in the region.'' [373] DHS cited the prospect that ''publication of the rule as a proposed rule, which would signal a significant change in policy while permitting continuation of the exception for Cuban nationals, could lead to a surge in migration of Cuban nationals seeking to travel to and enter the United States during the period between the publication of a proposed and a final rule.'' [374] DHS found that ''[s]uch a surge would threaten national security and public safety by diverting valuable Government resources from counterterrorism and homeland security responsibilities,'' ''could also have a destabilizing effect on the region, thus weakening the security of the United States and threatening its international relations,'' and ''could result in significant loss of human life.'' [375]

Given the urgent circumstances facing the Departments, the delays associated with requiring a notice-and-comment process for this rule would be contrary to the public interest because an advance announcement of the rule would incentivize even more irregular migration by those seeking to enter the United States before the IFR would take effect.

B. Executive Order 12866 (Regulatory Planning and Review), Executive Order 13563 (Improving Regulation and Regulatory Review), and Executive Order 14094 (Modernizing Regulatory Review)

Executive Order 12866 (''Regulatory Planning and Review''), as amended by Executive Order 14094 (''Modernizing Regulatory Review''), and Executive Order 13563 (''Improving Regulation and Regulatory Review''), directs agencies to assess the costs, benefits, and transfers of available alternatives, and, if regulation is necessary, to select regulatory approaches that maximize net benefits, including potential economic, environmental, public health and safety effects, distributive impacts, and equity. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

The Office of Information and Regulatory Affairs (''OIRA'') of OMB reviewed this IFR as a significant regulatory action under Executive Order 12866, as amended by Executive Order 14094. The estimated effects of the rule are described and summarized qualitatively below. Consistent with OMB Circular A–4, the Departments assessed the impacts of this rule against a baseline. The baseline used for this analysis is the ''no action'' baseline, or what the world would be like absent the rule. For purposes of this analysis, the Departments assumed that the no-action baseline involved continued application of the Circumvention of Lawful Pathways rule.

The expected effect of this rule, as discussed above, is primarily to reduce incentives for irregular migration and illegal smuggling activity. As a result, the primary effects of this rule will be felt by noncitizens outside of the United States. In addition, for those who are present in the United States and described in the Proclamation, the rule will likely decrease the number of asylum grants and likely reduce the amount of time that noncitizens who are ineligible for asylum and who lack a reasonable probability of establishing eligibility for protection from persecution or torture would remain in the United States. Noncitizens, however, can avoid the limitation on asylum under this rule if they meet an exception to the rule's limitation or to the Proclamation, including by presenting at a POE pursuant to a pre-scheduled time and place or by showing exceptionally compelling circumstances. Moreover, noncitizens who in credible fear screenings establish

House Calls on Congress To Advance Critical National Security Priorities (Oct. 20, 2023), *https://www.whitehouse.gov/briefing-room/statements-releases/2023/10/20/fact-sheet-white-house-calls-on-congress-to-advance-critical-national-security-priorities/;* Letter for Kevin McCarthy, Speaker of the House of Representatives, from Shalanda D. Young, Director, Office and Management Budget (Aug. 10, 2023), *https://www.whitehouse.gov/wp-content/uploads/2023/08/Final-Supplemental-Funding-Request-Letter-and-Technical-Materials.pdf.*

[370] The Departments noted, however, that the Circumvention of Lawful Pathways rule was exempt from notice-and-comment requirements pursuant to the good cause exception at 5 U.S.C. 553(b)(B) for the same reasons that the rule was exempt from delayed effective date requirements under 5 U.S.C. 553(d). *See* 88 FR at 31445 n.377.

[371] *See* DHS, Implementation of a Parole Process for Venezuelans, 87 FR 63507 (Oct. 19, 2022).

[372] *See* 88 FR at 31317 (''A week before the announcement of the Venezuela parole process on October 12, 2022, Venezuelan encounters between POEs at the SWB averaged over 1,100 a day from October 5–11. About two weeks after the announcement, Venezuelan encounters averaged under 200 per day between October 18 and 24.'').

[373] DHS, Eliminating Exception to Expedited Removal Authority for Cuban Nationals Arriving by Air, 82 FR 4769, 4770 (Jan. 17, 2017).

[374] *Id.*

[375] *Id.; accord* U.S. Dep't of State, Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act, as Amended, 81 FR 5906, 5907 (Feb. 4, 2016) (finding the good cause exception applicable because of short-run incentive concerns).

a reasonable probability of persecution or torture would still be able to seek statutory withholding or CAT protection in proceedings before IJs.

The benefits of the rule are expected to include reductions in strains on limited Federal Government immigration processing and enforcement resources; preservation of the Departments' continued ability to safely, humanely, and effectively enforce and administer the immigration laws; and a reduction in the role of exploitative TCOs and smugglers. Some of these benefits accrue to noncitizens whose ability to receive timely decisions on their claims might otherwise be hampered by the severe strain that further surges in irregular migration would impose on the Departments.

The direct costs of the rule are borne by noncitizens and the Departments. To the extent that any noncitizens are made ineligible for asylum by virtue of the rule but would have received asylum in the absence of this rule, such an outcome would entail the denial of asylum and its attendant benefits, although such persons may continue to be eligible for statutory withholding of removal and withholding under the CAT. Unlike asylees, noncitizens granted these more limited forms of protection do not have a path to citizenship and cannot petition for certain family members to join them in the United States. Such noncitizens may also be required to apply for work authorization more frequently than an asylee would. As discussed in this preamble, the rule's manifestation of fear and reasonable probability standards may also engender a risk that some noncitizens with meritorious claims may not be referred for credible fear interviews or to removal proceedings to seek protection. In these cases, there may be costs to noncitizens that result from their removal.

The rule may also require additional time for AOs and IJs, during credible fear screenings and reviews, respectively, to inquire into the applicability of the rule and the noncitizen's fear claim. Similarly, the rule will require additional time for IJs during section 240 removal proceedings. However, as discussed throughout this preamble, the rule is expected to result in significantly reduced irregular migration. Accordingly, the Departments expect the additional time spent by AOs and IJs on implementation of the rule to be mitigated by a comparatively smaller number of credible fear cases than AOs and IJs would otherwise have been required to handle in the absence of the rule.

Other entities may also incur some indirect, downstream costs as a result of the rule. The nature and scale of such effects will vary by entity and should be considered relative to the baseline condition that would exist in the absence of this rule, which as noted above is the continued application of the Circumvention of Lawful Pathways rule. As compared to the baseline condition, this rule is expected to reduce irregular migration. The Departments welcome comments on the effects described above to inform analysis in a final rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act (''RFA''), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires an agency to prepare and make available to the public a final regulatory flexibility analysis that describes the effect of a rule on small entities (*i.e.,* small businesses, small organizations, and small governmental jurisdictions) when the agency was required ''to publish a general notice of proposed rulemaking'' prior to issuing the final rule. *See* 5 U.S.C. 604(a). Because this IFR is being issued without a prior proposal, on the grounds set forth above, a regulatory flexibility analysis is not required under the RFA.

D. Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1995 (''UMRA'') is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and Tribal governments. Title II of the UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed rule, or final rule for which the agency published a proposed rule, that includes any Federal mandate that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and Tribal governments, in the aggregate, or by the private sector. The term ''Federal mandate'' means a Federal intergovernmental mandate or a Federal private sector mandate. *See* 2 U.S.C. 658(6), 1502(1). A ''Federal intergovernmental mandate,'' in turn, is a provision that would impose an enforceable duty upon State, local, or Tribal governments (except as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program). *See id.* 658(5). And the term ''Federal private sector mandate'' refers to a provision that would impose an enforceable duty upon the private sector (except as a condition of Federal assistance or a duty arising from participation in a voluntary Federal program). *See id.* 658(7).

This IFR is not subject to the UMRA because the Departments did not publish a proposed rule prior to this action. In addition, this rule does not contain a Federal mandate, because it does not impose any enforceable duty upon any other level of government or private sector entity. Any downstream effects on such entities would arise solely due to an entity's voluntary choices, and the voluntary choices of others, and would not be a consequence of an enforceable duty imposed by this rule. Similarly, any costs or transfer effects on State and local governments would not result from a Federal mandate as that term is defined under UMRA. The requirements of title II of the UMRA, therefore, do not apply, and the Departments have not prepared a statement under the UMRA.

E. Congressional Review Act

OMB has determined that this rule does not meet the criteria set forth in 5 U.S.C. 804(2). The rule will be submitted to Congress and the Government Accountability Office consistent with the Congressional Review Act's requirements no later than its effective date.

F. Executive Order 13132 (Federalism)

This rule would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

G. Executive Order 12988 (Civil Justice Reform)

This IFR meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

H. Family Assessment

The Departments have reviewed this rule in line with the requirements of section 654 of the Treasury and General Government Appropriations Act, 1999, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999. The Departments have reviewed the criteria specified in section 654(c)(1), by evaluating whether this regulatory action (1) impacts the

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

The Departments have determined that the implementation of this rule will not impose a negative impact on family well-being or the autonomy or integrity of the family as an institution.

I. Executive Order 13175 (Consultation and Coordination With Indian Tribal Governments)

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

J. National Environmental Policy Act

DHS and its components analyze actions to determine whether the National Environmental Policy Act of 1969 (''NEPA''), 42 U.S.C. 4321 *et seq.,* applies to these actions and, if so, what level of NEPA review is required. 42 U.S.C. 4336. DHS's Directive 023–01, Revision 01 [376] and Instruction Manual 023–01–001–01, Revision 01 (''Instruction Manual 023–01'') [377] establish the procedures that DHS uses to comply with NEPA and the Council on Environmental Quality (''CEQ'') regulations for implementing NEPA, 40 CFR parts 1500 through 1508.

Federal agencies may establish categorical exclusions for categories of actions they determine normally do not significantly affect the quality of the human environment and, therefore, do not require the preparation of an Environmental Assessment or Environmental Impact Statement. 42 U.S.C. 4336e(1); 40 CFR 1501.4, 1507.3(e)(2)(ii), 1508.1(d). DHS has established categorical exclusions, which are listed in Appendix A of its Instruction Manual 023–01. Under DHS's 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 of a larger action; and (3) no extraordinary circumstances exist that create the potential for a significant environmental effect.[378]

The IFR effectuates the following three changes to the process for those seeking asylum, withholding of removal, or protection under the CAT during emergency border circumstances:

- For those who enter across the southern border during emergency border circumstances and are not described in section 3(b) of the Proclamation, rather than asking specific questions of every noncitizen encountered and processed for expedited removal to elicit whether the noncitizen may have a fear of persecution or an intent to apply for asylum, DHS will provide general notice regarding the processes for seeking asylum, withholding of removal, and protection under the CAT, and will only refer a noncitizen for credible fear screenings if the noncitizen manifests a fear of return, or expresses an intention to apply for asylum or protection, expresses a fear of persecution or torture, or expresses a fear of return to his or her country or the country of removal.
- During emergency border circumstances, persons who enter the United States across the southern border and who are not described in paragraph 3(b) of the Proclamation will be ineligible for asylum unless they demonstrate by a preponderance of the evidence that exceptionally compelling circumstances exist, including if the noncitizen demonstrates that they or a member of their family as described in 8 CFR 208.30(c) with whom they are traveling: (1) faced an acute medical emergency; (2) faced an imminent and extreme threat to life or safety, such as an imminent threat of rape, kidnapping, torture, or murder; or (3) satisfied the definition of ''victim of a severe form of trafficking in persons'' provided in 8 CFR 214.11.
- The limitation on asylum eligibility will be applied during credible fear interviews and reviews, and those who enter across the southern border during emergency border circumstances and who are not described in section 3(b) of the Proclamation and do not establish exceptionally compelling circumstances will receive a negative credible fear determination with respect to asylum and will thereafter be screened for a reasonable probability of persecution because of a protected ground or torture, a higher standard than that applied to noncitizens in a similar posture under the Circumvention of Lawful Pathways rule.

Given the nature of the IFR, it is categorically excluded from DHS's NEPA implementing procedures, as it satisfies all three relevant conditions. First, the Departments have determined that the IFR fits clearly within categorical exclusions A3(a) and (d) of DHS's Instruction Manual 023–01, Appendix A, for the promulgation of rules of a ''strictly administrative or procedural nature'' and rules that ''interpret or amend an existing regulation without changing its environmental effect,'' respectively. The IFR changes certain administrative procedures relating to the processing of certain noncitizens during emergency border circumstances, and does not result in a change in environmental effect. Second, this IFR is a standalone rule and is not part of any larger action. Third, the Departments are not aware of any extraordinary circumstances that would cause a significant environmental impact. Therefore, this IFR is categorically excluded, and no further NEPA analysis or documentation is required. DOJ is adopting the DHS determination that this IFR is categorically excluded under A3(a) and A3(d) of DHS's Instruction Manual 023–01, Appendix A, because the IFR's asylum limitation and the reasonable probability standard will be applied by EOIR in substantially the same manner as it will be applied by DHS. *See* 40 CFR 1506.3(d) (setting forth the ability of an agency to adopt another agency's categorical exclusion determination).

K. Paperwork Reduction Act

This IFR does not adopt new, or revisions to existing, ''collection[s] of information'' as that term is defined under the Paperwork Reduction Act of 1995, Public Law 104–13, 109 Stat. 163,

[376] DHS, *Implementation of the National Environmental Policy Act, Directive 023–01, Revision 01* (Oct. 31, 2014), *https://www.dhs.gov/sites/default/files/publications/DHS_Directive%20023-01%20Rev%2001_508compliantversion.pdf.*

[377] DHS, *Implementation of the National Environmental Policy Act (NEPA), Instruction Manual 023–01–001–01, Revision 01* (Nov. 6, 2014), *https://www.dhs.gov/sites/default/files/publications/DHS_Instruction%20Manual%20023-01-001-01%20Rev%2001_508%20Admin%20Rev.pdf.*

[378] Instruction Manual 023–01 at V.B(2)(a) through (c).

44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320.

List of Subjects

8 CFR Part 208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 1208

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

DEPARTMENT OF HOMELAND SECURITY

Accordingly, for the reasons set forth in the preamble, the Secretary of Homeland Security amends 8 CFR parts 208 and 235 as follows:

PART 208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 1. The authority citation for part 208 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Pub. L. 110–229; 8 CFR part 2; Pub. L. 115–218.

■ 2. In § 208.13, add paragraph (g) to read as follows:

§ 208.13 Establishing asylum eligibility.

* * * * *

(g) *Entry during emergency border circumstances.* For an alien who entered the United States across the southern border (as that term is described in section 4(d) of the Presidential Proclamation of June 3, 2024, Securing the Border) between the dates described in section 1 of such Proclamation and section 2(a) of such Proclamation (or the revocation of such Proclamation, whichever is earlier), or between the dates described in section 2(b) of such Proclamation and section 2(a) of such Proclamation (or the revocation of such Proclamation, whichever is earlier), refer to the provisions on asylum eligibility described in § 208.35.

■ 3. Add subpart D, consisting of § 208.35, to read as follows:

Subpart D—Eligibility for Aliens Who Enter the United States During Emergency Border Circumstances

§ 208.35 Limitation on asylum eligibility and credible fear procedures for those who enter the United States during emergency border circumstances.

Notwithstanding any contrary section of this part, including §§ 208.2, 208.13, 208.30, and 208.33—

(a) *Limitation on eligibility.* (1) *Applicability.* An alien who is described in § 208.13(g) and who is not described in section 3(b) of the Presidential Proclamation of June 3, 2024, Securing the Border, is ineligible for asylum.

(2) *Exceptions.* (i) This limitation on eligibility does not apply if the alien demonstrates by a preponderance of the evidence that exceptionally compelling circumstances exist, including if the alien, or the alien's family member as described in § 208.30(c) with whom the alien is traveling, demonstrates by a preponderance of the evidence that, at the time of entry, the alien or a member of the alien's family as described in § 208.30(c) with whom the alien is traveling:

(A) Faced an acute medical emergency;

(B) Faced an imminent and extreme threat to life or safety, such as an imminent threat of rape, kidnapping, torture, or murder; or

(C) Satisfied the definition of ''victim of a severe form of trafficking in persons'' provided in § 214.11 of this chapter.

(ii) An alien who demonstrates by a preponderance of the evidence any of the circumstances in paragraph (a)(2)(i) of this section shall necessarily establish exceptionally compelling circumstances.

(iii) An alien described in section 3(b) of the Presidential Proclamation of June 3, 2024, Securing the Border, or who establishes exceptionally compelling circumstances under paragraph (a)(2)(i) of this section has established exceptionally compelling circumstances under § 208.33(a)(3).

(b) *Application in credible fear determinations.* (1) *Initial determination.* The asylum officer shall first determine whether the alien is subject to the limitation on asylum eligibility under paragraph (a) of this section.

(i) Where the asylum officer determines that the alien is subject to the limitation on asylum eligibility under paragraph (a) of this section, then the asylum officer shall enter a negative credible fear determination with respect to the alien's asylum claim and continue to consider the alien's claim under paragraph (b)(2) of this section.

(ii) Where the asylum officer determines that the alien is not subject to the limitation on asylum eligibility under paragraph (a) of this section because the alien is not described in § 208.13(g), the asylum officer shall follow the procedures in § 208.33(b).

(iii) Where the asylum officer determines that the alien is not subject to the limitation on asylum eligibility under paragraph (a) of this section because the alien is described in section 3(b) of the Proclamation or is excepted from the limitation on asylum eligibility under paragraph (a)(2) of this section, the asylum officer shall follow the procedures in § 208.30.

(2) *Protection eligibility screening.* (i) In cases in which the asylum officer enters a negative credible fear determination under paragraph (b)(1)(i) or (b)(3) of this section, the asylum officer will assess the alien under the procedures set forth in § 208.33(b)(2)(i) except that the asylum officer will apply a reasonable probability standard. For purposes of this section, *reasonable probability* means substantially more than a reasonable possibility, but somewhat less than more likely than not, that the alien would be persecuted because of his or her race, religion, nationality, membership in a particular social group or political opinion, or tortured, with respect to the designated country or countries of removal.

(ii) In cases described in paragraph (b)(2)(i) or (b)(3) of this section, if the alien establishes a reasonable probability of persecution or torture with respect to the designated country or countries of removal, the Department will issue a positive credible fear determination and follow the procedures in § 208.30(f). For any case in which USCIS retains jurisdiction over the application for asylum pursuant to § 208.2(a)(1)(ii) for further consideration in an interview pursuant to § 208.9, USCIS may require aliens who received a negative credible fear determination with respect to their asylum claim under paragraph (b)(1)(i) of this section to submit a Form I–589, Application for Asylum and for Withholding of Removal, together with any additional supporting evidence in accordance with the instructions on the form, to USCIS within 30 days from the date of service of the positive credible fear determination. The date of service of the positive credible fear determination remains the date of filing and receipt of the asylum application under § 208.3(a)(2); however, for any case in which USCIS requires the alien to submit a Form I–589, it may extend the

timelines in § 208.9(a)(1) and (e)(2) by up to 15 days. If USCIS requires the alien to submit a Form I–589 and the alien fails to do so within the applicable timeline, USCIS shall issue a Form I–862, Notice to Appear.

(iii) In cases described in paragraph (b)(2)(i) or (b)(3) of this section, if the alien fails to establish a reasonable probability of persecution or torture with respect to all designated countries of removal, the asylum officer will provide the alien with a written notice of decision and inquire whether the alien wishes to have an immigration judge review the negative credible fear determinations.

(iv) The alien must indicate whether he or she desires such review on a Record of Negative Fear Finding and Request for Review by Immigration Judge.

(v) Only if the alien requests such review by so indicating on the Record of Negative Fear shall the asylum officer serve the alien with a Notice of Referral to Immigration Judge. The record of determination, including copies of the Notice of Referral to Immigration Judge, the asylum officer's notes, the summary of the material facts, and other materials upon which the determination was based shall be provided to the immigration judge with the negative determination. Immigration judges will evaluate the case as provided in 8 CFR 1208.35(b). The case shall then proceed as set forth in paragraphs (b)(2)(v)(A) and (B) of this section.

(A) Where the immigration judge issues a positive credible fear determination under 8 CFR 1208.35(b)(2)(iii) or (b)(4), the case shall proceed under 8 CFR 1208.30(g)(2)(iv)(B).

(B) Where the immigration judge issues a negative credible fear determination, the case shall be returned to the Department for removal of the alien. No appeal shall lie from the immigration judge's decision and no request for reconsideration may be submitted to USCIS. Nevertheless, USCIS may, in its sole discretion, reconsider a negative determination.

(3) *Procedures in the absence of the limitation on asylum eligibility.* If the limitation on asylum eligibility in paragraph (a) of this section is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, then during the period(s) described in § 208.13(g), the asylum officer shall, as applicable, apply a reasonable probability screening standard for any protection screening under § 208.33(b)(2).

(c) *Family unity in the asylum merits process.* In cases where the Department retains jurisdiction over the application for asylum pursuant to § 208.2(a)(1)(ii), where a principal asylum applicant is found eligible for withholding of removal under section 241(b)(3) of the Act or withholding of removal under § 208.16(c)(2) and would be granted asylum but for the limitation on asylum in paragraph (a)(1) of this section or § 208.33(a), or both, and where an accompanying spouse or child as defined in section 208(b)(3)(A) of the Act does not independently qualify for asylum or other protection from removal or the principal asylum applicant has a spouse or child who would be eligible to follow to join that applicant as described in section 208(b)(3)(A) of the Act, the asylum officer may deem the principal applicant to have established exceptionally compelling circumstances under paragraph (a)(2)(i) of this section and § 208.33(a)(3)(i).

(d) *Continuing applicability of limitation on eligibility.* (1) Subject to paragraph (d)(2) of this section, the limitation on asylum eligibility in paragraph (a) of this section shall apply to any asylum application filed by an alien who entered the United States during the time and in the manner described in § 208.13(g) and who is not covered by an exception in paragraph (d)(2) of this section, regardless of when the application is filed and adjudicated.

(2) The limitation on asylum eligibility in paragraph (a) of this section shall not apply to an alien who was under the age of 18 at the time of the alien's entry, if—

(i) The alien is applying for asylum as a principal applicant; and

(ii) The asylum application is filed after the period of time in 208.13(g) during which the alien entered.

(e) *Severability.* The Department intends that in the event that any provision of this section, § 235.15, or the Presidential Proclamation of June 3, 2024, Securing the Border, is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, the provisions of this section and § 235.15 should be construed so as to continue to give the maximum effect to those provisions permitted by law, unless such holding is that a provision is wholly invalid and unenforceable, in which event the provision should be severed from the remainder of this section and the holding should not affect the remainder of this section or the application of the provision to persons not similarly situated or to dissimilar circumstances.

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

■ 4. The authority citation for part 235 continues to read as follows:

Authority: 8 U.S.C. 1101 and note, 1103, 1183, 1185 (pursuant to E.O. 13323, 69 FR 241, 3 CFR, 2003 Comp., p. 278), 1201, 1224, 1225, 1226, 1228, 1365a note, 1365b, 1379, 1731–32; 48 U.S.C. 1806 and notes, 1807, and 1808 (Title VII, Pub. L. 110–229, 122 Stat. 754); 8 U.S.C. 1185 note (sec. 7209, Pub. L. 108–458, 118 Stat. 3638, and Pub. L. 112–54, 125 Stat. 550).

■ 5. Add § 235.15 to read as follows:

§ 235.15 Inadmissible aliens and expedited removal during emergency border circumstances.

(a) *Applicability.* Notwithstanding §§ 235.3(b)(2)(i) and 235.3(b)(4)(i) (but not § 235.3(b)(4)(ii)), the provisions of this section apply to any alien described in § 235.3(b)(1)(i) through (ii) if the alien is described in § 208.13(g) and is not described in section 3(b) of the Presidential Proclamation of June 3, 2024, Securing the Border.

(b) *Expedited removal.* (1) [Reserved]

(2) *Determination of inadmissibility—*

(i) *Record of proceeding.* (A) A noncitizen who is arriving in the United States, or other alien as designated pursuant to § 235.3(b)(1)(ii), who is determined to be inadmissible under section 212(a)(6)(C) or 212(a)(7) of the Act (except an alien for whom documentary requirements are waived under § 211.1(b)(3) or § 212.1 of this chapter) shall be ordered removed from the United States in accordance with section 235(b)(1) of the Act. In every case in which the expedited removal provisions will be applied and before removing an alien from the United States pursuant to this section, the examining immigration officer shall create a record of the facts of the case and statements made by the alien.

(B) The examining immigration officer shall advise the alien of the charges against him or her on Form I–860, Notice and Order of Expedited Removal, and the alien shall be given an opportunity to respond to those charges. After obtaining supervisory concurrence in accordance with § 235.3(b)(7), the examining immigration official shall serve the alien with Form I–860 and the alien shall sign the form acknowledging receipt. Interpretative assistance shall be used if necessary to communicate with the alien.

(ii) [Reserved]

(iii) [Reserved]

(3) [Reserved]

(4) *Claim of asylum or fear of persecution or torture.* (i) If an alien subject to the expedited removal

provisions manifests a fear of return, or expresses an intention to apply for asylum or protection, expresses a fear of persecution or torture, or expresses a fear of return to his or her country or the country of removal, the inspecting officer shall not proceed further with removal of the alien until the alien has been referred for an interview by an asylum officer in accordance with part 208 of this chapter.

(A) The inspecting immigration officer shall document whether the alien has manifested or affirmatively expressed such intention, fear, or concern.

(B) The referring officer shall provide the alien with a written disclosure describing the purpose of the referral and the credible fear interview process; the right to consult with other persons prior to the interview and any review thereof at no expense to the United States Government; the right to request a review by an immigration judge of the asylum officer's credible fear determination; and the consequences of failure to establish a credible fear of persecution or torture.

(ii) [Reserved]

(c)–(f) [Reserved]

(g) *Severability.* The Department intends that in the event that any provision of paragraphs (a), (b)(2)(i), and (b)(4) of this section, § 208.35, or the Presidential Proclamation of June 3, 2024, Securing the Border, is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, the provisions of this section and § 208.35 should be construed so as to continue to give the maximum effect to those provisions permitted by law, unless such holding is that a provision is wholly invalid and unenforceable, in which event the provision should be severed from the remainder of this section and the holding should not affect the remainder of this section or the application of the provision to persons not similarly situated or to dissimilar circumstances.

DEPARTMENT OF JUSTICE

Accordingly, for the reasons set forth in the preamble, the Attorney General amends 8 CFR part 1208 as follows:

PART 1208—PROCEDURES FOR ASYLUM AND WITHHOLDING OF REMOVAL

■ 6. The authority citation for part 1208 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1158, 1226, 1252, 1282; Title VII of Pub. L. 110–229; Pub. L. 115–218.

■ 7. In § 1208.13, add paragraph (g) to read as follows:

§ 1208.13 Establishing asylum eligibility.

* * * * *

(g) *Entry during emergency border circumstances.* For an alien who entered the United States across the southern border (as that term is described in section 4(d) of the Presidential Proclamation of June 3, 2024, Securing the Border) between the dates described in section 1 of such Proclamation and section 2(a) of such Proclamation (or the revocation of such Proclamation, whichever is earlier), or between the dates described in section 2(b) of such Proclamation and section 2(a) of such Proclamation (or the revocation of such Proclamation, whichever is earlier) refer to the provisions on asylum eligibility described in § 1208.35.

■ 8. Add subpart D, consisting of § 1208.35, to read as follows:

Subpart D—Eligibility for Aliens Who Enter the United States During Emergency Border Circumstances

§ 1208.35 Limitation on asylum eligibility and credible fear procedures for those who enter the United States during emergency border circumstances.

Notwithstanding any contrary section of this chapter, including §§ 1003.42, 1208.2, 1208.13, 1208.30, and 1208.33—

(a) *Limitation on eligibility.* (1) *Applicability.* An alien who is described in § 1208.13(g) and who is not described in section 3(b) of the Presidential Proclamation of June 3, 2024, Securing the Border, is ineligible for asylum.

(2) *Exceptions.* (i) This limitation on eligibility does not apply if the alien demonstrates by a preponderance of the evidence that exceptionally compelling circumstances exist, including if the alien, or the alien's family member as described in 8 CFR 208.30(c) with whom the alien is traveling, demonstrates by a preponderance of the evidence that, at the time of entry, the alien or a member of the alien's family as described in § 208.30(c) with whom the alien is traveling:

(A) Faced an acute medical emergency;

(B) Faced an imminent and extreme threat to life or safety, such as an imminent threat of rape, kidnapping, torture, or murder; or

(C) Satisfied the definition of ''victim of a severe form of trafficking in persons'' provided in § 214.11 of this title.

(ii) An alien who demonstrates by a preponderance of the evidence any of the circumstances in paragraph (a)(2)(i) of this section shall necessarily establish exceptionally compelling circumstances.

(iii) An alien described in section 3(b) of the Presidential Proclamation of June 3, 2024, Securing the Border, or who establishes exceptionally compelling circumstances under paragraph (a)(2)(i) of this section has established exceptionally compelling circumstances under § 1208.33(a)(3).

(b) *Application in credible fear determinations.* (1) Where an asylum officer has issued a negative credible fear determination pursuant to 8 CFR 208.35(b), and the alien has requested immigration judge review of that credible fear determination, the immigration judge shall evaluate the case de novo, as specified in paragraph (b)(2) of this section. In doing so, the immigration judge shall take into account the credibility of the statements made by the alien in support of the alien's claim and such other facts as are known to the immigration judge.

(2) The immigration judge shall first determine whether the alien is subject to the limitation on asylum eligibility under paragraph (a) of this section.

(i) Where the immigration judge determines that the alien is not subject to the limitation on asylum eligibility under paragraph (a) of this section because the alien is not described in § 1208.13(g), the immigration judge shall follow the procedures in § 1208.33(b).

(ii) Where the immigration judge determines that the alien is not subject to the limitation on asylum eligibility under paragraph (a) of this section because the alien is described in section 3(b) of the Proclamation or is excepted from the limitation on asylum eligibility under paragraph (a)(2) of this section, the immigration judge shall follow the procedures in § 1208.30.

(iii) Where the immigration judge determines that the alien is subject to the limitation on asylum eligibility under paragraph (a) of this section, the immigration judge shall assess the alien under the procedures set forth in § 1208.33(b)(2)(ii) except that the immigration judge shall apply a reasonable probability standard. For purposes of this section, *reasonable probability* means substantially more than a reasonable possibility, but somewhat less than more likely than not, that the alien would be persecuted because of his or her race, religion, nationality, membership in a particular social group or political opinion, or tortured, with respect to the designated country or countries of removal.

(3) Following the immigration judge's determination, the case will proceed as indicated in 8 CFR 208.35(b)(2)(v)(A) and (B).

(4) If the limitation on asylum eligibility in paragraph (a) of this section is held to be invalid or

unenforceable by its terms, or as applied to any person or circumstance, then during the period(s) described in § 1208.13(g), the immigration judge shall, as applicable, apply a reasonable probability screening standard for any protection screening under § 1208.33(b)(2)(ii).

(c) *Family unity and removal proceedings.* In removal proceedings under section 240 of the Act, where a principal asylum applicant is found eligible for withholding of removal under section 241(b)(3) of the Act or withholding of removal under § 1208.16(c)(2) and would be granted asylum but for the limitation on asylum eligibility in paragraph (a)(1) of this section or § 1208.33(a), or both, and where an accompanying spouse or child as defined in section 208(b)(3)(A) of the Act does not independently qualify for asylum or other protection from removal or the principal asylum applicant has a spouse or child who would be eligible to follow to join that applicant as described in section 208(b)(3)(A) of the Act, the alien shall be deemed to have established exceptionally compelling circumstances under paragraph (a)(2)(i) of this section and § 1208.33(a)(3)(i).

(d) *Continuing applicability of limitation on eligibility.* (1) Subject to paragraph (d)(2) of this section, the limitation on asylum eligibility in paragraph (a) of this section shall apply to any asylum application filed by an alien who entered the United States during the time and in the manner described in § 1208.13(g) and who is not covered by an exception in paragraph (d)(2) of this section, regardless of when the application is filed and adjudicated.

(2) The limitation on asylum eligibility in paragraph (a) of this section shall not apply to an alien who was under the age of 18 at the time of the alien's entry, if—

(i) The alien is applying for asylum as a principal applicant; and

(ii) The asylum application is filed after the period of time in 1208.13(g) during which the alien entered.

(e) *Severability.* The Department intends that in the event that any provision of this section or the Presidential Proclamation of June 3, 2024, Securing the Border, is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, the provisions of this section should be construed so as to continue to give the maximum effect to those provisions permitted by law, unless such holding is that a provision is wholly invalid and unenforceable, in which event the provision should be severed from the remainder of this section and the holding should not affect the remainder of this section or the application of the provision to persons not similarly situated or to dissimilar circumstances.

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

Merrick B. Garland,

Attorney General, U.S. Department of Justice.

[FR Doc. 2024–12435 Filed 6–4–24; 4:15 pm]

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FEDERAL REGISTER

Vol. 89 Friday,
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Part III

Environmental Protection Agency

40 CFR Part 257
Alabama: Denial of State Coal Combustion Residuals Permit Program; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 257

[EPA–HQ–OLEM–2022–0903; FRL 11262–02–OLEM]

Alabama: Denial of State Coal Combustion Residuals Permit Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Availability of final decision.

SUMMARY: Pursuant to the Resource Conservation and Recovery Act (RCRA), the Environmental Protection Agency (EPA or the Agency) is denying the Alabama Department of Environmental Management's (ADEM) Application for approval of the Alabama coal combustion residuals (CCR) permit program (Application). After reviewing the State CCR permit program Application submitted by ADEM on December 29, 2021, additional relevant materials, including permits issued by ADEM, and comments submitted on the Proposed Denial, EPA has determined that Alabama's CCR permit program does not meet the standard for approval under RCRA.

DATES: This action is effective on July 8, 2024.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA–HQ–OLEM–2022–0903. All documents in the docket are listed on the *https://www.regulations.gov* website. Although listed in the index, some information is not publicly available, *e.g.,* 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.

FOR FURTHER INFORMATION CONTACT: Michelle Lloyd, Office of Resource Conservation and Recovery, Materials Recovery and Waste Management Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, MC: 5304T, Washington, DC 20460; telephone number: (202) 566–0560; email address: *lloyd.michelle@epa.gov.* For more information on this notification please visit *https://www.epa.gov/coalash.*

SUPPLEMENTARY INFORMATION:

Table of Contents

List of Acronyms

ACM Assessment of Corrective Measures
ADEM Alabama Department of Environmental Management
CCP coal combustion product
CCR coal combustion residuals
CFR Code of Federal Regulations
EPA Environmental Protection Agency
EPRI Electric Power Research Institute
FR Federal Register
GWMP Groundwater Monitoring Plan
GWPS groundwater protection standard
MCL maximum contaminant level
MNA Monitored Natural Attenuation
MSL mean sea level
NOPV Notice of Potential Violation
NPDES National Pollutant Discharge Elimination System
RCRA Resource Conservation and Recovery Act
RTC Response to Comments
TSD Technical Support Document
TVA Tennessee Valley Authority
USGS U.S. Geological Survey
WBWT waste below the water table
WIIN Water Infrastructure Improvements for the Nation

I. General Information

A. Summary of Final Action

EPA is taking final action to deny approval of Alabama's CCR permit program because the Agency finds that the State's program does not require each CCR unit in the State to achieve compliance with either the minimum requirements in the Federal CCR regulations or with alternative requirements that EPA has determined to be at least as protective as the requirements of the Federal CCR regulations in 40 CFR part 257, subpart D, for the reasons set forth in the Proposed Denial and this final action. See, 42 U.S.C. 6945(d)(1)(B).

B. Background

CCR are generated from the combustion of coal, including solid fuels classified as anthracite, bituminous coal, subbituminous coal, and lignite, for the purpose of generating steam to power a generator to produce electricity or electricity and other thermal energy by electric utilities and independent power producers. CCR include fly ash, bottom ash, boiler slag, and flue gas desulfurization materials. CCR contain many contaminants that may pose a hazard to human health and the environment.

On April 17, 2015, EPA published a final rule, creating 40 CFR part 257, subpart D,[1] that established a comprehensive set of minimum Federal requirements for the disposal of CCR in landfills and surface impoundments (80 FR 21302, April 17, 2015) (''Federal CCR regulations''). Section 2301 of the 2016 Water Infrastructure Improvements for the Nation (WIIN) Act amended section 4005 of RCRA, creating a new subsection (d) that establishes a Federal CCR permit program that is similar to the permit programs under RCRA subtitle C and other environmental statutes. See, 42 U.S.C. 6945(d).

The Federal CCR regulations are self-implementing, which means that CCR landfills and surface impoundments must comply with the terms of the rule even prior to establishment of a Federal CCR permit program, and noncompliance with any requirement of the Federal CCR regulations can be directly enforced against the facility. Once a final CCR permit is issued, the terms of the permit apply in lieu of the terms of the Federal CCR regulations, and RCRA section 4005(d)(3) provides a permit shield against direct enforcement of the applicable Federal CCR regulations (meaning the permit's terms become the enforceable requirements for the permittee).

RCRA section 4005(d) also allows States to seek approval for a State CCR permit program that will operate in lieu of a Federal CCR permit program in the State. The statute provides that after a State submits an application to the Administrator for approval, EPA shall approve the State permit program within 180 days after the Administrator determines that the State program requires each CCR unit located in the State to achieve compliance with either the Federal requirements or other State requirements that EPA determines, after consultation with the State, are at least as protective as those included in the Federal CCR regulations. See, 42 U.S.C. 6945(d)(1)(B).

After EPA issued the Federal CCR regulations in 2015, Alabama established ADEM Administrative Code Chapter 335–13–15, for the portions of

[1] Unless otherwise specified, all references to parts 257 and 239 in this notification are to title 40 of the Code of Federal Regulations (CFR).

those regulations for which the State is seeking approval, and language in the State's regulations is almost identical to EPA regulations. Alabama's regulations became effective in 2018, and soon after the State began implementing its State CCR permit program and issuing permits. At the time of submission of ADEM's December 29, 2021, Application to EPA, ADEM had issued permits for the following CCR facilities: (1) the James H. Miller Electric Generating Plant (Permit #37–51; issued December 18, 2020); (2) Greene County Electric Generating Plant (Permit #32–03: issued December 18, 2020); (3) Gadsden Steam Plant (Permit #28–09, issued December 18, 2020); (4) James M. Barry Electric Generating Plant (Permit #49–35, issued July 1, 2021); (5) E.C. Gaston Electric Generating Plant (Permit #59–16, issued May 25, 2021); and (6) Charles R. Lowman Power Plant (Permit #65–06, issued August 30, 2021). After its Application was submitted to EPA, ADEM proceeded to issue permits for the William C. Gorgas Electric Generating Plant (Permit #64–12 issued February 28, 2022) and for the Tennessee Valley Authority (TVA) Plant Colbert (Permit #17–11, issued October 25, 2022).

Starting in January 2018, EPA began working with ADEM as the State developed its Application for the State's CCR permit program, and, over the course of several years, EPA had many interactions with ADEM about the development of a state CCR permit program. See Unit III.E. of the Proposed Denial and Technical Support Document (TSD) Volume II (summarizing and listing, respectively, the communications between EPA and ADEM concerning the State's CCR permit program and implementation of the CCR regulations). As with other States, EPA discussed with ADEM the process for EPA to review and approve the State's CCR permit program, including ADEM's plans for formally adopting CCR regulations, ADEM's anticipated timeline for submitting a CCR permit program Application to EPA, and ADEM's regulations for issuing permits. EPA also reviewed ADEM's submissions on multiple occasions and sent comments to ADEM on those documents. On December 29, 2021, ADEM submitted its State CCR permit program Application to EPA Region 4 requesting approval of the State's partial CCR permit program.[2]

ADEM established State CCR regulations that largely mirror the provisions in the Federal CCR regulations and contain additional State-specific provisions and clarifications.

At the same time EPA was in discussions with Alabama about its CCR permit program, the Agency was also reviewing facility requests for extensions of the date to cease sending all waste to unlined surface impoundments under Part A of the Federal CCR regulations.[3] To be eligible for an extension under Part A, a facility was required to demonstrate that the CCR unit was in compliance with the Federal CCR regulations in 40 CFR part 257, subpart D.[4] The Agency's review of the Part A compliance demonstrations showed EPA that there were systemic problems with facility compliance with the groundwater monitoring, corrective action, and closure requirements.[5]

On January 11, 2022, EPA emailed ADEM copies of the first set of proposed Part A decisions, including the proposed decision for the General James M. Gavin Power Plant in Cheshire, Ohio. Proposed Denial TSD Volume II (listing communications between EPA and ADEM). Three of the proposed decisions addressed facilities that had one or more unlined surface impoundments with CCR continually saturated by groundwater, and that intended to close the units without addressing that situation. In each case, EPA explained that the facility failed to demonstrate that the closure of these units complied with the plain language of the performance standards in § 257.102(d)(2)—which include addressing infiltration into and releases from the impoundment and eliminating free liquids—given that groundwater appeared to be continually saturating CCR in the unlined impoundments. The closure regulations limit contact between the waste (CCR) in the unit and groundwater after closure because it is critical to minimizing contaminants released into the environment and will help ensure communities near the sites have access to safe water for drinking and recreation.

After forwarding the proposed decisions, EPA met with ADEM to discuss how the Federal regulations apply to situations in which an unlined surface impoundment has been constructed in or below the water table.[6] EPA also held a meeting about this topic where all the Region 4 States were invited, including ADEM.

After issuing the proposed Part A decisions, EPA looked at several of Alabama's State CCR permits for unlined surface impoundments that had been issued by that time. Of particular concern to the Agency were facilities that were closing (or had already closed) unlined CCR surface impoundments while leaving waste (*i.e.,* CCR) below the water table (WBWT), and ADEM had issued permits for such surface impoundments at Greene County Electric Generating Plant, Gadsden Steam Plant, and William C. Gorgas Electric Generating Plant. After a brief review of these permits, EPA identified to ADEM aspects of Alabama's permit program that appeared to differ from the Federal program, and the Agency explained that the differences appear to make the State's program less protective than the Federal program. The Agency specifically identified problems with the State's permit requirements covering closure of unlined surface impoundments, groundwater monitoring networks, and corrective action. With respect to some of EPA's concerns about compliance with the closure standards in § 257.102(d)(2) of the Federal CCR regulations, ADEM indicated it intended to address any ongoing issues with the facility closure plans through corrective action requirements instead of requiring compliance with the applicable closure requirements with respect to free liquids and infiltration from the bottom and sides.[7] See Unit IV.C of the Proposed

[2] Alabama Department of Environmental Management. Application For CCR Permit Program Approval. December 2021. The State is seeking approval of a partial CCR permit program because certain provisions of the Federal Program were not included in the State regulations. See Part IV.B. of the Proposed Denial for details on the State's regulations.

[3] Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals from Electric Utilities; A Holistic Approach to Closure Part A: Deadline to Initiate Closure 85 FR 53516, August 28, 2020.

[4] Section 257.103(f) required a certification of current compliance and that the owner or operator will remain in compliance with the applicable requirements of subpart D of part 257 at all times and a narrative compliance strategy. See the Part A Final Rule at 85 FR 53542–53544.

[5] On January 11, 2022, EPA issued proposed determinations on demonstrations submitted by facilities for extensions to the cease receipt of waste deadline per 40 CFR 257.103(f)(1) and (2), which the Agency refers to as ''Part A determinations'' or ''Part A''. The CCR Part A Final Rule (85 FR 53516, August 28, 2020) grants facilities the option to submit a demonstration to EPA for an extension to the deadline for unlined CCR surface impoundments to stop receiving waste. Facilities had until November 30, 2020, to submit demonstrations to EPA for approval.

[6] See March 15, 2022, Docket Number: EPA–HQ–OLEM–2022–0903–0039. The email included a list of units in Alabama that EPA believed were closing with waste in place with waste below the water table.

[7] See July 6, 2022, email from S. Scott Story, ADEM, to Meredith Anderson, EPA Region 4, entitled ''Meeting Follow Up'' which included two attachments: Plant Gadsden Waste Below the Water Table (WBWT) and Closure Questions and Plant Green County Waste Below the Water Table

Continued

Denial and Proposed Denial TSD Volume I for a detailed discussion of the deficiencies in ADEM's CCR permits.[8]

In addition to the concerns raised with respect to Plants Greene County, Gorgas, and Gadsden, EPA also raised concerns with respect to the proposed CCR permit for TVA Plant Colbert. On June 29, 2022, ADEM posted public notice of the draft permit for Plant Colbert. The proposed permit for Plant Colbert raised many of the same issues already being discussed with respect to the previously issued permits for CCR surface impoundments at Plants Greene County, Gorgas, and Gadsden. On September 15, 2022, EPA submitted a letter to ADEM outlining specific concerns with respect to the proposed permit.[9] On October 25, 2022, ADEM issued a CCR permit to Plant Colbert without revising the proposed permit to address EPA's concerns. In a letter dated October 27, 2022, ADEM responded to EPA's letter regarding Plant Colbert, again presenting the flawed interpretation of the requirements applicable to closing unlined CCR surface impoundments, even though EPA had rejected the State's interpretations of the Federal CCR regulations in previous discussions with ADEM. To date, the State has not taken action to revise the permits issued to Plants Greene County, Gorgas, Gadsden, or Colbert to address the deficiencies EPA noted to ADEM.

On November 18, 2022, EPA issued a final decision to deny the Gavin Plant's request to continue disposing CCR into an unlined surface impoundment after the deadline to stop such disposal has passed. EPA finalized this denial because Gavin had failed to demonstrate compliance with the Federal CCR regulations. Among other areas of non-compliance, EPA specifically noted that Gavin had closed an unlined CCR impoundment with at least a portion of the CCR in continued contact with groundwater, and without taking any measures to address the groundwater continuing to migrate into and out of the impoundment. EPA further explained that Gavin's closure of its unlined impoundments under these conditions failed to comply with the plain language of the closure standards in 40 CFR 257.102(d)(1) and (2).

Less than a month later, on December 9, 2022, ADEM gave EPA notice of its intent to sue EPA under section 7002(a)(1)(A) and (1)(B) of RCRA, alleging EPA failed to perform a nondiscretionary duty to approve the State's CCR permit program.[10] Among other things, ADEM asserted that EPA failed to comply with the statutory requirement to approve the State's CCR permit program within 180 days of the State's submittal of the permit program Application on December 29, 2021. On February 1, 2023, EPA responded to ADEM's Notice of Intent to Sue. EPA informed the State that the 180-day timeframe does not start to run until EPA determines that a State's Application is administratively complete and that, in this case, the State's Application was not complete because EPA's concerns with ADEM's interpretation of the minimum requirements of the Federal CCR regulations had yet to be resolved, and that EPA was providing an opportunity for ADEM to submit further Application information.[11] EPA further stated that the Agency could evaluate the State's program on the current record if ADEM decided not to supplement its Application with an explanation of how the State's interpretation of its regulations is at least as protective as the Federal CCR regulations, and EPA expressed concern that the current record would not support a proposal to approve the State's partial CCR permit program. Id. On February 17, 2023, ADEM responded to EPA that it did not intend to supplement the record and that EPA should evaluate its program accordingly.[12]

EPA thereafter reviewed the Application based on the information submitted to that date and on other publicly available and relevant information. Specifically, because ADEM started issuing permits for unlined surface impoundments prior to EPA approval of the State's CCR permit program, the Agency determined that the statute required some consideration of Alabama CCR permits as part of the permit program review to ensure that the State's program requires each CCR unit in the State to achieve compliance with either of the standards in RCRA section 4005(d)(1)(B). EPA reviewed several of Alabama's State CCR permits for unlined surface impoundments and provided comments on issues EPA identified with those permits as part of the Agency's evaluation of the State's Application.

On August 14, 2023, EPA proposed to deny approval of Alabama's CCR permit program (Proposed Denial).

C. Statutory Authority

EPA is issuing this final action pursuant to sections 4005(d) and 7004(b)(1) of RCRA. 42 U.S.C. 6945(d) and 6974(b)(1).

Under RCRA section 4005(d)(1)(A), 42 U.S.C. 6945(d)(1)(A), States seeking approval of a permit program must submit to the Administrator, ''in such form as the Administrator may establish, evidence of a permit program or other system of prior approval and conditions under state law for regulation by the State of coal combustion residuals units that are located in the State.'' EPA shall approve a State permit program if the Administrator determines that the State program requires *each* CCR unit located in the State to achieve compliance with either: (1) The Federal CCR requirements at 40 CFR part 257, subpart D; or (2) Other State criteria that the Administrator, after consultation with the State, determines to be ''at least as protective as'' the Federal requirements. 42 U.S.C. 6945(d)(1)(B). The Administrator must make a final determination, after providing for public notice and an opportunity for public comment, within 180 days of determining that the State has submitted a complete application consistent with RCRA section 4005(d)(1)(A).[13] See 42 U.S.C. 6945(d)(1)(B). EPA may approve a State CCR permit program in whole or in part. Id. Once approved, the State permit program operates in lieu of the Federal requirements. 42 U.S.C. 6945(d)(1)(A). In a State with a partial permit program, only the State requirements that have been approved operate in lieu of the Federal requirements, and facilities remain

(WBWT) and Closure Questions. Docket Number: EPA–HQ–OLEM–2022–0903–0065.

[8] Technical Support Document Volume III. See Volume III: Technical Support Document for the Proposed Notice to Deny Alabama's Coal Combustion Residuals Permit Program, EPA Analysis of Alabama CCR Permitting and Technical Regulations. U.S. Environmental Protection Agency, Office of Land and Emergency Management (5304T), 1200 Pennsylvania Avenue NW, Washington, DC 20460. August 2023.

[9] Letter from Carolyn Hoskinson, Director, Office of Resource Conservation and Recovery, to Mr. Russell A. Kelly, Chief, Permits and Services Division, and Mr. Steve Cobb, Chief, Land Division. EPA Comments on Proposed Permit, Tennessee Valley Authority Colbert Fossil Plant, Alabama Department of Environmental Management, Permit No. 17–11. September 15, 2022.

[10] Letter from Alabama Attorney General Steve Marshall to EPA Administrator Michael Regan, Notice of Endangerment and Intent to Sue under Section 7002(a)(1)(A) and (1)(B) of the Resource Conservation and Recovery Act. December 9, 2022.

[11] Letter from Barry Breen, Acting Assistant Administrator, OLEM, to Lance LeFleur, Director, ADEM, February 1, 2023. Email sent February 2, 2023.

[12] Letter from Lance LeFleur, Director, ADEM, to Barry Breen, Acting Assistant Administrator, OLEM, February 17, 2023.

[13] See U.S. Environmental Protection Agency. Coal Combustion Residuals State Permit Program Guidance Document; Interim Final, August 2017, Office of Land and Emergency Management, Washington, DC 20460 (providing that the 180-day deadline does not start until EPA determines the application is complete).

responsible for compliance with all remaining non-State approved requirements in 40 CFR part 257, subpart D.

The Federal CCR regulations are self-implementing, which means that CCR landfills and surface impoundments must comply with the terms of the rule even prior to obtaining a Federal permit or permit issued by an approved State, and noncompliance with any requirement of the Federal CCR regulations can be directly enforced against the facility. 42 U.S.C. 6945(d)(3). Once a final CCR permit is issued by an approved State, the terms of the State permit apply in lieu of the terms of the Federal CCR regulations and/or requirements in an approved State program. Further, RCRA section 4005(d)(3) provides a permit shield against direct enforcement of the applicable Federal standards or State CCR regulations (meaning that the permits terms become the enforceable requirements for the permittee).

D. Summary of Proposed Denial of Alabama's CCR Permit Program Application

On August 14, 2023, EPA published notice of the proposal to deny approval of Alabama's December 29, 2021, CCR permit program application. 88 FR 55220 (August 14, 2023). In the document, the Agency conducted an analysis of the Alabama CCR permit program Application, including a thorough analysis of ADEM's statutory authorities for the CCR program, as well as the regulations at Alabama Administrative Code Chapter 335–13–15, Standards for the Disposal of Coal Combustion Residuals in Landfills and Impoundments. See Unit IV.B.2.b of the Proposed Denial and TSD Volume III. EPA also reviewed Alabama's permitting regulations and recent and ongoing permit decisions ADEM was making under its CCR regulations.

In the Proposed Denial, EPA provided its interpretation of the scope of the Agency's review of a State CCR permit program under section 4005(d)(1)(B) of RCRA. That section of the statute provides in part that the Administrator ''shall approve, in whole or in part, a permit program or other system of prior approval and conditions submitted under subparagraph (A) if the Administrator determines that the program or other system *requires each coal combustion residuals unit located in the State to achieve compliance with*'' either: (1) The Federal CCR requirements at 40 CFR part 257 (*i.e.,* the Federal CCR regulations); or (2) Other State criteria that the Administrator, after consultation with the State, determines to be at least as protective as the Federal requirements. 42 U.S.C. 6945(d)(1)(B) (emphasis added). See Proposed Denial Unit IV.A (providing the Agency's interpretation of EPA's authority to review State CCR permit program applications). The Agency explained that such determinations necessarily include consideration not only of a State's statute and regulations, but what the State requires ''each CCR unit'' to do, such as in permits or orders, when such information is available prior to approval of the State program. EPA further explained that because ADEM started issuing permits prior to program approval the State's permitting decisions under its existing CCR regulations are directly relevant to understanding whether the State's program requires ''each [CCR] unit located in the State to achieve compliance with'' either the Federal regulations or alternative State standards that are at least as protective as the Federal CCR regulations as required by RCRA section 4005(d)(1)(B).

In the Proposed Denial, EPA first evaluated the terms of Alabama's permit program that, as noted above, largely mirror the Federal CCR Regulations. The Agency proposed to find that the terms of ADEM's CCR permit program regulations demonstrate that the State program includes all regulatory provisions required for approval of a partial program.[14] Thus, EPA concluded that the terms of the permit program provide ADEM with the authority necessary to issue permits that will ensure each CCR unit in the State achieves the minimum required level of protection (*i.e.,* the State has the authority to issue permits that require compliance with standards that are at least as protective as those in the Federal CCR regulations).

While EPA concluded that the statutes and regulations of the Alabama CCR permit program provide the State with sufficient authority to require compliance with the Federal requirements or State requirements that are as protective as the Federal requirements, EPA also proposed to determine that permits issued by ADEM allow CCR units in the State to comply with alternative requirements that appeared to be less protective than the requirements in the Federal CCR regulations with respect to groundwater monitoring, corrective action, and closure. EPA reviewed four permits for CCR surface impoundments in Alabama and the Agency found that those permits allow CCR in closed units to remain saturated by groundwater, without requiring adequate (or any) engineering measures to control the groundwater flowing into and out of the closed unit. See Proposed Denial Unit IV.C and the TSD Volume I (providing a detailed discussion of EPA's concerns with the closure requirements for surface impoundments at Alabama CCR permits issued to Plants Colbert, Gadsden, Gorgas, and Greene County). EPA also noted that ADEM approved groundwater monitoring systems that contain an inadequate number of wells, and in incorrect locations, to detect groundwater contamination from the CCR units. Id. Finally, EPA proposed to find that ADEM issued multiple permits that effectively allow permittees to delay implementation of effective measures to remediate groundwater contamination both on- and off-site of the facility. Id.

In addition, EPA proposed that a review of the permit records demonstrates a consistent pattern of deficiencies in the permits that is allowed to occur because of the State's flawed interpretation of the Federal CCR regulation and by a lack of oversight and independent evaluation of facilities' proposed permit terms on the part of ADEM. For the permits terms reviewed in the proposal, EPA was unable to locate any evaluation or record of decision documenting that ADEM had critically evaluated the materials submitted as part of the permit applications, or otherwise documented its rationale for adopting those proposed permit terms prior to approving the application. Because of the technical insufficiency of the permit terms as issued and the absence of any supporting rationale for why those permit terms were protective of human health and the environment notwithstanding their deficiencies, EPA could not conclude that the Alabama CCR permits are as protective as the Federal CCR regulations; therefore, EPA could not conclude that Alabama's program satisfied the requirement for approval of a State CCR permit program.

EPA discussed these general issues with ADEM and the State declined to revise the permits to be consistent with the Federal CCR regulations. ADEM also declined to demonstrate that its

[14] EPA conducted a thorough review of the terms of Alabama's CCR permit program submittal, consistent with review of submittals by states that were granted approval, and that review can be found in the Proposed Denial TSD Volume III: Technical Support Document for the Proposed Notice to Deny Alabama's Coal Combustion Residuals Permit Program, EPA Analysis of Alabama CCR Permitting and Technical Regulations. U.S. Environmental Protection Agency, Office of Land and Emergency Management (5304T), 1200 Pennsylvania Avenue NW, Washington, DC 20460. August 2023.

alternative requirements satisfy the requirement in RCRA section 4005(d)(1)(B)(ii). Instead, the Alabama Attorney General, on behalf of ADEM, stated in the Notice of Intent to Sue [15] that EPA does not have the authority to consider implementation of the State program when determining whether a State program is sufficient, and that the Agency may only look to the ''four corners'' of the State program Application when evaluating the program for approval. In the Notice of Intent to Sue, the ''four corners'' of the application are described as being public participation, guidelines for compliance, guidelines for enforcement authority, and intervention in civil enforcement proceedings. The Notice of Intent further argued that EPA could only consider implementation after approval, and then withdraw the program if issues were identified.

In Unit IV.A of the preamble to the Proposed Denial, EPA rejected ADEM's position that RCRA section 4005(d) prohibits EPA from considering the permits issued under the State CCR permit program when determining whether to approve the program and that EPA may only address such issues after the State program is approved. In Unit IV.B of the preamble to the Proposed Denial, the Agency provided a short summary of EPA's conclusions after review of the express terms of the ADEM statutes and regulations. In Unit IV.C of the preamble to the Proposed Denial, EPA identified specific permits that the Agency believes are deficient and explained the bases for EPA's proposed determination that they are inconsistent with the standard for approval in RCRA section 4005(d)(1)(B).

II. Final Action on Alabama CCR Permit Program Application

After considering comments on the Proposed Denial, EPA is taking final action to deny approval of Alabama's CCR permit program for the reasons set forth below in summary and as explained in detail in the Proposed Denial.

A. Legal Authority To Evaluate State CCR Program Applications

EPA is affirming the interpretation of the statute set forth in detail in Unit IV.A of the Proposed Denial and summarized below.

The terms and structure of RCRA 4005(d) require EPA to consider the CCR permits a State has issued under the CCR program it has submitted for EPA approval. Section 4005(d)(1)(B) requires EPA to determine whether the State program ''requires each'' CCR unit in the State ''to achieve compliance'' with either the Federal regulations at 40 CFR part 257, subpart D (*i.e.,* the Federal CCR regulations), or with alternative requirements at least as protective as the Federal CCR regulations. This direction necessarily includes Agency consideration of the existing record of what the State actually requires individual CCR units to do pursuant to the program that the state has submitted to EPA for approval. The statute provides that once a permit is in effect, the permit terms replace the regulations as the criteria with which the permitted facility must comply. See, 42 U.S.C. 6945(d)(6). Consequently, once issued, the permits effectively are the program, or at the least, a substantial component of the CCR program for the individual facilities. The Agency does not believe it can reasonably ignore such information, as it falls squarely within the ordinary meaning of what the statute expressly directs EPA to consider. The overall context of RCRA section 4005(d) further supports consideration of State CCR permits when they have been issued prior to approval of a State program. Specifically, the Agency concludes that it would not be reasonable to ignore permits issued prior to approval of a State CCR program because, as noted above, a permit issued pursuant to a Federal or approved State permit program acts as a shield to direct enforcement of the Federal CCR regulations. Once a permit is issued by an approved State, facilities are shielded from enforcement of requirements that are addressed in the provisions of the applicable State permit, even if those permit provisions are not as protective as the Federal CCR regulations. The permit shield supports EPA's conclusion that it would be unreasonable to approve a State CCR permit program where the Agency knows that permits issued by the State are not at least as protective as the Federal CCR regulations because, once the State program is approved, neither EPA nor a member of the public can take action to require the facility to comply with the minimum level of protection contemplated under the statute. Further compounding the problem is the fact that once a State CCR program is approved, RCRA requires EPA to follow a statutorily established process to either convince the State to revise the defective permits or withdraw approval of the State CCR program. During the time it takes to address the program deficiencies, the CCR units with inadequate permits would be authorized to continue to operate in a manner that the EPA believes is not as protective as the Federal CCR regulations require. Further, it would arguably be arbitrary to ignore such information when it is available given that RCRA requires State CCR programs to ensure compliance with the Federal standards, yet EPA would effectively be allowing facilities with such deficient permits to manage unlined surface impoundments in a manner that poses potential ongoing hazards to human health and the environment. In sum, EPA approval of a State program that has issued deficient permits is also EPA approval of the deficient permits; therefore, it is reasonable for EPA to consider State issued CCR permits when determining whether a State has satisfied the statutory requirements for a State CCR permit program.

A State's permitting decisions under its CCR regulations are thus directly relevant to understanding the submitted program, and to determining which statutory standard EPA must use to evaluate the State program. If a State interprets its statute and regulations to impose the same requirements found in the Federal CCR regulations—or issues permits that impose the same requirements—the relevant standard is found in subsection (B)(i). 42 U.S.C. 6945(d)(1)(B)(ii). By contrast, where the State interprets its program to impose different requirements or issues permits that impose different requirements than the Federal CCR regulations, the relevant standard is found in (B)(ii), which requires EPA to determine whether the State's alternative standards are ''at least as protective as the Federal CCR regulations.'' 42 U.S.C. 6945(d)(1)(B)(ii).

Here, there is no question that the relevant standard is found in section 4005(d)(1)(B)(ii). The State expressly acknowledged that it interprets its closure regulations to impose different requirements than those found in the Federal CCR regulations, and the State has issued permits authorizing closures that are inconsistent with the plain language of the Federal CCR regulations. Although the state disputes EPA's reliance on the ordinary meaning of the provisions, it is well-settled that in the absence of a statutory or regulatory definition, reliance on the ordinary meaning is the default. *See, Williams* v. *Taylor,* 529 U.S. 420, 431 (2000)) (''It is fixed law that words of statutes or regulations must be given their 'ordinary, contemporary, common meaning.' ''). And with EPA's recent adoption of the ''default'' dictionary

[15] Letter from Alabama Attorney General Steve Marshall to EPA Administrator Michael Regan, Notice of Endangerment and Intent to Sue under Section 7002(a)(1)(A) and (1)(B) of the Resource Conservation and Recovery Act. December 9, 2022.

definitions of infiltration and liquid into the Federal CCR regulations, there is no plausible argument that Alabama's CCR program is the same as the Federal. See ''Hazardous and Solid Waste Management System: Disposal of Coal Combustion Residuals From Electric Utilities; Legacy CCR Surface Impoundments'', 89 FR 38950, 39100 (May 8, 2024) (*e.g.,* adding a definition of ''infiltration'' to the Federal CCR rule).

The same holds true with respect to the groundwater monitoring and corrective action portions of the program. Although ADEM has not similarly acknowledged different interpretations of the groundwater monitoring and corrective action regulations, it has repeatedly issued permits that authorize groundwater monitoring systems and corrective actions that do not comply with the Federal CCR regulations.

B. EPA Review of Alabama Regulations for CCR Units

EPA is taking final action on the proposed determination that the express terms of Alabama's CCR regulations provide the State with sufficient authority to issue permits that are at least as protective as those required under the Federal CCR regulations. See Proposed Denial Unit IV.B and TSD Volume III (providing EPA's analysis of the laws and regulations for Alabama's CCR permit program). In sum, Alabama established State CCR regulations that largely mirror the language in the Federal CCR regulations in almost all respects, and, to the extent the provisions are different, the differences in the State regulations are at least as protective as the Federal CCR regulations. For this reason, the Agency believes the record would support approval of Alabama's program if the State either modifies its permits to be consistent with the Federal requirements or demonstrates that its alternative interpretations of the Federal CCR regulations ensure that State permits are at least as protective as the Federal CCR regulations.

C. EPA Review of Alabama's Permits Issued Under the State CCR Regulations

After consideration of comments, the Agency is taking final action denying Alabama's Application because EPA finds that the State's CCR permit program does not require each CCR unit in the State to achieve compliance with either the minimum requirements in the Federal CCR regulations or with alternative State requirements that EPA has determined to be at least as protective as the Federal provisions. EPA is basing this decision on the evaluations of the Alabama CCR permits for Plants Colbert, Gadsden, Greene County, and Gorgas contained in the Proposed Denial, and on Alabama's stated interpretation of the closure requirements, as discussed in the Proposed Denial and confirmed in ADEM's comments on the Proposed Denial. See Proposed Denial Unit IV.C and TSD Volume III; see also State of Alabama Comments.[16]

EPA reviewed the permits for the identified plants in part because the permits were issued to unlined surface impoundments that have closed or are closing with waste that will remain in place below the water table. For the review, EPA considered the publicly available information about the plants and CCR units at issue. EPA did not attempt to catalog every potential inconsistency between the permits and the Federal CCR regulations, but only considered the permits' consistency with certain fundamental aspects of the closure, groundwater monitoring, and corrective action requirements. The review revealed a consistent pattern of ADEM issuing permits to CCR units that fail to require compliance with significant requirements in 40 CFR part 257 that are necessary to protect human health and the environment from exposure to contamination from leaking CCR units. EPA also identified a consistent pattern of ADEM approving documents submitted by the facilities, such as closure plans, groundwater monitoring plans, and assessments of corrective measures, even though the submissions lack critical information or are otherwise deficient. ADEM also did not require the permittees to take any action to cure deficiencies in the permits even where ADEM previously identified the deficiencies and requested further information prior to issuing the final permits. The permit information further showed that ADEM issued multiple permits allowing CCR in closed units to remain saturated by groundwater, without requiring engineering measures that will control the groundwater flowing into and out of the closed unit. EPA also found that ADEM approved groundwater monitoring systems that contain an inadequate number of wells, and in incorrect locations, to monitor all potential contaminant pathways and to detect groundwater contamination from the CCR units in the uppermost aquifer. Finally, EPA determined that ADEM issued multiple permits that allow the permittee to delay implementation of effective measures to remediate groundwater contamination both on- and off-site of the facility. Overall, EPA's review of the permit records and other readily available information demonstrates a consistent pattern of deficient permits and a lack of oversight and independent evaluation of facilities' permit terms and supporting documentation. In each instance described in the proposal, EPA was unable to locate any evaluation or record of decision documenting that ADEM critically evaluated the materials submitted as part of the permit application, or otherwise documented its rationale for adopting them.

EPA confirms the proposed conclusions from the Agency's technical review of the four Alabama CCR permits in this final action, and the comments responding to some of EPA's technical evaluations of the groundwater monitoring networks and corrective action provisions in the CCR permits do not address EPA's concerns as explained below. Further, the comments do not address all of the technical issues EPA identified nor do the comments address the broader concerns with the pattern of inadequate review and approval of permit applications by ADEM. Further, Alabama specifically acknowledges in its comments that it interprets the closure requirements for unlined surface impoundments differently than EPA. Alabama's interpretation allows unlined surface impoundments to close with CCR in contact with groundwater without requiring measures to prevent groundwater from flowing into and out of the closed unit indefinitely. EPA rejects the State's interpretation because it is inconsistent with the plain language of the Federal CCR regulations and because it is not as protective of human health and the environment. Thus, Alabama's interpretation of the closure standards for surface impoundments alone supports EPA's Final Denial because approval of the State program would mean approval of the CCR permits EPA reviewed in the Proposed Denial and a permit shield would allow those CCR units to continue to operate with inadequate permits until and unless EPA withdraws the approval, at which time the Federal CCR Regulation would again directly apply to the CCR surface impoundments. Under these circumstances, EPA cannot conclude that Alabama's CCR permit program requires each CCR unit in the State to achieve compliance with either the Federal CCR regulations or with alternative State requirements that EPA

[16] Available in the docket: EPA–HQ–OLEM–2022–0903–0261.

has determined are at least as protective as the Federal CCR Regulations as required under section 4005(d) of RCRA.

III. Summary of Comments and Responses

EPA received 4,775 comments on the Proposed Denial. EPA reviewed the comments, and the Agency provides summaries of and responses to the comments below and in the Response to Comments document in the docket.

A. Legal and Policy Comments on EPA's Review of Alabama's CCR Permit Program

1. Comments Opposing EPA's Process for Reviewing Alabama's CCR Permit Program in Accordance With RCRA Section 4005(d)

Comments: ADEM and other State and industry commenters assert that EPA has interpreted the State program approval provisions of RCRA incorrectly because the Agency considered CCR permits issued by ADEM to support the Proposed Denial of the Alabama CCR permit program and that the Agency failed to adequately communicate its concerns to ADEM.

ADEM appears to disagree with EPA that the State had extensive communication with the Agency about development of the State's Application for a CCR permit program, that EPA detailed its concerns, and that ADEM declined to alter its course by continuing to issue CCR permits. ADEM also takes issue with EPA's statement in the Proposed Denial that ADEM put the Agency in the position where it had no choice but to proceed to program denial. ADEM asserts that its Application was a multi-year development project in very close communication with EPA Region 4 and Headquarters such that and that Region 4 personnel clearly indicated the final application was complete and approvable upon its submittal on December 29, 2021, and subsequent transmittal to EPA HQ on January 3, 2022. ADEM states that at no time leading up to this point in the process, during which EPA was fully aware that ADEM was reviewing and processing CCR permit applications and issuing CCR permits to the Alabama facilities did EPA identify deficiencies or recommend changes to any ADEM CCR permits. ADEM asserts that receipt of the pre-publication copy of EPA's Proposed Denial of ADEM's CCR program on August 3, 2023, was the first written identification from EPA of any alleged deficiencies in ADEM's CCR program Application, or its proposed or issued permits. ADEM acknowledges that it did receive several questions from EPA regarding specific permits to which ADEM states that it provided EPA detailed verbal and written responses. ADEM maintains that thereafter EPA made no effort to seek any further clarifications and gave no indication that any of its questions remained unanswered. Many of the technical issues discussed during the meetings with EPA reappear in the Proposed Denial and are framed in a manner to make it appear ADEM's program is non-compliant.

ADEM also maintains that it had no opportunity to correct the perceived deficiencies. According to ADEM, EPA made no direct requests of ADEM to change or modify any of its CCR program components. ADEM states that EPA expressly admits that the ADEM regulations largely mirror the Federal rules. ADEM then argues that the sole focus of EPA's program approval review is the issued permits which ADEM argues are sufficient because language in the permits largely mirror language in the Federal CCR regulations. ADEM concludes that it is a ''mystery'' exactly what the State would modify to bring the program to the level of equivalency that EPA believes to be lacking. ADEM maintains that the 200-plus page **Federal Register** notification of EPA's proposed Program Denial provides no clarity to this issue.

ADEM and other commenters note that EPA makes numerous references to 42 U.S.C. 6945(d)(1)(B), and ADEM quoted the provision in whole to point out the timing for EPA to review and act on a State CCR permit program application. ADEM states that EPA Region 4 transmitted ADEM's final permit approval Application to EPA HQ on January 3, 2022 (see Docket No. EPA–HQ–OLEM–2022–0903–0029), seemingly for the purpose of final processing. ADEM contends that, in accordance with 42 U.S.C. 6945(d)(1)(B), EPA had until July 2, 2022, to approve ADEM's CCR permit program. Instead, ADEM asserts, that what ensued was a series of discussions and reviews long after the public comment periods and issuance of the CCR permits. ADEM argues that EPA has clearly missed the statutorily mandated deadline to approve ADEM's CCR program.

ADEM states that EPA focuses on the ''such other State criteria'' noted in 42 U.S.C. 6945(d)(1)(B)(ii) as the basis to allow it to review issued permits as part of the permit approval record. ADEM argues that approach is illogical on its face when considered in the context of EPA's specific actions in this matter. Hypothetically, ADEM states it could have chosen to delay issuance of the permits until after submittal of the final program approval Application, as other States with approved programs chose to do. At that hypothetical point, EPA would have only ADEM's CCR regulations upon which to review its equivalency to the Federal program. ADEM can only assume that EPA would have then proceeded directly to program approval in this hypothetical scenario. EPA, presumably, would not have waited for ADEM to start issuing permits to observe the way it interprets its rules prior to approval. ADEM states that EPA clearly did not do this during the permitting program approvals for Oklahoma, Georgia, and Texas. ADEM argues that if EPA is not requiring other States to issue permits to observe their interpretations of their CCR regulations, it is not logical or consistent for EPA to incorporate reviews of ADEM's previously issued permits into its program approval review. ADEM argues this punishes Alabama for its proactive approach to CCR facility management.

ADEM does not agree that 42 U.S.C. 6945(d)(1)(D) authorizes EPA to review permits as part of the program approval process simply because EPA is able to consider permits when the Agency periodically reviews approved State programs. ADEM maintains that EPA suggests that there is no fundamental difference between it reviewing permits after approval and concluding program withdrawal is warranted, versus reviewing permits issued prior to approval and determining permit program denial is warranted. ADEM argues that because EPA had ample opportunity to actively participate in the permit development process, to avail itself of the public review process, and to formally outline its permitting concerns to ADEM prior to permit issuance, the Agency cannot use permits as the basis for program denial because EPA stayed silent about permitting concerns until after the permits were issued (years after in most cases). ADEM maintains EPA's permitting concerns did not arise until after the permits were issued and that EPA did not act in good faith. ADEM further contends that even if permit reviews were an appropriate part of the program approval process, the State objects in the strongest possible terms to EPA's waiting until the program approval process to object. ADEM argues EPA's approach makes it difficult for ADEM to respond to EPA's concerns, and the State does not believe Congress intended for EPA to approach State permit program approval in this manner.

ADEM argues that EPA ultimately proposed to deny ADEM's Application,

not because ADEM's criteria were deficient or its authority to implement and enforce those criteria were somehow lacking, but rather because EPA believes that proposed and final permits in Alabama ''contain permit terms that are neither the same as, nor as protective as, the Federal CCR regulations.'' ADEM maintains that nothing in the WIIN Act or EPA's ''Coal Combustion Residuals State Permit Program Guidance Document: Interim Final'' (82 FR 38685, August 15, 2017) (''Guidance Document'') indicates that States can, should or must submit actual permits to EPA as part of the review and approval process.

ADEM notes that to date, EPA has reviewed and approved (at least in part) three other State CCR permit programs—83 FR 30356 (June 28, 2018) (Oklahoma); 85 FR 1269 (January 10, 2020) (Georgia); and 86 FR 33892 (June 28, 2021) (Texas). ADEM maintains that those States did not submit individual permits as part of their applications, nor did EPA ask to review particular permits, or any permit language that any of the States contemplated using after their programs were approved. By way of example, in Oklahoma, EPA noted in its approval decision that four of the five CCR units subject to the Federal CCR regulations in the State were already permitted and, once the State's program was approved, would be subject to the State's CCR regulations. Instead of reviewing any of those permits, EPA focused its review on the State's CCR regulations and the ''four corners'' of its legal and regulatory framework—public participation opportunities in the permitting process, guidelines for compliance, guidelines for enforcement authority, and intervention in civil enforcement proceedings. ADEM further states that until now, EPA performed the same scope and level of ''four corners'' review in each State that submitted an application. According to EPA, the WIIN Act ''directs EPA to determine that the state has sufficient authority to require compliance from all CCR units located within the state'' and ''[t]o make this determination EPA evaluates the State's authority to issue permits and impose conditions in those permits, as well as the State's authority for compliance monitoring and enforcement.'' In short, ADEM argues that EPA's review is—and has been—limited to a State's authority, not to any particular exercise of such authority for individual permit decisions.

ADEM states that EPA claims that it would be illogical not to review individual permit language because EPA would then be required to approve a State permit program that EPA believes it likely will eventually have to withdraw. ADEM argues that this ignores EPA's role in the State permitting process. ADEM argues that if EPA believes a State has drafted a CCR permit that deviates from applicable regulatory requirements, EPA would have ample opportunity to comment or object, consistent with its general oversight duties. Moreover, if a State finalizes a permit in a manner that does not resolve legitimate concerns (if any) raised by EPA, then EPA would have the same appeal options as any other interested party. Indeed, this opportunity for engagement and dispute resolution is precisely what EPA presented in its Guidance Document for ''adequate public participation.''

ADEM argues that the Federal CCR regulations do not specify permit terms, so there is no regulatory basis for EPA to compare any particular State permit language or find it to be more or less protective. ADEM further asserts that EPA has not proffered or finalized any particular permit terms that could serve as a basis for comparison and that, to the contrary, EPA's Federal permit program proposal would specifically allow a permit writer—in its discretion—to incorporate the regulatory criteria by ''re-writing them into the permit or incorporating them by reference.'' ADEM states that it followed this approach in its permits but that EPA still found fault with the permits. According to ADEM, even if EPA had the authority to assess permit language as part of its review of a State permit program, there is no rational basis for EPA to reject ADEM's permit language since it mirrors what EPA has proposed for its own permit writers.

Response: EPA does not agree that the Agency's approach to review of the Alabama's CCR permit program was in error. In addition, as the record shows EPA did inform ADEM of the Agency's concerns with the State's interpretation of the Federal CCR regulations before signing the Proposed Denial. See TSD Volume II.

As explained in detail in the Proposed Denial, section 4005(d)(1) of RCRA directs EPA to determine whether a State program ''requires each'' CCR unit in the State ''to achieve compliance'' with either the Federal standards or an alternative State program at least as protective as the Federal CCR regulations. See Proposed Denial, 88 FR 55220, 55226 (August 14, 2023). Given that statutory directive, EPA concludes that it cannot ignore permits that are available prior to approval of a State CCR program, as in this case. Id. ADEM implies that EPA is acting in an unreasonable manner by taking this approach, but in fact it would be both unreasonable and arbitrary and capricious to ignore issued permits since they are the best evidence of whether a State program does in fact require each CCR unit in the State to achieve compliance with the Federal CCR regulations or State standards that are at least as protective as the Federal regulations.[17]

EPA also disagrees that the Agency is treating ADEM unfairly. ADEM complains that EPA is evaluating the permits the State issued and asserts that EPA is treating Alabama differently than it treated Oklahoma, Georgia, and Texas when it approved those partial State CCR permit programs. ADEM is incorrect that EPA is treating Alabama differently. As ADEM noted, two of the three approved States had not issued permits at the time the Agency approved their programs, but the Agency did evaluate Oklahoma's final permits as part of its program review and EPA did not identify the persistent problems the Agency found when it reviewed Alabama's. In addition, for Alabama as for other States, EPA has incorporated a consideration of both final *and* proposed State permits as part of the Agency's review of initial State CCR permit program Applications submitted for a completeness determination because of concerns with implementation of certain provisions of the Federal CCR regulations with respect to unlined CCR surface impoundments. In fact, EPA recently sent a letter to the State of Wyoming indicating the Agency could not determine the State's application to be complete due to a number of issues including a lack of clarity in how the State interprets the Federal CCR closure performance standard.[18] The Agency is also in active discussions with other States seeking program approval (Arizona, Arkansas, Florida, Illinois, Indiana, Kansas, Louisiana, Maryland, Michigan, Mississippi, Missouri, Montana, Nebraska, North Carolina,

[17] EPA detailed the interactions between EPA and Alabama in the Proposed Denial. See Proposed Denial Section III.E. With respect to ADEM's suggestion that EPA surprised the State with its approach to review of the State's CCR program and the Agency's application of the Federal CCR regulations, there is information in the record to the contrary. Specifically, EPA issued a letter to ADEM concerning the Colbert facility on September 15, 2022, and the Agency sent to ADEM a list of unlined CCR surface impoundments in the State with waste below the water table on March 15, 2022.

[18] Letter from Barry Breen, Principal Deputy Assistant Administrator for the Office of Land and Emergency Management to Mr. Todd Parfitt, Director of the Wyoming Department of Environmental Quality. December 5, 2023.

North Dakota, Ohio, Pennsylvania, Tennessee, Utah, Virginia, West Virginia, Wisconsin, Wyoming) and the Agency intends to consider permits as part of its review of those programs.

ADEM also argues that the statute requires EPA to delay review of the State's CCR permits until after EPA has approved the State program. But the statute does not mandate that approach and, further, that approach would be unreasonable under the current situation. As noted in the Proposed Denial, it would be illogical for EPA to approve a State CCR permit program that the Agency believes it likely will eventually have to withdraw. Moreover, withdrawing a State CCR permit program takes significant time, during which CCR units in the State could continue to operate—or new permits could be issued—under conditions that are less protective than those required in the Federal CCR regulations. Third, if EPA were to approve Alabama's program now (*i.e.,* after the deficient CCR permits were issued), the Alabama CCR program, including the facility-specific permits, would apply in lieu of the Federal CCR regulations pursuant to RCRA section 4005(d)(3)(B), preventing enforcement of the Federal standards in the interim. None of these outcomes is consistent with RCRA's requirement that each CCR unit be subject to a minimum level of protection established in the Federal CCR regulations.

EPA also does not agree that the time it takes a State to satisfy the requirements to develop a complete permit application changes the Agency's responsibility under the statute to consider the available and relevant information when making its decision. ADEM incorrectly suggests that EPA is bound by supposedly clear representations from EPA Region 4 staff indicating to ADEM that the State's application was complete upon submission of the Application on December 29, 2021, and because the regulatory provisions of the State's program mirror the regulatory provisions in the Federal CCR Regulations.[19] As an initial matter, Region 4 has not been delegated the authority to make a completeness determination and EPA does not provide oral completeness determinations. In fact, the Agency did not determine at that time or since that the State's application was complete because the Agency was, prior to that time, aware of facilities in Alabama and other States that were planning to close or had closed unlined surface impoundments while leaving waste below the water table. EPA discussed with ADEM the Agency's concerns with the State's implementation of the closure standards for unlined surface impoundments, but the State maintained that its interpretation of the Federal CCR regulations was correct and EPA's interpretation of the Federal closure standards for unlined surface impoundments was wrong. In addition, as EPA reviewed ADEM's permits in more detail, EPA identified additional concerns with the State's implementation of the program with respect to groundwater monitoring systems and corrective action. As a result of these discussions, on July 7, 2022, EPA informed ADEM via telephone that the Agency was putting on hold its completeness review of ADEM's CCR permit program Application until Alabama demonstrated to EPA that the State was implementing its program consistent with the Federal CCR regulations. Further, EPA explained to ADEM that it was exploring options for actions to take at the Federal level with respect to both the CCR permit program Application, and at specific facilities where there are outstanding concerns.

EPA disagrees that the Agency is prohibited from considering the State's proposed CCR permits as part of the CCR permit program review process and disagrees that EPA is limited to reviewing State permits during the State's permit issuance process. As an initial matter, it is not possible for EPA to review even a fraction of the State permits that are issued to CCR units. But even if it were possible for EPA to review all State CCR permits, RCRA does not require it. ADEM cites nothing to support its contention that EPA can only review a State permit during its issuance. Instead, RCRA provides EPA with authority to review CCR permits issued by a State at any time. As discussed above, the mandate to determine whether the State program ''requires each'' CCR unit in the State ''to achieve compliance'' with either the Federal CCR regulations or with standards at least as protective as the Federal CCR regulations necessarily includes Agency consideration of State permits, when such information is available prior to approval of the State program. See, 42 U.S.C. 6945(d)(1)(B) and the statute expressly provides that EPA may review State permits ''as the Administrator determines necessary'' as part of a State program review. RCRA section 4005(d)(D)(i)(I). In fact, as ADEM recognizes, RCRA section 4005(d)(1)(ii)(II) authorizes EPA to evaluate a State program, including permits issued under the program, as part of EPA's required periodic program review of approved State programs; and the statute does not limit the scope of the Agency's periodic review to only the permits on which the Agency commented during the State's permit issuance process. For these reasons, it is appropriate for EPA to consider permits issued under a State CCR permit program as part of an initial program review, regardless of whether EPA submitted comments on those permits in the State permitting proceeding.

EPA also disagrees that the Agency has not told ADEM what it must do to address the Agency's concerns. All States were on notice when EPA published proposed denials of Part A extension requests and when the Agency informed States with unlined surface impoundments that EPA was concerned about compliance with the closure standards. EPA has also directly communicated with Alabama as set forth in the Proposed Denial, and the Agency's comments on the Colbert permit explained many of EPA's concerns with Alabama's interpretation and implementation of its CCR permit program. In any case, to the extent there remains confusion, ADEM's permits misapply the Federal closure standards for unlined surface impoundments, ADEM is not adequately evaluating groundwater monitoring networks in proposed permits to ensure that those networks are configured to properly detect contamination coming from permitted units, and ADEM is not ensuring timely implementation of corrective action measures after contamination is detected. EPA summarized its concerns with ADEM's implementation in the Proposed Denial at 88 FR 55230 where EPA explained that it had identified a consistent pattern of ADEM issuing permits to CCR units that fail to demonstrate compliance with fundamental requirements in part 257, without requiring the permittees to take specific actions to bring the units into compliance. EPA went on to say that it

[19] EPA provided in the proposed rule a summary of calls, emails and letters where EPA brought up specific concerns with the State's CCR permit program and specific permit conditions at facilities. See Proposed Denial, 88 FR 55223, 55224 (August 14, 2023). ADEM's account of the situation differs in some regards to EPA's, and the Agency stands by its rendering of events. But even if the State's characterization of the facts leading up to the proposed decision were accurate, those facts do not change EPA's responsibility under the statute. EPA cannot ignore information indicating that a State program is not as protective as the Federal CCR program, no matter the timing of that information. If as here, the information is available prior to program approval, the information is relevant to program approval and EPA may consider that information.

also identified a consistent pattern of ADEM approving documents submitted by the facilities, such as closure plans, groundwater monitoring plans, and assessments of corrective measures, even though the submissions lacked critical information or are otherwise deficient. ADEM also did not require the permittees to take any action to cure deficiencies in the permits even where ADEM previously identified the deficiencies and requested further information prior to issuing the final permits. Further, EPA explained that it was proposing to determine that ADEM issued multiple permits allowing CCR in closed units to remain saturated by groundwater, without requiring engineering measures that will control the groundwater flowing into and out of the closed unit. See, 40 CFR 257.102(d). EPA also stated that ADEM approved groundwater monitoring systems that contain an inadequate number of wells, and in incorrect locations, to monitor all potential contaminant pathways and to detect groundwater contamination from the CCR units in the uppermost aquifer. See, 40 CFR 257.91. Finally, EPA said it proposed to determine that ADEM issued multiple permits that effectively allow the permittee to delay implementation of effective measures to remediate groundwater contamination both on- and off-site of the facility. See, 40 CFR 257.96 and 257.97. Overall, EPA's review of the permit records and other readily available information documented a consistent pattern of deficient permits and a lack of oversight and independent evaluation of facilities' proposed permit terms.

ADEM's comments on the Proposed Denial do not address these systemic issues in any substantive manner or explain how it will proceed to ensure that CCR permits are at least as protective as the Federal CCR regulations and that the records contain all the information necessary for EPA and the public to evaluate the terms of the permits for compliance with the standards. Instead of addressing these issues, ADEM relies on a narrow legal argument that its interpretation of EPA's regulations governs, which EPA addresses elsewhere.

For all these reasons, EPA is taking final action to deny approval of Alabama's CCR permit program.

Comment: ADEM stated that it is aware that EPA received a joint letter, dated March 11, 2022, from the Sierra Club and the Southern Environmental Law Center. The letter transmits several extensive technical reports prepared by paid third parties. ADEM only learned of this letter months after EPA received it and had to specifically request a copy of it. The letter seeks to provide EPA with a detailed ''outline [of] the legal basis for denying ADEM's State CCR permit program'' and includes as attachments several reports contracted for by the groups critiquing various CCR permits issued by the Department. ADEM states that it is unclear what influence this letter had on EPA's decision-making process for Alabama's approval application, but the timing of its receipt by EPA falls directly between the time of EPA's receipt of Alabama's final program approval application, and the May through July conference calls described above. Also, there is a clear similarity between the technical concerns raised in the letter and those raised by EPA in the months following ADEM's final program application. Furthermore, EPA's actions after receiving this letter appear to follow the playbook for agency action promoted by the advocacy groups. ADEM, and Alabama's citizens, are due an explanation why this letter does not appear in the official EPA docket for the proposed denial.

Response: ADEM's suspicions that a letter from Environmental groups somehow influenced EPA are baseless. Well before the submission of the March 11, 2022, letter, EPA had made it clear to ADEM that EPA had concerns about how ADEM was implementing the regulations, especially in regard to CCR units closing with waste in place where the waste remained in contact with groundwater. In fact, on January 11, 2022, EPA emailed ADEM copies of the first set of proposed Part A decisions, including the proposed decision for the General James M. Gavin Power Plant in Cheshire, Ohio. Three of the proposed decisions addressed facilities that had one or more unlined surface impoundments with CCR continually saturated by groundwater, and that intended to close the units without addressing that situation. EPA explained that in each case, the facility had failed to demonstrate that the closure of these units complied with the plain language of the performance standards in § 257.102(d)(2), which include addressing infiltration into and releases from the impoundment, and eliminating free liquids, given that groundwater appeared to be continually saturating the unlined impoundment. EPA went on to send a list of CCR units with WBWT that had indicated they would be closing with waste in place and scheduled meetings with ADEM and other Region 4 States to discuss these issues. The letter ADEM is concerned with was not placed in the docket because it was not considered by EPA during development of the proposed denial.

Comment: Commenter ADEM states that EPA explicitly acknowledges that it has not conducted a complete or detailed review of the facility files or background information used by ADEM to issue its CCR permits. Commenter states that despite this, EPA drew unfounded conclusions about the reviews and analysis conducted by the State prior to issuing the permits. Commenter states EPA ignores the facts, including the fact that ADEM issued unilateral administrative orders in 2018 and 2019 to each Alabama CCR facility requiring the collection and submission of detailed and voluminous information related to detailed site characterization and assessment for each unit at each facility, detailed information related to site geology and hydrogeology, detailed information related to existing contamination, development of groundwater remediation plans, and other items.

Commenter states that EPA also ignored that ADEM required each facility to submit detailed permit applications for each unit/facility including site history, unit construction and operation, planned closure methods and procedures, and planned corrective measures to address groundwater contamination among other items. Commenter states that these applications were subjected to detailed review and evaluation by ADEM's staff of multiple Professional Engineers (P.E.s) and Professional Geologists (P.G.s) with extensive professional experience evaluating environmental assessments, groundwater monitoring systems, environmental permit applications, and corrective action systems. Commenter states that following these extensive reviews, the facilities were required to revise their applications and provide additional information to address identified deficiencies. Commenter states that EPA's review was perfunctory in nature and that the Agency made numerous flawed conclusions that essentially dismiss the dedicated work by the many seasoned professionals involved in development of the permits. Commenter asserts that EPA is not living up to the standard that is expected and that should be demanded from a seasoned, science-based government agency responsible for protecting human health and the environment through the application of sound science and engineering.

Response: ADEM makes much of the point that EPA states in the Proposed Denial that the Agency did not do a complete review of the permits. EPA did

do a thorough review of the portions of the permits discussed in the Proposal. The purpose of this statement was merely to be clear that EPA had not reviewed every provision of each of the permits, so neither the State nor the facilities should assume that EPA has identified all the potential problems with the permits. In any case, the problems EPA did identify with the four permits reviewed were alone sufficient to support the Proposed Denial, and ADEM does not explain how further analysis of the permits would have changed EPA's conclusions about the provisions that were reviewed. Specifically, EPA reviewed three areas that showed consistent problems in facilities' Part A extension requests—closure, groundwater monitoring, and corrective action—and the Agency documented the findings in the Proposed Denial. EPA found that the permits were neither consistent with, nor as protective as the Federal CCR regulations with respect to all three areas reviewed.

The Agency also disagrees that it should defer to the work of States or facilities and their P.E.s and P.G.s when reviewing permits. EPA has significant technical expertise to evaluate a permit record and determine whether the record is complete and demonstrates that the permit is at least as protective as the Federal standards. EPA must follow the facts. This demands that the Agency conduct its own evaluation and reach its own conclusions, and not uncritically adopt P.E. and P.G. assessments from other parties. This is the case regardless of those individuals' own professionalism. To do otherwise for fear of causing offense, would be to abrogate the Agency's oversight role.

Further, as noted below in response to several technical comments, ADEM and facilities provide new explanations for actions taken in the permits that they say justify the permit terms. But such comments make EPA's point. That additional explanations are necessary demonstrates the insufficiency of the preexisting permit records with respect to both groundwater monitoring networks and corrective actions. In any case, the technical comments on the Proposed Denial do not address all the technical issues EPA raised and none of the comments satisfactorily explain how the closure requirements were met. In addition, even when the comments address issues raised in the Proposed Denial, those comments do not supplement or substitute for enforceable permit conditions and, therefore, the comments do not demonstrate that the permits themselves are actually in compliance with the Federal CCR regulations or more stringent State requirements.

2. Comments in Support of EPA's Process for Evaluating Alabama's CCR Permit Program

Comment: Environmental and public health commenters state that ADEM's operation of its State CCR program and its repeated failure to protect Alabama's communities and clean water from dangerous CCR disposal and pollution establish that ADEM's application fails the protective standards contained in the WIIN Act. Commenters state that ADEM has violated the Federal CCR regulations across Alabama by approving the cap in place closure of unlined leaking CCR lagoons that will pollute and threaten Alabama's clean water, rivers, and communities forever. Commenters state that EPA's careful analysis shows ADEM has issued permits that would allow Alabama utilities to store millions of tons of CCR in groundwater in perpetuity, and the commenters cite a memorandum from a licensed hydrogeologist who studied the Alabama sites for years and whose analysis is consistent with EPA's. Commenters conclude that EPA's Proposed Denial upholds the law and protects Alabama's people and water from the illegal permitting practices of ADEM. Only the vigorous enforcement of the Federal CCR regulations will provide Alabama the protections that it deserves, and ADEM has demonstrated that it cannot and will not follow the law and protect the State, its communities, and its clean water.

Response: EPA agrees that the Alabama CCR program is not as protective as the Federal CCR regulations, and the Agency is taking final action to deny approval of the State program.

Comment: Several commenters strongly support the proposed decision of EPA to deny Alabama's request for approval of its Application. Commenters state that ADEM's CCR permit program fails to meet the standard for EPA authorization in significant ways. Commenters state it is likely that EPA will soon be required to approve or deny additional State CCR permit program applications and it is essential that EPA apply the same strong reasoning, and fidelity to the Federal CCR regulations evidenced in the proposed Alabama denial to any new requests to operate State CCR programs. Commenters state that there will be scores of permits issued that are not as protective as the Federal CCR regulations and consequently harm human health and the environment unless EPA maintains the same approach to reviewing other State programs that it took with Alabama.

Commenters state that allowing permit programs like ADEM's to operate is particularly damaging because once an approved State issues a permit, the permitted facility is shielded from enforcement of any requirement other than the provisions contained in the State permit. Permit deficiencies such as those EPA identified in Alabama must be resolved now, before a State is approved to operate in lieu of the Federal program. Commenters further argue that this is a matter of considerable urgency because there is no quick fix once an approved State issues a permit that fails to protect health and the environment. Commenters note that EPA has the authority to withdraw a deficient State permit program, but that the statutorily mandated process takes considerable time. Commenters state that they conducted a limited analysis of State permitting at sites and that it reveals that States are regularly permitting companies to dispose of CCR in contact with groundwater, even where there is clear evidence that the ash is leading to unsafe levels of contamination. Commenters state that they also found instances where States are applying a risk-based analysis to corrective action—an approach clearly prohibited by the Federal CCR regulations—as well as at least one State imposing groundwater monitoring requirements that are ineffective and significantly less robust than those required by EPA. Commenters further argue it is essential for EPA to provide oversight now, before a State applies for program authorization. Commenters state that EPA enforcement actions at facilities that are violating the prohibition against closure with CCR in groundwater, operating deficient groundwater monitoring systems, and selecting impermissible and ineffective groundwater remedies are needed at many facilities nationwide. Commenters assert that EPA must proactively communicate and demonstrate to States that their permitting cannot circumvent Federal requirements because noncompliance is widespread, and plants are initiating and completing illegal closures at a rapid pace pursuant to the Federal requirement to close unlined units.

Commenters state that denial of Alabama's CCR permit program helps to protect Alabama, its residents, and its clean water from CCR pollution and dangerous CCR storage when ADEM will not. Commenters maintain that ADEM has demonstrated that it will authorize unlawful CCR storage and

pollution to continue indefinitely and that it will not enforce the law and the Rule's protections against the powerful utilities in Alabama. Commenters state that, by denying ADEM's application, EPA will prevent ADEM from being able to put in place CCR regulations permits that violate the Federal CCR regulations and will ensure that citizens and EPA can enforce the Federal CCR regulations and see that Alabama communities receive its protections. Commenters maintain that EPA will also communicate to other State agencies, utilities, and communities across the nation that the protective standards of the Federal CCR regulations will be upheld.

Commenters agree with EPA's draft denial stating that RCRA establishes clear standards that States must meet to receive approval for a State CCR permit program. Specifically, RCRA requires ''each CCR unit located in the state to achieve compliance with'' either the Federal criteria in part 257 or other State criteria that ''are at least as protective as'' the Federal regulations. Commenters agree that EPA demonstrated in its Proposed Denial that it is not enough that State regulations parrot the language of the Federal CCR regulations; they must adhere to its substance. Commenters state that EPA's examination of permits issued by ADEM reveals that the State is implementing its regulations in a manner that is significantly less protective than the plain language of the Federal CCR regulations. Commenters state that the permits issued by ADEM impose requirements that are less protective than the Federal CCR regulations with respect to groundwater monitoring, corrective action, and closure. Commenters state that, for example, ADEM has issued multiple permits allowing CCR in closed units to remain saturated by groundwater, without requiring any engineering measures to control the groundwater flowing into and out of the closed unit. Thus, according to the comments, ADEM is allowing multiple regulated facilities to violate one of the most critical requirements of the Federal CCR regulations.

Response: EPA agrees that the Alabama CCR program is not as protective as the Federal CCR regulations and the Agency is taking final action to deny approval of the State program. EPA agrees that its approach to evaluating State CCR programs should be similar in similar circumstances, and so it intends to consider proposed and final State CCR permits when determining whether to approve all State CCR permit programs as it has in evaluating the Alabama program.

Comment: Commenter states that its members rely on good quality water in the Black Warrior River for drinking, fishing, swimming, hunting, and boating. The commenter agrees with EPA's preliminary determination that the State's application for and implementation of its own CCR program is significantly less stringent than the Federal minimum standard requirements and does not meet the standard for approval under RCRA. Commenter states that CCR has been mismanaged by Alabama Power Company for roughly 100 years and improperly regulated by ADEM for nearly 40 years, allowing toxic contamination of groundwater, streams and rivers at Plant Gorgas, Plant Miller, and Plant Greene County (all located within the Black Warrior River watershed). Commenter supports denial of Alabama's CCR permit program and hope it forces Alabama Power to properly dispose of its toxic CCR waste away from water resources. Commenter states proper disposal of CCR is critical to the health and success of future generations of humans and wildlife that depend on the river. Commenter maintains that across the Southeast, States like Virginia, North Carolina, and South Carolina have required utilities to clean up CCR contamination, with over 250 million tons of hazardous CCR being excavated from unlined pits near waterways. These materials are either recycled or disposed of in modern, lined landfills away from rivers. Commenter states that even Alabama Power's sister company, Georgia Power, has recycled or properly disposed of over 65 million tons of ash. Commenter states EPA's decision makes clear that Alabama can no longer be the outlier and must implement similar safeguards. Commenter states the following problems exist with ADEM's permits: (1) The Draft Permits and Closure Plans, as written, do not require the Ash Pond facilities to come into compliance with Federal and State CCR regulations; (2) The Draft Permits and Closure Plans allow the continued location of the Ash Ponds in areas where they cannot be permitted by law; (3) The Draft Permits and Closure Plans should require and include more information about the extent of contamination from the Ash Ponds; (4) The Draft Permits and Closure Plans do not consider contamination that has migrated offsite, or the remediation of that contamination; (5) The Draft Permits and Closure Plans do not consider the long-term maintenance of artificial caps; (6) The Draft Permits and Closure Plans do not consider responsibility for the facilities after the 30-year post closure care period; (7) The Draft Permits and Closure Plans lack key modeling information; (8) ADEM unnecessarily grants the Company variances from including boron as an Appendix IV Monitoring parameter; (9) Neither ADEM nor the Company provide any information about alternative closure methods; therefore, the public is limited in its knowledge about closure techniques that would be more protective of human health and the environment; and (10) Alabama Power's closure plans approved under ADEM's regulatory program allow CCR to remain in groundwater, in violation of the Federal CCR regulations.

The commenter states that the list is representative, but not exhaustive of all the deficiencies with the permits ultimately issued by ADEM. Because ADEM's application does not meet the standards established under RCRA and because the permits issued under ADEM's non-approved CCR program are also deficient, the commenters believe that EPA has made the correct decision to deny the ADEM's Application to manage the State's CCR program.

Response: EPA agrees that Alabama's permits are not as protective as the Federal CCR regulations and EPA is taking final action to deny approval of the program. The remainder of the comment addresses issues that are outside the scope of the Final Decision and no response is required.

3. EPA Should Defer to State's Interpretation of the Federal CCR Regulations

Comments: Several comments state that the 2017 Guidance Document and the information required for the Oklahoma, Georgia, and Texas permit programs applications do not require States to provide EPA with issued permits or proposed permits if the State begins to implement the State permit program prior to EPA approval. Commenters maintain that State agencies should be allowed reasonable latitude to interpret regulations, particularly where EPA guidance has not been issued. Commenters recommend that EPA review all State permit programs with the same criteria and in accordance with the Interim Final Guidance, RCRA 4005, and WIIN Act section 2301.

Commenters disagree that Alabama's interpretation of the Federal CCR regulations is flawed. Commenters argue that because the Federal regulations are self-implementing in all but three States (Oklahoma, Georgia, and Texas) that

EPA should leave interpretation up to the regulated community and the States who have received State CCR permit program approval from EPA. Commenters state that EPA has no plans to provide implementation guidance through rulemaking but will instead provide guidance to States seeking permit program approval. Commenters maintain that EPA has not provided formal comprehensive written guidance on implementation to States or the regulated community.

Commenters maintain it is unreasonable and unrealistic for EPA to direct States to EPA's Part A determinations for guidance on the correct interpretation of the plain language of the Federal regulations. Commenters argue it is not reasonable for EPA to provide a comprehensive interpretation of Federal regulations by comparing one facility's final Part A determination in one State to another facility's proposed Part A decision (that includes different hydrologic and geologic conditions) in a different State. Commenters argue that States should not be forced to look at EPA decisions in other States to determine how to implement Federal regulations within their own State. Commenters argue that States do not have the resources to review several proposed and one final Part A decisions (and Part B decisions) to evaluate how EPA may interpret Federal CCR regulations in their own State.

Commenters argue that the requirements of the Federal CCR regulations are subject to interpretation and the plain language of the Federal CCR regulations can reasonably be interpreted in more than one way as the interpretation often depends on site-specific circumstances. Commenters state that in March 2022, comments regarding proposed Part A determinations noted that the proposed decisions seek to clarify several interpretive issues involving the closure of unlined CCR surface impoundments. Commenters argue that the clarifications are a significant shift in policy from long standing regulations, guidance, and interpretations of closure requirements including those pertaining to the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) remedial actions, RCRA subtitle C closure actions, RCRA subtitle D closure actions for sanitary landfills and open dumps, and more recently for RCRA subtitle D CCR unit closures. Commenters urged EPA to employ a more formal approach (*i.e.,* rulemaking, policy memo, guidance document) to establish such interpretations if EPA finalizes these determinations and thus makes a substantial shift in the interpretation and policies for closure requirements for CCR or other units. Commenters argue that absent formal comprehensive written guidance, State agencies should be allowed latitude to interpret the regulations.

Response: EPA does not agree with the comments suggesting EPA should defer to the varying interpretations of the Federal CCR regulations of the 50 States and the regulated community until EPA has revised the Guidance Document or revised the CCR regulations. EPA is aware of no authority that supports—or requires—such an approach and the comments do not provide any. Further, such an approach would lead to inconsistent interpretations of the regulations and, as the Agency is seeing here, interpretations that are leading to State permits that are not as protective as the Federal CCR regulations.

EPA also disagrees that directing States to the Part A and Part B determinations is in any way inappropriate or unreasonable. At the same time EPA was reviewing Alabama's and other States' CCR permit program applications, EPA was reviewing requests for Part A extensions of the deadline to cease receipt of waste to unlined surface impoundments and Part B submissions for alternate liner demonstrations. When conducting those reviews, the Agency was required to review facility compliance with the Federal CCR regulations as part of the decision-making process. What EPA found during the Part A and Part B reviews was significant noncompliance with the requirements of the Federal CCR regulations, particularly noncompliance with the closure requirements for unlined surface impoundments, the groundwater monitoring network requirements, and the corrective action requirements.[20] As explained in the Proposed Denial, the proposed Part A determinations and comments on those determinations brought to light the extent to which some States and members of the regulated community were not interpreting the regulations correctly, particularly with respect to the closure requirements for unlined surface impoundments. 88 FR 55229. EPA thereafter informed States and facilities with unlined surface impoundments of the Agency's concerns and directed them to the Part A determinations for the guidance on implementing the rules. The proposed and final Part A decisions were internally consistent and available to States to explain EPA's concerns with CCR permits, and all States with unlined surface impoundments then had detailed descriptions of EPA's concerns.

EPA further disagrees that the litigation on the Agency's interpretation of the closure requirements means the Agency must approve or defer decisions on State programs that the Agency believes are less protective than the Federal CCR regulations. As noted above, EPA disagrees with the comments against EPA's interpretation of the closure requirements and those issues are being litigated. In this case, EPA is simply applying its consistent position on the matter. The fact that that a similar dispute over the meaning of EPA's regulations is occuring in an unrelated action is no reason for EPA to refuse to apply this position or to act inconsistently with its stated position. Further, no commenter has explained how it would be reasonable to for EPA to approve a State program that the Agency concludes does not in fact require each CCR unit to comply with standards at least as protective as Federal CCR regulations. EPA has not identified a rationale either. Furthermore, as noted above, EPA also proposed to deny approval of Alabama's program due to deficiencies in the groundwater monitoring networks and corrective action requirements and a general pattern of inadequate review and documentation of CCR permit applications. 88 FR 55230. Thus, even if EPA did not consider the closure issues, the Agency would still be unable to conclude that Alabama's CCR program requires each CCR unit to achieve at least the minimum level of protection.

EPA also disagrees that it is changing long standing regulations, guidance, and interpretations of closure requirements, including those pertaining to the CERCLA remedial actions, RCRA subtitle C closure actions, RCRA subtitle D closure actions for sanitary landfills and open dumps, and more recently for RCRA subtitle D CCR unit closures. All of these arguments related to closure are addressed in the Gavin Decision [21] and the litigation on the closure standards, and EPA is maintaining the interpretations set forth therein. Further, EPA disagrees that it must or should wait to rely on the Agency's interpretation of the closure requirements until the litigation is

[20] This web page contains links to Part A decisions that EPA proposed in 2022 and 2023. It also links to the Gavin final decision: CCR Part A Implementation: *https://www.epa.gov/coalash/coal-combustion-residuals-ccr-part-implementation.*

[21] Final Decision: Denial of Alternate Closure Deadline for General James M. Gavin Plant, Cheshire, Ohio, EPA–HQ–OLEM–2021–0100 November 22, 2022.

resolved or wait to consider CCR permits as part of the state permit program review until the Agency revises the Guidance or regulations. EPA has identified a problem and it would not be reasonable to ignore information relevant for determining whether a State CCR program is sufficiently protective simply because the Guidance has not caught up to the facts. Finally, as noted above, EPA has now revised the CCR regulations to include new definitions that make clear Alabama's CCR program is inconsistent with and less protective than the Federal program with respect to closure of unlined surface impoundments.

4. EPA Should Consider CCR Permits in Its State Program Approval Process

Comment: Commenter agrees with EPA's approach to considering State CCR permits when reviewing State CCR permit programs and states that Georgia is an instructive example of why it is important to take this approach. Commenter states that Georgia had not issued State CCR permits when EPA approved the State's CCR permitting program in January 2020, so the Agency did not have the benefit of knowing how the State would administer its State regulations. Commenter states that since EPA approval, Georgia issued a proposed permit in July 2021 for a CCR impoundment at Georgia Power Company's Plant Hammond, which would authorize closure with waste left in the impoundment and installing a cap which would leave CCR deep in groundwater forever. Commenter states that Georgia's disregard of the plain language of the Federal CCR regulations led to EPA writing Georgia Environmental Protection Division (EPD) concerning its permitting practices. Commenter states that since that time, Georgia has not issued a final permit for Plant Hammond,[22] has not issued proposed permits for any other CCR impoundment in Georgia, and, in effect, has stopped operating its CCR program. Commenter States that the Georgia fiasco should not be repeated. Commenter states that through this denial, EPA will avoid an even worse outcome in Alabama, where ADEM has issued illegal final permits. Commenter also states that by its action EPA will also communicate to Georgia and other State agencies that a State CCR permit program must actually follow the requirements of the Federal CCR regulations.

[22] EPA notes that Georgia EPD issued a final CCR permit on November 13, 2023, for Plant Hammond's Ash Pond 3 (AP–3).

Response: EPA agrees that considering State CCR permits when determining whether to approve a State CCR permit program application is consistent with the statute and necessary to ensure no State program is approved unless it requires each CCR unit in the State to comply with the minimum level of protection (*i.e.,* the Federal CCR regulations). In part because EPA concludes that Alabama's permits are not as protective as the Federal CCR regulations, EPA is taking final action to deny approval of Alabama's CCR permit program. Comments related to Georgia are outside the scope of this action and no response is required.

5. EPA Should Not Consider CCR Permits in Its State Program Approval Process

Comment: Commenters maintain that EPA relies on its recent, disputed, and legally contested interpretations of the regulatory closure performance standards, groundwater monitoring conditions, and corrective action requirements in the Federal CCR regulations to conclude that several ADEM-issued permits are inadequate because they allegedly fail to achieve those requirements (as interpreted by EPA). More specifically, commenters state that EPA faults ADEM for issuing permits:

1. ''allowing CCR in closed units to remain saturated by groundwater, without requiring engineering measures that will control the groundwater flowing into and out of the closed unit;''

2. ''approv[ing] groundwater monitoring systems that contain an inadequate number of wells, and in incorrect locations, to monitor all potential contaminant pathways and to detect groundwater contamination from the CCR units in the uppermost aquifer;'' and

3. ''allow[ing] the permittee to delay implementation of effective measures to remediate groundwater contamination both on- and off-site of the facility.''

Commenters assert that EPA's allegations of deficiency are predicated on EPA's recent and disputed interpretations, none of which have been formally promulgated through notice and comment rulemaking, as well as its own unilateral technical review, without regard to the role of—or certifications provided by—P.E.s. Commenters believe EPA's allegations are improper and cannot lawfully be used as a basis for denying ADEM's CCR permit program.

Commenters further argue that EPA acted improperly because it reviewed available State issued and proposed permits. Commenter notes that EPA stated ''unlike Georgia, Texas, and Oklahoma (currently the only three States with EPA approval for State CCR permit programs), Alabama had already begun implementing its State CCR Permit program and issuing permits prior to its submittal of an Application for EPA approval of the State's CCR permit program''. Commenters further note that EPA stated ''to the extent the state implements its CCR regulations prior to EPA's determination of state program adequacy, EPA will also discuss that state's interpretation and implementation of its program to ensure EPA fully understands the program and to determine which of the two statutory standards EPA will use to evaluate the state program. EPA took the same approach with Alabama as with other states seeking approval.''

Commenters argue EPA is wrong to take this approach because the 2017 Guidance Document and the information required for the Oklahoma, Georgia and Texas permit programs applications do not require States to provide EPA with issued permits or proposed permits if the State begins to implement the State permit program without EPA approval. Commenters also argue this is the correct approach because State agencies should be allowed reasonable latitude to interpret regulations; especially where EPA guidance has not been issued. Commenters further recommend that EPA review all State permit programs with the same criteria and in accordance with the 2017 Guidance Document and RCRA section 4005(d).

Response: As stated above, EPA does not agree that it must approve a State program where the Agency has determined State permits are less protective than the Federal CCR regulations. Instead, in light of EPA's review, it would be unreasonable to approve the State program since the Agency has concluded that the State permits do not in fact require compliance with at least the minimum level of protection required. Further, in this case, Alabama would have to acknowledge EPA's concerns and take steps to start revising flawed permits for EPA to approve the State's CCR permit program.

Further, despite the commenters' assertion, not all of the bases for the proposed and final denial are subject to litigation and, even if they were, it would make sense for EPA to maintain consistent positions across different actions. With respect to P.E. assessments, EPA made clear in the 2015 Rule that it would not rely exclusively on engineer certification to

ensure compliance with technical standards, but that other mechanisms would also help to ensure compliance. 80 FR 21312, 21334–35. First, the performance standards in the regulations are independent requirements and are enforceable regardless of whether a P.E. certification was obtained. The 2015 rulemaking preamble made this clear in response to commenters concerned that the proposed regulations relied too heavily upon the judgment of P.E. In the preamble, EPA explained that it disagreed that the rules rely ''almost entirely'' on professional engineers to protect human health and the environment. The final rule relies on multiple mechanisms to ensure that the regulated community properly implements requirements in this rule. As one part of this multi-mechanism approach, owners or operators must obtain certifications by qualified individuals verifying that the technical provisions of the rule have been properly applied and met. However, a more significant component is the performance standards that the rules lay out. These standards impose specific technical requirements. The certifications required by the rule supplement these technical requirements, and while they are important, they are not the sole mechanism ensuring regulatory compliance. Id. at 80 FR 21335.

In addition, information the P.E. uses to assess compliance is required to be publicly posted on a website specifically to allow for interested parties to evaluate the accuracy of the P.E. certifications. 80 FR 21339. EPA did not have enforcement authority in 2015, and the statute instead left enforcement to States and citizens. See 42 U.S.C. 6972(a)(1)(A). 80 FR 21309. To facilitate such enforcement, the 2015 rule required engineer certifications and other underlying compliance data to be posted to the internet, as this would allow states and the public to evaluate the accuracy of the certifications in assessing whether to sue. Id. at 21335. If EPA intended P.E. certification to effectively serve as a shield, there would be no reason to require posting on a publicly accessible website of the majority of compliance data that underly the certifications. EPA confirmed this in the preamble to the 2015 regulations, stating that making this information available to other parties (*e.g.,* state agencies and citizens) was another mechanism to ensure technical performance standards established in the regulations would be achieved. ''EPA has developed a number of provisions designed to facilitate citizens to enforce the rule pursuant to RCRA section 7002. Chief among these is the requirement to publicly post monitoring data, along with critical documentation of facility operations, so that the public will have access to the information to monitor activities at CCR disposal facilities.'' Id. In sum, the certifications do not act as prohibitions on state or citizen enforcement, and they certainly do not bar EPA from using its WIIN Act authority to enforce standards in the regulations. Thus, despite commenters' assertions, a P.E. certification does not demonstrate or assure actual compliance with the Federal CCR regulations (or any rule), nor does it deprive EPA of its ability to conduct an independent assessment or to reach a contrary conclusion from a P.E. In this case, comments have not provided sufficient evidence to rebut EPA's conclusions in favor of the conclusions reached by the P.E.'s hired by the relevant facilities as part of the State permitting processes.

As stated above, EPA does not agree that its approach with respect to Oklahoma, Georgia, and Texas prevent EPA from now considering proposed and final permits that are available for review at the time the Agency is evaluating a State program. EPA was not aware of the potential widespread issues with implementation of the Federal CCR regulations when approving those State programs, and it was not until the Agency reviewed the Part A applications and received comments on the Part A Proposed Denials that the Agency realized the extent of the problems. Since that time, EPA has proactively engaged States and facilities to ensure compliance with the Federal CCR regulations. In any event, EPA considered Oklahoma's permits as part of the review approval process, and EPA is currently engaged with both Georgia and Texas as they issue State CCR permits.

EPA also disagrees that the Agency should defer to potentially many different State interpretations of the Federal CCR regulations.

6. EPA Must Approve Alabama's CCR Permit Program Because Alabama's Regulations Mirror the Federal CCR Regulations

Comments: Commenters argue that ADEM's permit program meets statutory requirements because it mirrors the Federal CCR regulations and it is consistent with EPA's 2017 Guidance Document, so EPA must approve without looking to implementation of the regulations. Commenters maintain that ADEM complied with the WIIN Act because the State provided ''evidence of a permit program or other system of prior approval and conditions under State law'' for CCR units and showed that the State program is ''at least as protective as'' the Federal CCR regulations. Commenters state that EPA reviewed ADEM's authority, State public participation procedures, technical criteria, and other relevant factors in the Proposed Denial and the Agency found that ''these aspects of the Alabama CCR permit program provide the State with the necessary authority to implement an adequate State program.'' Commenters also state that EPA does not question ADEM's resources to administer the program.

Commenters note that EPA did not stop its review with the State's CCR permit program regulations, as it should according to comments, and EPA instead based its disapproval of ADEM's program on the Agency's review of Alabama CCR permits and on recent statements of interpretation which were not subject to proper notice and comment rulemaking and are currently being challenged in the U.S. Court of Appeals for the D.C. Circuit. Commenters conclude that EPA should approve because, according to the commenters, ADEM has implemented regulations that are identical in text and substance to those of EPA as to the standards at issue; ADEM's provisions for public participation are satisfactory to EPA; there is no risk to human health or the environment; and ADEM has demonstrated that it has the appropriate resources and expertise to implement the CCR program, backed by decades of implementation of parallel RCRA programs.

Commenters state that the WIIN Act requires EPA to approve a State CCR permit program application no later than 180 days after submission if the Agency ''determines that the program or other system requires each coal combustion residuals unit located in the State to achieve compliance with the applicable criteria for coal combustion residuals units under part 257 of title 40, Code of Federal Regulations . . . or such other State criteria that the Administrator, after consultation with the State, determines to be at least as protective'' as the Federal CCR regulations. Thus, according to commenters, the plain text of Alabama's regulations requires CCR units in the State to comply with all of the substantive Federal CCR regulations requirements, including those related to closure, corrective action, and groundwater monitoring, and EPA has determined that ADEM's standards are

at least as protective as the Federal CCR regulations. Commenters state that because ADEM's application fulfills the requirements of 42 U.S.C. 6945(d) to require compliance with the Federal CCR regulations criteria or State-specific criteria that are at least as protective as the Federal CCR regulations, EPA must approve the application and the Agency should not consider information beyond the four corners of the application when evaluating a State CCR permit program application, particularly when the new positions at issue were put forth without proper notice and comment and are subject to litigation as discussed below.

Commenters argue that the WIIN Act provides a separate mechanism for EPA to review an approved State permit program and address alleged deficiencies with implementation of the approved State program. According to commenters, the WIIN Act directs EPA to provide a notice of deficiencies and an opportunity for a public hearing if ''the State has not implemented an adequate permit program'' or if ''the State has, at any time, approved or failed to revoke a permit for a coal combustion residuals unit, a release from which adversely affects or is likely to adversely affect the soil, groundwater, or surface water of another State.'' Based on this language, commenters assert EPA must approve an application first before addressing any alleged issues with implementation.

Commenters also state that RCRA subtitle D ''envisions that states are primarily responsible for regulating disposal of nonhazardous wastes in landfills and dumps.'' Commenters further assert that EPA's principal role under subtitle D ''is to announce Federal guidelines for state management of nonhazardous wastes. . . .'' Thus, according to commenters, States have the primary role to interpret and implement waste regulations and EPA should not attempt to supplant the cooperative federalism approach that is enshrined in RCRA by requiring strict compliance with the Agency's flawed positions as a prerequisite for approving a State program.

Commenters note that in August 2017, EPA issued the Guidance Document for States with information and procedures on how to develop and submit their State CCR permit programs to EPA for approval. The guidance includes frequently asked questions about the WIIN Act and the process for States to seek approval, as well as detailed checklists for State program submittals. Commenters further state that ADEM initially submitted its application for State permit program approval to EPA over five years ago on July 12, 2018. Commenters state that ADEM submitted revised applications on February 26, 2021, and December 29, 2021. Commenters state that ADEM's latest application (*i.e.,* its ''evidence of a permit program'') contains all of the information and followed all of the procedures outlined by EPA in its interim final guidance, and, after review of the State's submission, EPA confirmed that ''the express terms of ADEM's CCR permit program . . . include[ ] all regulatory provisions required for approval'' and ''provide the State with sufficient authority to require compliance with the Federal requirements or equivalent State requirements.''

Commenters further state that EPA changed its approach and took a sharp turn and began describing its evaluation of Alabama's program against criteria not only outside of EPA's statutory directive but also beyond any regulatory authority of the Agency. Commenters state this approach is troubling for many reasons and that the proper standard for comparison exists in 40 CFR part 257. Commenters further state that Alabama has easily satisfied both criteria, and its program should be approved expeditiously. Commenters assert that EPA has appropriately determined that Alabama's approach to CCR permit applications and approvals is adequate. See, 88 FR 55229, August 14, 2023. Commenters also assert that EPA found that the Alabama CCR program will provide robust implementation and enforcement of the State's CCR requirements and afford adequate opportunity for citizen intervention in civil enforcement proceedings. 88 FR 55229; see also Docket ID EPA–HQ–OLEM–2022–0903–0133, Proposed Denial TSD Volume III. Commenters state that the Alabama CCR program constitutes a well-developed permit program that, as required by the WIIN Act, ''provide[s] evidence of a permit program or other system of prior approval and conditions under State law for regulation by the State of coal combustion residuals units that are located in the State.'' 42 U.S.C. 6945(d)(1)(A). Commenters maintain that Alabama's CCR permit program will provide more than adequate opportunities for public participation in the permitting process. Commenters state that to the extent there are any differences, ''the differences do not on their face substantively make the State regulations less protective than the Federal CCR regulations.'' Id. Commenters maintain that the State's CCR regulations contain all the technical elements of the Federal CCR regulations, including requirements for location restrictions, design and operating criteria, groundwater monitoring and corrective action, closure requirements, post-closure care, recordkeeping, notification and publicly accessible website posting requirements. EPA TSD Volume III at 6–9; 88 FR 55228. For these reasons, commenters state that EPA should approve Alabama's CCR permit program, such that it will apply in lieu of the Federal regulations.

Commenters point to the program review and withdrawal provisions of RCRA 4005(d) and state that the key takeaways from this portion of the statute are that: (1) In the event the State were to fail to cure program implementation deficiencies identified during EPA's periodic review of the State program, or if the State were to fail to deliver on its commitment to update its approved program at such time as the Federal requirements change, EPA has the authority and responsibility to withdraw the State's program approval, after appropriate notice and opportunity for a public hearing; and (2) Once a program withdrawal occurs, the State has the opportunity to have its program approval restored upon correction of the offending program deficiencies. Commenters maintain that the review and withdrawal provisions support a conclusion that EPA may not consider implementation and State CCR permits when evaluating a State CCR permit program.

Response: EPA agrees that Alabama's State CCR regulations in large part mirror the Federal CCR regulations and that, for this reason, the State's regulations provide Alabama with sufficient authority to implement a CCR program that meets the standard for approval under section 4005(d)(1)(B). But EPA disagrees that copying the Federal CCR regulations alone is sufficient to require EPA to approve a State program when the Agency has concluded that the program, as implemented through State permits, is in practice, not as protective as the Federal CCR regulations. As noted above, section 4005(d)(1)(B) of RCRA requires EPA to conclude that a State program ''requires each CCR unit . . . to *achieve* compliance'' with at least the minimum level of protection (*i.e.,* the Federal CCR regulations or equivalent State standards) before approving the program, not, as the commenters contend, to simply require compliance with those standards. Congress was thus clear that a requirement to comply is insufficient; this is why EPA evaluates not only the CCR specific requirements but also the State's general authority to

issue permits and impose conditions in those permits, as well as the State's authority for compliance monitoring and enforcement, and whether the State has the resources to implement and enforce the program. Consequently, the RCRA section 4005(d)(1)(B) standard is not met where, whatever the State regulations may say, the permits issued to implement those regulations authorize actions that are inconsistent with the plain language of the Federal CCR regulations. This is because Congress specified that what matters is what the State program actually requires the permittee to achieve; and, for example, a permit that simply recites the regulations while simultaneously approving a clearly deficient closure or groundwater monitoring plan cannot plausibly be argued to require the facility to achieve compliance with those regulations. And where, as here, the Agency has concluded the State program is not as protective, EPA does not have a basis to approve the program under the statute.

At the same time, however, none of the comments appear to question EPA's authority to withdraw a State CCR program if, after approval, the Agency determines that a State is not implementing its CCR permit program in a manner that ensures permits require at least the minimum level of protection. See RCRA section 4005(d)(1)(D). The withdrawal provisions of the statute presume that EPA disagrees with how a State is implementing its CCR permit program (*e.g.,* EPA believes the state permits are inadequate) when EPA takes action to withdraw a State CCR program, and the statute gives EPA the authority to review all State CCR permit programs, including those that mirror the Federal CCR regulations. Notwithstanding, the comments appear to suggest that EPA cannot question implementation of a State program that adopts the Federal CCR rule terms because States are allowed to interpret the regulations differently than EPA. Taken to its logical conclusion, there would be separate standards for withdrawal based on whether the program was approved under RCRA 4005(d)(1)(B)(i) or (ii), and EPA would be essentially precluded from withdrawing approval of a State program if approval was based on RCRA 4005(d)(1)(B)(i). The commenters' interpretation would read a limitation on State withdrawal that has no basis in the statute. EPA declines to read such a limitation into the statute or adopt a position that requires the Agency to ignore information (*e.g.,* final State permits) that is clearly relevant to the finding that EPA must make when determining whether a State program in fact meets the statutory requirements. Finally, EPA does not see any benefit to a system where EPA must first approve a deficient program to only then be forced to expend further resources on withdrawing that same program for the same deficiencies.

In addition, comments do not address all the technical issues with the Alabama CCR permits that EPA identified in the Proposed Denial. For example, the comments do not demonstrate EPA's interpretations of the requirements for groundwater monitoring systems and corrective action are novel or a change in the standards, and many of the issues identified in the Proposed Denial were either not addressed or insufficiently addressed in the comments. Without some response to the issues, EPA cannot conclude that the permits in fact require each CCR unit to achieve the minimum level of protection. As EPA explained in the proposal, because the permits issued by Alabama appear to interpret the Federal CCR regulations differently than EPA, Alabama is essentially submitting ''other State criteria,'' and consistent with RCRA 4005(d)(1)(B)(ii), in order for EPA to approve such a program, Alabama must provide the information to support a determination that the State criteria are ''at least as protective as the [Federal CCR regulations].'' Further, none of the comments address the general concern that Alabama is not exercising sufficient review and oversight of the program, and, conversely, the fact that information beyond what is in the permit record is necessary to explain why the permits are sufficient demonstrates that ADEM's permit program implementation is insufficient. See Comment Response above.

EPA also disagrees that the Agency is prohibited from considering State permits in the program review process because the Guidance Document does not contemplate review of permits. The Guidance Document does not, and indeed cannot, prevent EPA from considering information that falls squarely within the ordinary meaning of what the statute expressly directs EPA to consider, even if that information is not described therein when such an instance arises. In this instance, the reason the Guidance Document does not address the issue is because, as noted above, EPA was not aware of the widespread problems with State CCR permits until the Agency reviewed the Part A requests for extensions and received the comments from States and industry on the Proposed Denials of Part A requests in 2021, three years after issuance of the Guidance Document. EPA also did not anticipate that a State might demonstratively contend that EPA should adopt a fundamentally different interpretation of the CCR regulations than what EPA intended in writing them. In addition, as noted above, EPA has since raised the issue of permits with every State requesting approval of a State CCR permit program and with the three States that have approved State programs.

Finally, EPA disagrees that it is attempting to supplant the cooperative federalism approach enshrined in RCRA. Even under the more limited authority conferred on the Agency prior to the WIIN Act, EPA's subtitle D criteria established minimum national standards with which facilities were required to comply, irrespective of state law. The Federal criteria are intended to establish a consistent minimum national floor; if States could simply reinterpret those criteria to establish different requirements (*e.g.,* a different floor specific to the state), this would defeat the purpose. Moreover, the commenter has misunderstood both the intent and effect of the WIIN Act. Congress deliberately expanded EPA's role under the existing subtitle in 2016 when it granted EPA the authority to enforce the Federal criteria, issue permits in non-participating states, and to establish the minimum national standards that are both applicable directly to facilities and used to evaluate state programs.

7. Lack of a Federal Permit Program To Serve as Comparative Basis

Comment: Commenters state that in the Proposed Denial, EPA specifies that section 2301 of the WIIN Act amended section 4005 of RCRA, creates a new subsection (d) that establishes a Federal CCR permitting program similar to permit programs under RCRA subtitle C and other environmental statutes. Commenters further state that the WIIN Act only establishes a Federal permit program; it does not specify it be under RCRA subtitle C. Commenters note that on April 17, 2015, EPA published the first Federal CCR regulations regulating CCR as a subtitle D solid waste. Commenters conclude that section 2301 of the WIIN Act and section 4005 of RCRA do not specify the establishment of a Federal CCR permitting program similar to permit programs under RCRA subtitle C. Commenters state that Chapter 2 Item 1 of the 2017 Guidance Document states that EPA is using 40 CFR part 239, which are the requirements for determining adequacy of State subtitle D permit programs, as a guide for what a State submission

should include. Commenters argue that this is the reason States are drafting CCR State permit programs that are in line with their EPA approved subtitle D permit programs.

Commenters recommend EPA approve State permit programs that permit and interpret the Federal regulations in line with RCRA subtitle D solid waste programs since EPA promulgated national CCR standards under RCRA subtitle D and not RCRA subtitle C.

Commenters argue that the lack of a Federal permitting program is a key weakness in EPA's Proposed Denial. Commenters maintain that EPA has no Federal permit program for States to compare to the State programs and that EPA does not have any practical experience developing and issuing CCR permits. Commenters appear to believe that EPA cannot evaluate permits until the Agency has established a Federal CCR permit program and started issuing permits under the program.

Commenters note that the Proposed Denial contends that once a permit is issued, the permit serves as a ''shield'' to the regulations and at that point the facility is only responsible for compliance with the permit and the Federal regulations are no longer the governing rules (88 FR 55223, August 14, 2023). Commenters state that these assertions by EPA are incorrect. Commenters note that EPA has no CCR permitting program. Commenters question how the Federal CCR regulations requires a facility to achieve compliance without a Federal permit program. Commenters also state that because ADEM regulations are equivalent to the Federal rules, inclusion of ADEM regulations in ADEM-issued permits is equivalent to inclusion of Federal rules in the permit. Commenters state that, for this reason, if EPA considers the current Federal rules sufficient to require facilities to ''achieve compliance'', then the ADEM-issued permits that refer to these rules must also meet the same standard. Commenters argue that EPA is attempting to hold ADEM to a higher standard than EPA itself is required to achieve and seeks to punish ADEM for having a permitting program when EPA does not. Commenters conclude that, at best, it seems premature to move directly to program denial until EPA has, through the traditional, long-standing regulatory development and approval process, promulgated a set of Federal permitting standards.

Response: EPA disagrees that it is holding ADEM to a higher standard than EPA itself is required to achieve. The statute imposes the same standard on EPA permits that it imposes on State permit programs. See 42 U.S.C. 6945(d)(2)(B) (''Administrator shall implement a permit program *to require each coal combustion residuals unit* located in the nonparticipating State *to achieve compliance with* applicable criteria established by the Administrator under part 257 . . .'') (emphasis added). EPA has interpreted this provision to require a Federal CCR permit to include specific provisions to ensure that the permittee achieves compliance with the Federal CCR regulations, rather than merely reiterating the regulations. See, 85 FR 9964–9965 (describing examples of permit conditions).

Commenters are also incorrect to the extent they suggest the Federal CCR regulations cannot be enforced because EPA has yet to take final action on the Federal CCR permit program regulations. The Federal CCR regulations are directly enforceable against facilities until they receive a permit from an approved State or pursuant to a Federal permit program. For this reason, if EPA approved Alabama's CCR permit program, the Federal CCR regulations would no longer apply to the final CCR permits that EPA believes are insufficiently protective, and facilities would have a permit shield for their flawed permits. Absent approval and the attendant permit shields, EPA can proceed with actions at any time to require the facilities to come into compliance with the Federal CCR regulations. Indeed, EPA is currently pursuing a number of enforcement actions. Further, the comments imply that Alabama's CCR permits simply recite the applicable regulations, but, in fact, the permits not only cite the applicable regulations but also specify the actions required to be taken to comply with the provisions. In this case, many of the actions being required in the permits are not sufficient to meet the requirements of the Federal CCR regulations.

EPA also disagrees with comments stating the Agency must approve Alabama's program because the regulations are identical. Because the State's interpretation of EPA's regulations is different from the Agency's (as demonstrated by the permits it has issued), Alabama is in fact operating a different program than EPA, even if the terms of the regulations are the same. Under the statute, the State must explain how its alternative standards are as protective and ADEM has refused to provide an explanation. RCRA 4005(d)(1)(B)(ii).

The fact that EPA's permitting regulations have not yet been promulgated is irrelevant to the fact that permits issued by ADEM allow CCR units in the State to comply with alternative requirements that are less protective than the requirements in the Federal CCR regulations with respect to groundwater monitoring, corrective action, and closure. Even absent a Federal CCR permit program, the Federal CCR requirements apply directly to facilities until the facility obtains a permit from an authorized State or EPA after it promulgates the Federal CCR permit program.

For example, as discussed in the Proposed Denial, ADEM has issued multiple permits allowing CCR in closed units to remain saturated by groundwater, without requiring adequate, or in some cases any, engineering measures to control the groundwater flowing into and out of the closed unit. ADEM has also approved groundwater monitoring systems that contain an inadequate number of wells, and in incorrect locations, to detect groundwater contamination from the CCR units. Finally, ADEM has issued multiple permits that effectively allow the permittee to delay implementation of effective measures to remediate groundwater contamination both on- and off-site of the facility. Overall, EPA's review of the permit records demonstrates a consistent pattern of deficiencies in the permits and a lack of oversight and independent evaluation of facilities' proposed permit terms on the part of ADEM.

EPA further disagrees with the comments stating that EPA must approve State programs consistent with the way State programs are approved under RCRA subtitle D for non-CCR units, and that EPA is approving State CCR permit programs under RCRA subtitle C. In fact, EPA is not evaluating State CCR permit programs the same as the approach for evaluating other State permit programs under either subtitle D for non-CCR units or subtitle C for hazardous waste units, and instead the Agency is evaluating State CCR permit programs based on RCRA section 4005(d), which is a unique State program approval provision that is different from the other State program approval provisions in RCRA subtitle C and D. In addition, EPA's advice in the Guidance Document to look at the process for approval of State programs under RCRA subtitle D when developing the regulations and procedures for a State CCR program was not an indication that those regulations apply or that the standard for approval of non-CCR RCRA State programs applies to approval of State CCR permit programs. Instead, EPA must comply with RCRA section 4005(d) when

evaluating State CCR permit programs and the commenters do not explain how EPA could ignore that provision and apply a different RCRA State program approval process.

8. Comments in Support of EPA's Interpretation of the Closure Standards for Unlined Surface Impoundments

Comment: Commenters state that the governing standards for closure in place, monitoring, and corrective action are set out clearly in the Federal CCR regulations, and EPA consistently has applied the plain language of the Federal CCR regulations as it has in the Proposed Denial. Commenters state that Alabama has adopted regulations that mimic the language of the Federal CCR regulations, but as EPA points out, ADEM has disregarded the plain language of the regulations and instead has allowed utilities in Alabama to leave CCR in old, unlined, leaking riverfront pits saturated in water, below the water table and even below sea level. Commenters state that EPA has clearly applied the straightforward requirements of the Federal CCR regulations in its Gavin decision and has replied to all the arguments made by ADEM, Alabama Power, and Alabama Power's trade associations in its responses to comments on the proposed Gavin decision. Commenters state that EPA has also applied those standards in issuing a Notice of Potential Violations to the Alabama Power Company (Alabama Power) for its violations of the Federal CCR regulations at Plant Barry near Mobile. Commenter notes that, in the Proposed Denial, EPA applied the plain language of the Federal CCR regulations and the WIIN Act and followed the same course it has followed repeatedly in the past.

Commenters note that Duke Energy, one of the largest energy companies in the country, also recognizes and understands the plain language of the Federal CCR regulations. Commenters state that Duke Energy has set out that the 2015 CCR Rule's closure performance standards prohibit closure-in-place where groundwater is in actual or likely contact with the CCR unless effective engineering measures can be installed to control, minimize, or eliminate such conditions. Commenters further assert that contrary to the closure and storage practices ADEM has repeatedly permitted, the utility industry's research arm, the Electric Power Research Institute, long ago informed its members that capping an unlined CCR impoundment in place is inappropriate where the ash remains in contact with groundwater: ''Caps are not effective when [coal ash] is filled below the water table, because groundwater flowing through the [coal ash] will generate leachate even in the absence of vertical infiltration through the [coal ash].'' Commenters state that the legal standards are clear, and EPA has fully explained them in the Proposed Denial, the Notice of Potential Violations sent to Alabama Power, the Gavin decision, the Agency's response to Gavin comments, and elsewhere.

Commenters state that the Federal CCR regulations plainly states that if a CCR impoundment is to be capped in place, ''[f]ree liquids must be eliminated,'' the utility must ''[p]reclude the probability of future impoundment of water, sediment, or slurry,'' and the utility must ''[c]ontrol, minimize or eliminate, to the maximum extent feasible, post-closure infiltration of liquids into the waste and releases of CCR, leachate, or contaminated run-off to the ground or surface waters or to the atmosphere.'' 40 CFR 257.102(d)(2)(i) and (d)(1)(ii) and (i). Yet, as EPA sets out in its Proposed Denial and its Notice of Potential Violation (NOPV) for Plant Barry, ADEM has allowed utilities to cap in place unlined leaking CCR impoundments across Alabama, in violation of all these provisions. Commenter argues that ADEM seeks to justify approval of its Application despite its pervasive violations of the Federal CCR regulations by pointing out that its State CCR regulations copy the relevant language of the Federal CCR regulations. Commenters assert that ADEM asks EPA to put on blinders, to read just the bare language of ADEM's regulation, and to ignore what ADEM is doing in practice across the State to allow CCR impoundments to fall far short of the Federal standards. Commenters state that ADEM's argument asks EPA to allow Alabama to nullify the Federal CCR regulations and the WIIN Act and to violate the requirements and purpose of the WIIN Act. Commenters argue that the WIIN Act requires much more than EPA merely reviewing a State application to see if the language of the State regulations matches the language of the Federal CCR regulations, and, instead, the WIIN Act requires EPA to determine that ''the program or other system [of the State] requires each coal combustion residuals unit located in the State to achieve compliance with'' either the criteria set out in the Federal CCR regulations or other State criteria that EPA determines to be as protective as the criteria of the Federal CCR regulations. 42 U.S.C. 6945(d)(1)(B). Commenters maintain that EPA is not directed to perform a word check of the State regulations but rather to determine whether the State's program or other system actually requires all the CCR units in the State to achieve compliance with the Federal CCR regulations or other criteria that are as protective. Commenters maintain that ADEM's program miserably fails to achieve that compliance and that ADEM's argument, if adopted, would make compliance with the WIIN Act and the protective standards of the Federal CCR regulations a farce. Commenters believe a State agency like ADEM, which has acted contrary to the plain language of the Federal CCR regulations and refuses to address EPA's concerns with its program, would be able to disregard entirely the standards designed to protect the public, communities, and clean water and allow CCR to be stored permanently in unlined pits sitting deep in groundwater beside major waterways—despite the plain language of the Federal CCR regulations and State regulations to the contrary if Alabama's State CCR permit program were approved. Commenter states further that EPA maintains that approval would not only violate the plain language of the WIIN Act, it would also eliminate the protections the Federal CCR regulations provides for all people and all waters in the United States, including all Alabamians and the waters in Alabama.

Commenters also state that Alabama is an outlier and that in the Southeast, over 250 million tons of CCR are being cleaned up. Commenters note that by contrast, every unlined CCR impoundment in South Carolina is being excavated; every unlined CCR impoundment in North Carolina is being excavated; all of Dominion's unlined CCR lagoons in Virginia are being excavated; notwithstanding Georgia EPD's failure to implement the CCR regulations, Georgia Power has committed to excavate about two-thirds of its CCR from unlined impoundments in Georgia; and to date the TVA has been required to excavate CCR impoundments at its Gallatin plant near Nashville and its Allen plant in Memphis. Commenters maintain that every unlined CCR impoundment in the coastal region of these Southeastern States is being excavated—but not in Alabama. Commenters state that only Alabama is allowing every utility in the State—regardless of where the CCR impoundment is located and even though all the impoundments have ash sitting deep in groundwater—to leave all their millions of tons of CCR in unlined, leaking impoundments beside the State's waterways.

Commenters further allege that all eight of the final CCR permits ADEM

has issued violate the Federal CCR regulations. Commenters note that EPA focused on four Alabama CCR Permits that were issued to impoundments that are being closed with waste in place below the water table in the Proposed Denial: TVA's Plant Colbert and Alabama Power's Plants Gadsden, Gorgas, and Greene County. Commenters state that while EPA concentrated on these permits, the four additional CCR permits issued by ADEM—for Alabama Power's Plants Barry, Gaston, and Miller and PowerSouth Energy Cooperative's Plant Lowman—share similar fundamental flaws and further demonstrate that Alabama's permit program fails to meet the statutory standard for approval. Commenter states that the permits for Plants Barry, Gaston, Miller, and Lowman also ''allow[] CCR in closed units to remain saturated by groundwater, without requiring engineering measures that will control the groundwater flowing into and out of the closed unit.'' 88 FR 55220, 55230 (August 14, 2023).

Commenters state that there are additional instances where ADEM has allowed noncompliance with the Federal CCR regulations and that these additional flaws further support EPA's denial of ADEM's permitting program. Commenters state that ADEM adopted the location restrictions, including a requirement that by October 17, 2018, that utilities make a demonstration that their CCR impoundments are not located in wetlands. 40 CFR 257.61(a), (c). Commenters state that ADEM CCR regulations contain the same requirement. Alabama Administrative Code r. 335–13–15.03(2). Commenters state that Alabama Power posted its wetlands demonstration for Plant Barry for both the Federal and State CCR regulations on its CCR website and that its demonstration states that the Plant Barry CCR impoundment is a wastewater treatment facility and that wastewater treatment facilities are excluded from the definition of wetlands. According to commenters, based on these conclusions, Alabama Power states that the Plant Barry CCR impoundment is not in wetlands. Commenters state that this approach makes a mockery of the wetlands location demonstration because many, and perhaps all, CCR impoundments have been permitted under the Clean Water Act as wastewater treatment facilities. Commenters state that the approach Alabama Power takes under both the Federal and Alabama CCR regulations would result in all permitted CCR impoundments satisfying the wetlands location restriction—even though they are in wetlands, within the floodplain, and built on top of a stream, as is true with the Plant Barry CCR impoundment. Commenters state that the standard is whether the impoundment is ''in'' wetlands, not whether the impoundment ''is'' a wetland, but that ADEM has allowed Alabama Power to get away with this nonsensical response to the wetlands location restriction. A review of Alabama Power's website demonstrates that it has filed such meaningless and evasive wetlands location demonstrations for all its CCR facilities. Commenters state that this approach to wetlands requirements has not been taken in other jurisdictions. For example, Duke Energy reported that its CCR impoundment at its H.F. Lee facility in North Carolina did not meet the location restriction because of leakage into surrounding wetlands. Duke Energy reached the same conclusion for its West Ash Basin at its Roxboro facility also in North Carolina.

Response: EPA agrees with the comments that the Agency's application of the closure requirements in § 257.102(d) to the unlined surface impoundments at issue is reasonable and reflects the plain meaning of the regulations. The Agency also agrees that it is appropriate to consider State CCR permits when evaluating whether to approve a State CCR permit program. EPA also agrees that allowing unlined impoundments to comply with only the standards in § 257.102(d)(3) relating to the cover system is not as protective as the Federal CCR regulations. As the commenters note, this conclusion is consistent with a technical report from the Electric Power Research Institute (EPRI) that was included in attachments to the comment. The report says, ''Capping is usually performed to prevent or reduce infiltration of water into CCPs, which subsequently reduces the volume of leachate generated. Caps can be installed on both legacy and recently filled CCP sites. Depending on climatic conditions, designs can range from barrier caps utilizing low permeability materials such as PVC, to evapotranspirative caps that utilize soil sequencing and vegetation to promote runoff and evaporation of water. Caps are not effective when CCP is filled below the water table, because groundwater flowing through the CCP will generate leachate even in the absence of vertical infiltration through the CCP.'' [23]

EPA also agrees that the Agency's review of the Alabama CCR permits was not exhaustive—EPA did not attempt to identify every potential inconsistency with the Federal requirements, either in the permits reviewed in the Proposed Denial or in other permits that were not reviewed by EPA. EPA stated in the Proposed Denial that it was not conducting a comprehensive review because the purpose of the evaluations of the permits was not to evaluate compliance by the regulated facilities, but instead to determine whether the facilities' permits require facilities to comply, regardless of actual compliance by the facilities (stated differently, it is theoretically possible that the facilities reviewed in the Proposed Denial are in compliance with the Federal CCR regulations even though their permits by the terms do not require compliance).

The remainder of the comment address issues outside the scope of this action and no response is required.

9. Comments in Support of EPA's Evaluation of CCR Permits Issued by ADEM

Comment: Commenter states that the Black Warrior river watershed flows through one of the most biodiverse regions in the country and provides a source of drinking water for dozens of communities across north-central Alabama; the river drains parts of 17 Alabama counties and the area the river drains, its watershed, covers 6,276 square miles in Alabama and measures roughly 300 miles from top to bottom; the watershed is home to over 1 million residents and contains 16,145 miles of mapped streams; thousands of people use the river and its tributaries for fishing, swimming, hunting, and watersports, contributing to Alabama's $14 billion outdoor recreation economy; and the river supports numerous freshwater species, including some that occur in the Black Warrior basin and nowhere else in the world. Commenter states that despite the river's importance to the State, Alabama Power plans to keep three unlined, leaking CCR pits along the river: Plant Gorgas (Mulberry Fork, Walker County), Plant Miller (Locust Fork, Jefferson County), and Plant Greene County (lower Black Warrior River). Commenter states that these three pits contain a total of about 55 million cubic yards of CCR, or an estimated 55 million tons (110 billion pounds, or 10 times the amount released in the Kingston disaster). Commenter states that Alabama Power's federally mandated groundwater monitoring

[23] Groundwater Remediation of Inorganic Constituents at Coal Combustion Product Management Sites, EPRI Technical Report (2006), SELC Comment Attachment 11 at p. 3–6. Docket Number EPA–HQ–OLEM–2022–0903–0260.

indicates that groundwater around the pits contains unsafe levels of toxic contaminants such as arsenic, cobalt, lithium, and molybdenum. Commenter states that but for the mandated monitoring and reporting requirements of the Federal CCR regulations, Alabama residents would have no idea of the extent of this contamination or the risk it presents to their communities.

Commenter states that Plant Greene County Ash Pond was constructed between 1960 and 1965, and the ash pond currently occupies approximately 489 acres on the banks of the Black Warrior River near Forkland, Alabama. Commenter states that, according to United States Geological Survey (USGS) topographic maps, the unlined ash pond was built across Big Slough, and associated wetlands, which flows into Backbone Creek, a tributary of the Black Warrior River. Commenter states Alabama Power stopped burning coal at Plant Greene County in March 2016 after converting all of its electric production to natural gas, meaning that the plant is no longer generating new CCR. Commenter states that at the last inspection, the ash pond was determined to be filled to its capacity, containing 10,300,000 cubic yards (yd^3) of CCR.

Commenter states that EPA's environmental justice mapping and screening tool shows Plant Greene County has three environmental justice indexes above the 80th percentile. Commenter states that these indexes measure the environmental burden upon the surrounding community; the higher the index score, the greater the burden on the local community. Plant Greene County's score for wastewater discharge concerns is 90.4. Commenter states that the Plant Greene County pond was constructed over 5 decades ago and the pond does not meet the specifications required under current regulations for the proper disposal of CCR. Commenter states that the ash pond was constructed without any currently acceptable form of bottom liner, leaving the CCR and its toxic constituents to leach into groundwater, the average level of which is less than 5 feet below the pond.

Commenter states that a stream named Big Slough was essentially cut in half by the construction of Plant Greene County, its CCR pond, and its barge canal in the mid-1960s. Commenter states that the Big Slough and surrounding wetlands throughout the middle of this large river bend were buried beneath and contaminated by toxic CCR. Big Slough continues to flow from the west side of the CCR pond to the southwest into Backbone Creek, which flows into the Black Warrior downriver. Commenter states that the CCR pond is surrounded by a large earthen dike that contains over fifty years-worth of toxic CCR waste, now estimated to be 10.3 million tons. Commenter states that capping CCR in place at Plant Greene County will not erase the very real connection that exists between Alabama Power's toxic CCR, Big Slough buried underneath it, the wetlands and floodplain it was constructed in, and the groundwater it sits in. All of this water is dynamic, flowing and moving constantly, creating an ongoing pathway for continued contamination of groundwater throughout the area, local streams, wetlands, and the lower Black Warrior River.

Commenter states that the deficiencies in the construction of the ash pond at Plant Greene County have damaged the groundwater below and around the pond. Commenter states that Alabama Power's own testing demonstrates that the groundwater is contaminated with arsenic, cobalt, and lithium concentrations that exceed levels deemed safe by EPA. Commenter states that arsenic levels in the groundwater at Plant Greene County have been measured at levels up to 7.5 times greater than the action level determined by EPA. Commenter states that every semi-annual groundwater sampling event at Plant Greene County since Alabama Power began testing has shown levels of pollutants that exceed GWPS. Commenter states that without the effective removal of the CCR waste, the contamination of ground and surface water at Plant Greene County will continue for decades.

Commenter states that the CCR pond at Plant Miller was originally constructed in the late 1970s, and the primary dike impounding the CCR disposal facility stands at 170 feet tall and 3,300 feet long, or about 0.625 miles, creating an unlined pond that occupies approximately 321 acres and is located near Quinton, Alabama. Commenter states that Alabama Power built the Plant Miller Ash Pond on the bank of the Locust Fork of the Black Warrior River and it was constructed to contain a maximum of 22,000,000 cubic yards of CCR. Commenter states that the pond now holds more than 18,500,000 cubic yards, and discharges wastewater at a rate of approximately 11.5 million gallons per day (MGD). Commenter states that the CCR disposal facility at Plant Miller was constructed prior to modern regulations and does not meet current regulatory safety requirements. The commenter states that the pond does not have a bottom liner to prevent toxic CCR leachate from contaminating the underlying water table, which is located less than 5 vertical feet from the base of the bottom of the pond. Commenter states that two unnamed tributaries (UTs) to the Locust Fork of the Black Warrior River were partially buried when Alabama Power constructed its CCR pond at Plant Miller in the late 1970s. Commenter states that the West UT's three headwater streams were buried beneath the toxic CCR waste repository and the South UT's headwater reaches were also buried. Essentially, the upper half of each stream's watershed was buried by Alabama Power's CCR. Commenter states that both streams were filled with large dams made of clay, soil, and rock fill, and the dam is approximately 170 ft. tall at its highest point, and over 3,300 ft. long. The commenter states that the dam connects to a large earthen dike that flanks the southwest side of the ash pond and that the dike holds back the ponded water along the entire western side of the ash pond and all of the 18.5 million tons of toxic ash deposited there since the 1970s, which looms over the remaining lower reaches of the UTs and the Locust Fork below. Commenter states that capping CCR in place at Plant Miller will not erase the very real connection that exists between Alabama Power's toxic CCR, the two streams buried underneath it, and the groundwater it is sitting in. All of this water is flowing and moving constantly, creating an ongoing pathway for continued contamination of groundwater throughout the area, local streams, and the Locust Fork. Commenter states that these fundamental deficiencies in the facility construction have led to significant contamination of groundwater in the area surrounding the pond. Commenter states that groundwater monitoring at Plant Miller demonstrates contamination but the full extent of which is still unknown.

Commenter states that Alabama Power's Plant Gorgas is located in Walker County, Alabama, near the town of Parrish, where Baker Creek flows into the Mulberry Fork of the Black Warrior River. Commenter states that after more than 100 years of generating electricity by burning coal, Plant Gorgas was decommissioned on April 15, 2019. Commenter states that Alabama Power disposed of CCR in several different areas around the facility and that the largest of these ash dumps, the primary CCR pond known locally as Rattlesnake Lake, has received the bulk of the electric plant's CCR waste over the last 60+ years. Commenter states that the

facility's gypsum pond, which has only been in operation for about 14 years, also receives some CCR residue mixed with spent gypsum from the plant's air pollution emissions scrubbers, and Alabama Power has used three onsite landfill structures for additional CCR disposal, one each for bottom ash, fly ash, and gypsum. Commenter states that the primary CCR disposal facility for the waste created at Plant Gorgas (Rattlesnake Lake) is a 420-acre impoundment on the opposite bank of the Mulberry Fork from the electric generating facility. Commenter states that it was constructed in 1953 as a cross-valley dam blocking Rattlesnake Creek. Currently, the dam stands at about 140 feet above the elevation of the river below. Commenter states that as of a May 1, 2018, inspection, Rattlesnake Lake contained approximately 25 million cubic yards of CCR, according to documents published on the power company's website. Commenter states that the Rattlesnake Lake was constructed without the minimum 5-foot buffer between the base of the CCR unit and the uppermost limit of the uppermost, underlying aquifer and it was also constructed without any bottom liner to prevent contamination of the underlying aquifer. Commenter states that Rattlesnake Lake does not meet current State and Federal regulations and that it must be safely and permanently closed without ash sitting in groundwater, just like the ash ponds at Plants Miller and Greene County.

Rattlesnake Creek was dammed by Alabama Power in the early 1950s to form Rattlesnake Lake for CCR waste storage. The majority of the creek and its tributaries are impounded as a result. Only the tail end of the creek remains below the dam before it flows into the Mulberry Fork. This part of the creek is a slough due to being part of the Mulberry Fork's reservoir effect caused by Bankhead Dam far downstream on the Black Warrior River.

Commenter states that Alabama Power elected cap-in-place as its preferred method for closing the ash pond at Plant Gorgas. However, Alabama Power announced plans do not seem to take into account the inherent difficulty in removing the water from a continuously flowing creek that drains a watershed of over 1,300 acres. Commenter states that the plans do not address exactly how the left-over CCR will be separated from the natural course of Rattlesnake Creek. Instead, according to commenter, the plans simply state the CCR will be consolidated to an area somewhat smaller than its current footprint and covered with a low-permeability liner. Commenter states that Alabama Power has not indicated any form of protective bottom liner will be employed to prevent future contamination of groundwater. Commenter states that Alabama Power's monitoring has detected contamination of arsenic, lithium and molybdenum in the underlying aquifer.

Commenter states that capping CCR in place at Plant Gorgas' Rattlesnake Lake will not erase the very real connection between Alabama Power's toxic CCR, the creek buried underneath it, and the groundwater it is sitting in. Commenter states that all of this water is flowing and moving constantly, creating an ongoing pathway for continued contamination of groundwater throughout the area, local streams, Rattlesnake Creek, and the Mulberry Fork. Commenter states that a flowing creek, fed by groundwater and springs, cannot be dewatered. Commenter maintains that no matter what Alabama Power endeavors to do at Rattlesnake Lake, leaving toxic CCR in place there will cause continued intermingling of ash waste with the creek and groundwater for future generations to deal with.

Commenter maintains that using cap-in-place in these circumstances, as allowed by the closure plans approved under ADEM's deficient regulatory program, also fails to address the threat of a potential catastrophic dam failure or release of ash at all three facilities on the Black Warrior River. Commenter states that over 55 million cubic yards of CCR are stored along the banks of the Black Warrior River at the facilities and that improper maintenance or the possibility of extreme weather events or natural disasters damaging the dike and/or dam systems could result in breaches or failures that could release massive quantities of toxic CCR into the river. Commenter states that the Federal CCR regulations require a risk assessment evaluation at CCR ponds (40 CFR 257.73), and the ash ponds at Plant Greene County and Plant Miller were classified as a Significant Hazard, meaning that dam failure or improper operation of the facility would likely result in significant economic loss or environmental damage. Commenter states that the dam at Plant Gorgas was assessed as a High Hazard Potential, meaning that in addition to economic loss and environmental damage, dam failure would also likely result in the loss of human life. Commenter states that the inundation maps provided by Alabama Power (available to EPA) depict the areas that could be flooded with CCR and contaminated water under current conditions at the ponds in the event of such a catastrophe. Commenter states that the inundation maps demonstrate that failure at any one of the three facilities would be devastating to the river and the surrounding communities.

Commenter states that even after final pond closure, the remaining ash will continue to be located in close proximity to the underlying aquifers and will likely intermingle with the groundwater table at times. Commenter states that Alabama Power's Assessment of Corrective Measures (ACM) filed with ADEM for all three facilities propose to address the groundwater contamination primarily with a process known as monitored natural attenuation (MNA). Commenter states that the selected remedy of MNA here means that the Company will continue to monitor groundwater while allowing natural chemical and physical processes in the subsurface environment to remove, dilute, or immobilize the contaminants. Commenter states this means that Alabama Power will do little to treat the groundwater contamination on site or in the surrounding environment, other than adopt a wait-and-see attitude with possible (not guaranteed) future actions. Commenter states that the ACMs contemplate several other potentially viable corrective measures, but the Company has not committed to employing these measures, asserting that one or more of these technologies may be used as adaptive site management as a supplement to the selected remedy, if necessary.

Commenter states that EPA guidance (2015)[24] recommends a four-tiered approach should be used to establish whether MNA can be successfully implemented at a given site. Commenter states that the first step is to demonstrate that the extent of groundwater impacts is stable, and that the Company has failed to do at all three facilities. Commenter states that, second, Alabama Power should determine the mechanisms and rates of attenuation, and that the Company has failed to do that. Third, Alabama Power should determine if the capacity of the aquifers is sufficient to attenuate the mass of constituents in groundwater and that the immobilized constituents are stable. Id. The fourth and final step is for Alabama Power to design performance monitoring programs based on the mechanisms of attenuation and establish contingency remedies (tailored

[24] U.S. EPA. Use of Monitored Natural Attenuation for Inorganic Contaminants in Groundwater at Superfund Sites. Office of Solid Waste and Emergency Response (OSWER). August 2015.

to site-specific conditions) should MNA not perform adequately. Commenter states that Alabama Power failed to take these steps.

Commenter states that Alabama Power has yet to demonstrate how MNA will work, evaluate whether it is a feasible remedy based upon site specific conditions at all three facilities or even analyze whether the aquifer has sufficient capacity to absorb all the toxic CCR pollution. Commenter states that even without these assurances, the ACMs note that the process of MNA could take two decades or more after final closure to allow contaminants to bleed out of the source and move through the groundwater into the environment so that the groundwater monitoring will begin to measure levels that meet GWPS, meaning that it may be 2045 or later before the CCR contaminants have moved out of the measured groundwater sites into the surrounding environment, even generously assuming MNA could even work here.

Commenter states that EPA's Proposed Denial correctly points out multiple additional deficiencies with the Company's selection of MNA as a proposed remedy at all three facilities, with ADEM's permitting of the ash pond closure at all three facilities with deficient ACMs, with ADEM's oversight of the selection of remedial measures, with Alabama Power's implementation of groundwater monitoring and ADEM's oversight of groundwater monitoring. The commenter agrees with the Agency's assessment on each of these points.

Commenter supports EPA's Proposed Denial of Alabama's CCR regulatory program 100%. Commenter states that but for Federal oversight of CCR pollution, Alabama's citizens would have absolutely no data about the danger that CCR pollution presents to public health and the environment. Commenter states there was no meaningful groundwater monitoring performed at Alabama CCR sites and no public data about the migration of dangerous CCR contaminants into adjacent ground and surface waters until the Federal CCR regulations required it.

Commenter states that Alabama rushed to submit its own CCR regulatory program, a program that EPA has correctly found fails to meet Federal standards. Commenter states that it is important to realize that Alabama submitted its regulatory program not to protect people and special places from CCR pollution but to protect Alabama Power. Commenter states that they filed technical comments every step of the way during Alabama's development and implementation of its flawed CCR program. Commenter states that the State failed to follow the data, the science, and the law to develop a protective regulatory scheme that would require Alabama Power to clean up the CCR pollution that the power company's own sampling shows is contaminating Alabama's groundwater, rivers, and streams. Commenter made many of the same arguments that EPA made in support of its meticulously supported Proposed Denial.

Commenters state that despite the irrefutable evidence that leaving CCR in primitive unlined pits does not stop water pollution or mitigate risks of spills during extreme weather events, ADEM chose to stubbornly persist with its dangerous and deficient regulatory program. Commenter states that Alabama's program unlawfully allows CCR to remain saturated by groundwater after closure; fails to require appropriate groundwater monitoring; and permits Alabama Power to delay indefinitely the implementation of measures to remediate documented groundwater pollution. Commenter states that without EPA's Proposed Denial of Alabama's CCR program, the State's residents and special places would be at the mercy of a substandard regulatory system that ignores the documented dangers of CCR. According to commenter, Alabama Power forecasts rate increases that will be implemented if the power company is forced to comply with the rule, increases that will hit hardest in Alabama's poor communities. Commenter maintains that Alabama Power has earned more than $1 billion in profits from 2014–2018 compared to the industry average, and that for over a decade, Alabama's residential electricity bills have been in the top three highest in the nation while Alabama Power banked higher profits than comparable electric utilities in other southern States. Commenter states that Alabama Power earned a 38% higher profit margin than sister company Georgia Power, and that the people in Georgia have electric bills averaging $134.11 per month, people in Mississippi average $135.31, and Alabamians averaged $147.75 in 2021, according to the most recent available data from the U.S. Energy Information Administration, up from $143.95 in 2020. Commenter states that Alabama Power's return on average equity (ROE) for 2018 to 2020 was 12.76 percent. Commenter states that in comparison, Florida Power & Light earned 11.39%, Mississippi Power 11.11%, Duke Energy Carolinas 9.37%, Georgia Power 9.24% and Louisville Gas & Electric 8.67%. Commenter asserts that if Alabama Power's ROE had instead been the average for the industry, Alabama Power customers would have saved $1.02 billion since 2014. Commenter states that if Alabama Power puts its record profits toward cleaning up CCR to comply with the 2015 CCR Rule, it can limit the impact of rate increases on its poorest customers.

Commenter also states that Alabama Power insists that it will have to implement a logistically challenging trucking scheme to dispose of its CCR in remote landfills, but that this argument is another red herring. Commenter states that power companies in Virginia, North Carolina, South Carolina, Tennessee, and Georgia have built upland lined landfills to properly dispose of their CCR. Alabama Power, as one of the largest landowners in the State, will surely do the same to limit the costs of cleaning up CCR. Alabama Power has constructed and operated other landfills and there is no reason to expect it will not do the same here. For all of the reasons cited in this letter, as well as all of the reasons stated in EPA's proposed rule, commenter believes that the Agency has taken the appropriate action in proposing to deny the State of Alabama's application for a State CCR permit program.

Response: EPA agrees that closure with waste in place in the groundwater without taking measures to ensure that liquid does not enter the units or that free liquids and contaminants do not migrate out of the unit after closure is inconsistent with the Federal CCR regulations. EPA also agrees that permits allowing such closure are not as protective as the Federal CCR regulations require and that such units pose a potential ongoing hazard to human health and the environment. EPA also agrees that Alabama's CCR permits do not adequately implement corrective action.

10. Comments Opposed to EPA's Application of the Closure Performance Standards

Comment: Commenters state that EPA's current ''no waste below the water table'' interpretation is based on three terms: infiltration, future impoundment, and free liquids. Commenters state that just as the word ''groundwater'' does not appear in the close-in-place regulations, none of these three terms appears in EPA's groundwater regulations, nor does any of the text around them refer to groundwater. Commenters state that these terms have meanings that easily harmonize with the purposes and goals

of facility closure, which are primarily to achieve a stable and secure base and to install a protective cover.

Commenters state that a protective cover that is designed and installed to EPA's specifications repels stormwater to prevent it from infiltrating downward into the waste, where it could become a source of leachate. Commenters note that this is not to say that some other source of water (such as laterally flowing groundwater) cannot also generate leachate, nor does ''infiltrate'' as a general vocabulary word always refer to movement in a single direction. Rather, commenters state that for over more than 40 years of usage under RCRA, in the context of closing a waste facility in place, EPA has consistently used the word ''infiltration'' to describe the potential for stormwater to penetrate downward into the waste.

Commenters also discuss future impoundments and contend that ash is dewatered and stabilized to ensure the closed unit maintains a slope, so rainwater runs off. Commenters state that if not adequately pre-stabilized, ash could settle over time and create a bowl or indentation on top of the cap where rainwater could pond. Commenters note that the longer impounded water stands on top of the ash, the greater the possibility that the cap could fail and water could infiltrate downward. Commenters assert that the obligation to prevent future impoundment refers to the need to ensure the cap is adequately supported and settlement of this nature does not occur.

With reference to free liquids, commenters assert that the regulations require the free liquids that must be removed are the relatively free-flowing liquids which otherwise could contribute to instability and affect the cap. Commenters state that there has never been an obligation to remove all liquids, nor is it true as a principle of engineering that CCR or other waste must achieve a moisture content of zero before it can be sufficiently stabilized. Commenters maintain that stability is determined by engineers who investigate and perform calculations according to well understood principles and procedures, taking into account liquids that may be present and any other relevant factors.

Commenters state that the terminology in the close-in-place performance standard reflects concepts and functions that naturally harmonize with the goals of facility closure. Commenters state that there is no need to search for a groundwater-related purpose where none is named, because a different division of EPA's regulations addresses groundwater quality issues.

Commenters note that EPA has stated recently that it has consistently held its current position on waste below the water table since 1982, and it cites documents dating back to then that refer to the need to address groundwater. Commenters do not dispute the requirement to protect groundwater, but commenters maintain that, if EPA had held a consistent position on this point since 1982, that means EPA also must have had a relatively complete understanding of both the closure and corrective action processes at that time. Commenters state that, otherwise, EPA could not have determined which elements were required for closure versus corrective action (or both) or identified a specific engineering response as mandatory in a particular scenario (such as waste below the water table). Commenters maintain that was not the case in 1982. Commenter states that, for example, in 1998, EPA described the history of hazardous waste regulations as follows:

> The closure process in Parts 264 and 265 was promulgated in 1982, before the Agency had much experience with closure of RCRA units. Since that time, EPA has learned that, when a unit has released hazardous waste or constituents into surrounding soils and groundwater, closure is not simply a matter of capping the unit, or removing the waste, but instead may require a significant undertaking to clean up contaminated soil and groundwater. The procedures established in the closure regulations were not designed to address the complexity and variety of issues involved in remediation. Most remediation processes, on the other hand, were designed to allow site-specific remedy selection, because of the complexity of and variation among sites.

Commenters assert that this passage emphasizes the need for remediation to address groundwater impacts, an unremarkable and undisputed proposition. In terms of understanding the respective purposes of closure and corrective action, the commenters contend that the statement is contrary to the notion that EPA's views on the selection of measures for remediation, whether at the time of closure or otherwise, had already crystallized in 1982. Commenters state that rather, according to the agency, EPA ''learned'' after then that it was unwise if not impossible to mandate particular responses in advance or from the top down without a ''site specific'' evaluation that accounted for ''the complexity and variation among sites.''

Response: EPA does not agree with the commenter that the Agency has incorrectly applied the Federal CCR regulations. Further, the comments are substantively the same as comments submitted to EPA in response to the proposed Part A decision for Gavin, and EPA responded to the comment in the Response to Comments (RTC) for the final Part A decision for Gavin. See *e.g.,* Gavin RTC, pages 65 and 102. EPA adopts the responses from Gavin for this final action. See also Gavin Final Decision [25] pages 24–41; 89 FR 38987–38995, 39077–39078.

Comment: Commenters assert that if EPA's interpretations are indeed new—as is more likely the case—then it is clear that 2015 rules do not require removal of CCR as a part of a closure-in-place closure, and do not require the complete isolation of the CCR from all potential sources of moisture in order to meet the performance standards required as a part of the closure-in-place. Rather, these issues are addressed as a part of the post-closure risk-based corrective action process, as clearly contemplated in the 2015 rules.

Response: EPA disagrees that its interpretations of closure are new and notes that EPA responded to comments that are substantively the same in several instances, including in the RTC to the final Part A decision for Gavin Final. See *e.g.,* Gavin RTC pages 65 and 96. EPA adopts the responses from Gavin in response to the comments. See also Gavin Final Decision, pages 24–41.

Comment: Commenter ADEM states that it promulgated CCR regulations in 2018 that reflect the same options for closure established by EPA. Commenter states it has issued permits to Alabama Power approving the Company's plans to close its ash ponds using the closure-in-place method and Alabama Power has acted in accordance with those permits. Commenter states that if closure-in-place is not available, the only alternative is closure-by removal. Commenter states that as of the 3rd quarter of 2023, Alabama Power estimates the costs of closure-in-place to be $3.5B and that at the present time, closure-by-removal is estimated to be three to five times more costly than closure-in-place. Commenter states this is due to, for example, the associated cost of excavation, transportation, and disposal in an offsite landfill compared to the costs of closure-in-place.

Commenter states that not only are the costs associated with closure-by-removal significantly higher and more burdensome to Alabama citizens, but the timeframe to complete closure is also significantly greater. Commenter states that Alabama Power has already completed closure-in-place at one of its

[25] Final Decision: Denial of Alternate Closure Deadline for General James M. Gavin Plant, Cheshire, Ohio, EPA–HQ–OLEM–2021–0100 November 22, 2022.

plants, with the remainder projected to be completed by 2032 or earlier. Commenter states that based on initial evaluations, closure-by-removal can take anywhere from 16 years to 54 years, depending on the plant site. Commenters state that in addition, the initial evaluations assumed landfill sites within a reasonable proximity to each plant would be readily available, but the commenter asserts this has proven not to be the case, which may further extend the time necessary to complete closure-by-removal.

Response: Comments do not provide support for the claimed costs of closure by removal, which in any event, are not relevant under RCRA. But, in any case, the differential cost of closure approaches does not equate to a conclusion that EPA is improperly requiring all CCR surface impoundments to close by removal. Nor does the cost of closure by removal allow a facility to close a unit without concern for the continued movement of liquid into and out of a unit closed with waste in the water table. Instead, as EPA has repeatedly stated, whether any particular unit can meet the closure in-place standards is a fact- and site-specific determination that will depend on a number of considerations, such as the hydrogeology of the site, the engineering of the unit, and the kinds of engineering measures implemented at the unit. Accordingly, the fact that, prior to closure, the base of a unit intersects with groundwater does not mean that the unit may not ultimately be able to meet the performance standards for closure with waste in place. In other words, EPA is not mandating that a unit submerged in groundwater prior to closure must necessarily close by removal. Depending on the site conditions the facility may be able to meet the performance standards in § 257.102(d) by demonstrating that a combination of engineering measures and site-specific circumstances will ensure that, after closure of the unit has been completed, the groundwater would no longer remain in contact with the waste in the closed unit. See Gavin RTC page 103. See also Gavin Final Decision pages 28–30.

Comment: Commenter states that EPA has approved closures with waste below the water table. Commenter states that EPA's primary disagreement with ADEM's implementation of the CCR program is the approval of closures in place where waste (*i.e.,* saturated ash) remains below the water table. Commenter states that, under such circumstances, according to EPA, the facility must either remove the waste below the water table or execute certain as yet unspecified engineering measures. Commenter also noted that EPA asserts that it has held the same view consistently since the early 1980s as to waste at hazardous waste and municipal solid waste facilities.

Commenter disagrees and states that, over a period of decades, EPA has repeatedly approved the closure of sites with hazardous waste and materials below the water table and found that such closures both protected human health and the environment and complied with RCRA subtitle C standards. Commenter states that EPA could not have approved closures in this fashion if it had been impossible to protect human health and the environment with waste below the water table or if a closure in place under such circumstances violated RCRA closure standards.

Commenter states that EPA approved these closures under the primary authority of CERCLA, commonly referred to as the Superfund program. Commenter states that section 121 of CERCLA imposes two important statutory obligations. First, as under RCRA, EPA must ensure closures protect human health and the environment. Second, ''[w]ith respect to any hazardous substance, pollutant or contaminant that will remain onsite,'' EPA must ensure that a CERCLA closure also complies with ''any standard, requirement, criteria, or limitation under any Federal environmental law,'' explicitly including RCRA, that may impose a ''legally applicable or relevant and appropriate standard, requirement, criteria, or limitation'' (which EPA references as ''ARAR''). Commenter states that, thus, where EPA identified RCRA closure standards as ARARs at a CERCLA site, EPA was under a statutory obligation to confirm compliance with those standards, which applied the same terms and concepts as those found in § 257.102(d).

Commenter states that EPA's Superfund closures with waste below the water table thus stand for two important propositions: first, if waste remains below the water table, RCRA does not impose an absolute requirement to close by removal or to implement any particular engineering measures, nor does that circumstance necessarily preclude protection of health or the environment; and second, even if those are EPA's interpretations through these decisions, EPA repeatedly expressed a contrary view in the past.

Commenter states that when EPA promulgated the CCR regulations in 2015, it was under an obligation to prepare a Regulatory Impact Analysis (RIA) that included, among other things, an estimate of compliance costs. Commenter states that the cost analysis prepared by EPA ''assume[d] that all surface impoundments undergo closure as landfills, meaning that surface impoundments are not excavated, nor is their ash trucked off-site.'' Commenter states that EPA referred to the cost of closure throughout the RIA as the ''capping and post-closure monitoring costs,'' and EPA did not estimate the cost of excavation and redisposal. Commenter states that EPA acknowledged in its Risk Assessment for the final rule that some CCR impoundments ''come in direct contact with the water table for at least part of the year.'' Commenter states that, if EPA knew some ash ponds had ash in contact with groundwater and believed that its rule required closure by removal (or some other special engineering response) in that scenario, then EPA was required to include the costs of that response in the RIA. Commenter states that the absence of consideration of costs of that nature indicates that EPA did not believe closure in place was necessarily prohibited or that measures beyond those currently planned at Alabama facilities were required for units with ash below the water table.

Response: EPA does not agree with the commenter's assertion that all CERLA actions constitute a determination by EPA that a selected remedy meets all requirements of RCRA, and therefore the existence of Superfund cleanup decisions that allow waste to remain in place in groundwater at certain sites means that RCRA generally allows closure with waste remaining in groundwater. The quotations provided in the comments are incomplete and strung together by words not found in the statute (see section 121 of CERCLA). This inaccuracy, combined with the lack of consideration of the specific facts and circumstances at the Superfund sites with remedy documents referenced in Attachment 2 of the comment,[26] render the commenter's conclusions flawed.

CERCLA is a risk-based cleanup program that does not require that RCRA standards be met in all cases. CERCLA requires consideration of costs in selecting remedies. Additionally, CERCLA cleanups can be divided into portions (*i.e.,* operable units) which approach cleanups from multiple perspectives to address risks. This means that a remedy selected for a landfill could leave waste in place, even if it had some contact with groundwater,

[26] Comment submitted by Energy Institute of Alabama, Docket ID: EPA–HQ–OLEM–2022–0903–0182.

but engineering controls that would be required by RCRA (*e.g.,* to prevent groundwater contact with waste) could be required in a remedy selected for another operable unit (*e.g.,* a contaminated groundwater plume).

Attachment 2 referenced by the commenter does not provide any information about the remedies selected in the Records of Decision (RODs) listed. It does not indicate whether RCRA was considered an ARAR in the RODs, whether the remedies selected in the listed RODs included engineering controls to control, minimize or eliminate post-closure infiltration of groundwater into the waste and releases of contaminants, or whether there were other operable units with selected remedies at these sites whose remedies may have required these controls. In any case, the commenter's attempt to rely on a handful of CERCLA RODs to demonstrate the proper interpretation of the requirements in the CCR regulations is not reasonable.

Regarding the comment about the RIA, the conclusions in the risk assessment and the RIA were based on the factual scenarios EPA believed were most likely to occur. See Gavin RTC page 69. Simply put, at the time the risk assessment and the RIA were developed, EPA had not been made aware by any facility that a significant proportion of unlined CCR surface impoundments were constructed in groundwater several feet deep. No commenter during the 2015 rulemaking identified the prevalence of such conditions, or even noted their existence. Thus, the RIA was based on the best information EPA had at the time, and unfortunately, the regulated community did not provide this information to EPA when commenting on the 2015 rule. To now argue that underestimates in the RIA should dictate how the regulation must be interpreted is unreasonable, particularly because their interpretation would mean the regulations fall short of the statutory mandate, as explained in *Utility Solid Waste Activities Group* v. *EPA,* 901 F.3d 414 (D.C. 2018).

B. Comments on EPA's Technical Evaluation of Alabama CCR Permits

1. Comments Opposed to EPA's Evaluation of CCR Permits Issued by ADEM

Comment: Commenter TVA states that it is committed to meeting its obligations associated with the Federal CCR regulations and ADEM's CCR regulations at the Colbert Plant and in so doing continuing to protect human health and the environment and the commenter disagrees with EPA's observations and assumptions about ADEM's permit decisions as discussed in Unit VI.

Commenter states that the Colbert Plant was retired in 2016 and that closure of Ash Disposal Area 4 (also known as Ash Pond 4 (AP–4)) was completed in 2018 in accordance with the Federal CCR regulations and State requirements. Commenter states that Ash Disposal Area 4 was investigated pursuant to the requirements of the Federal CCR regulations and the First Amended Consent Decree between ADEM and TVA. Commenter maintains closure was based on site-specific data and that it is protective of human health and the environment. Commenter notes that there is more work ongoing to address the limited groundwater impacts from Ash Disposal Area 4, but no remedy has been selected, or approved by ADEM, at this time. Commenter states that ADEM has requested more site-specific data and evaluations to support remedy selection. Commenter states that once a remedy is selected and approved by ADEM, TVA will implement that remedy and continue to monitor the unit as the groundwater reaches and maintains GWPS. Commenter asserts that it will adjust the remedy and unit, if needed, to maintain compliance with performance standards with the oversight of ADEM.

Response: The commenter describes actions that must be taken beyond the terms of the applicable CCR permit record in order for the facility to be in compliance with the Federal CCR regulations. However, the fact that necessary actions are not reflected in, or required by, the permit supports EPA's conclusion that Alabama's CCR program is not as protective as the Federal CCR regulations. Specifically, the commenter provides information about actions TVA is taking to collect additional site-specific data and select a remedy. However, this data collection is not required in the final permit issued by ADEM, and the permit provides no deadline for remedy selection. Thus, TVA can be in compliance with its permit without collecting additional data and taking an indefinite amount of time to select a remedy. While this inaction would result in compliance with the permit, it would not achieve compliance with the Federal regulations. See additional discussion of this practice on pages 55241–55242 of the Proposed Denial where EPA states, ''What the permittee is required to do in order to achieve compliance with the regulations must be determined prior to final permit issuance, because the permit must contain these requirements.'' The Colbert permit is thus not as protective as the Federal CCR regulations, regardless of any voluntary actions the facility may be taking.

The facts demonstrate that the permit is not sufficiently protective because Colbert has for several years collected data to conduct an ongoing study without specific objectives, but that study has still not yet resulted in selection of a remedy; nor does the permit provide a deadline for remedy selection. While this protracted study without remedy does not appear to violate the permit, it is neither consistent with nor as protective as the Federal CCR regulations. Specifically, 40 CFR 257.96(a) requires the ACM be completed within 180 days unless a 60-day extension is warranted. Remedy selection is required as soon as feasible, but no less than 30 days after the results of the ACM are discussed in a public meeting with interested parties. See 40 CFR 257.96(e) and 257.97(a). EPA does not agree that permits that allow continued data collection without enforceable requirements (*e.g.,* a permit that includes the regulatory deadlines) to select and implement a remedy are consistent with these requirements. Instead, such permits, if issued pursuant to an approved State program, would shield the permittee from enforcement of the Federal corrective action provisions while releases continue to migrate from the CCR unit. Thus, the Colbert permit is not as protective as the Federal CCR regulations. In addition, EPA's review of Alabama's permits shows that open ended corrective action is common among the facilities permitted by ADEM, which supports EPA's conclusion that the State's program does not require each CCR unit in the State to comply with standards at least as protective as the Federal regulations.

Comment: Commenter states that EPA conjectures that ADEM has approved a monitoring plan with an insufficient number of monitoring wells at necessary locations and vertical depths to ensure that all potential pathways have been monitored. Commenter says that EPA further asserts that bedrock monitoring wells have not been installed at the downgradient boundary as required by 40 CFR 257.91(a)(2) and that some wells are located up to hundreds of feet away from the boundary and on the other side of Cane Creek. Commenter maintains that this leads EPA to conclude that ADEM issued a final permit that approved the bedrock monitoring wells to not be installed at the waste boundary as required by Federal CCR regulations.

Commenter states that the Colbert monitoring system was designed and approved by ADEM by considering site-specific technical information as required by 40 CFR 257.91(b), and the commenters asserts that EPA apparently ignored the information. The commenter maintains that EPA fails to consider that some monitoring wells at the facility were installed prior to implementation of the CCR program and not directly at the unit boundary. Commenter maintains that the geophysical methods confirmed fractures present at these locations, implying an existing connection to the CCR unit, and because of the high hydraulic conductivity in karst due to the presence of preferential pathways, commenter asserts that it is appropriate to assume that groundwater samples from these monitoring wells located beyond the boundary should accurately represent the quality of water that passes it. Commenter states that additionally, some specific well locations were chosen based on anomalies detected from surface geophysical (electrical resistivity) investigations to target areas with preferential pathways. Commenter states that EPA also references monitoring wells located on the opposite side of Cane Creek from the CCR unit. Commenter maintains that Cane Creek is recharged by water from the alluvium, and groundwater within the bedrock aquifer is expected to flow beneath the creek. Commenter states that ADEM's approval of the Colbert monitoring system was based on its review and understanding of the entirety of information and data available for the site.

Response: EPA disagrees with the commenter's explanation as to why a sufficient number of bedrock compliance wells were not installed at the downgradient waste boundary. While EPA appreciates the efforts of TVA and ADEM to design and approve a monitoring program before implementation of the CCR program, the Federal CCR regulations were published in April 2015. Therefore, ADEM has had nearly nine years to require and approve modifications to the groundwater monitoring system to ensure that the requirements outlined at § 257.91(a)(2) were met.

EPA also disagrees with the commenter's technical rationale for not installing additional compliance bedrock wells at the downgradient waste boundary. The regulation specifies that ''[t]he downgradient monitoring system must be installed at the waste boundary that ensures detection of groundwater contamination the uppermost aquifer.'' 40 CFR 257.91(a)(2). The fact that the facility may have installed wells farther away that also accurately represent the quality of groundwater passing the waste boundary of the CCR unit does not satisfy the requirement for a system *at* the waste boundary. As explained in the 2015 final rule, wells installed at the waste boundary ensure early detection of contamination so that corrective measures can be implemented to protect sensitive receptors. In short, wells installed at the waste boundary ensure that worst case contamination is detected as quickly as possible. At AP–4, COF–111BR is the sole bedrock well installed at the downgradient waste boundary. This well alone does not represent the quality of groundwater passing the entire downgradient waste boundary of the CCR unit, especially since groundwater contamination has been identified in this well and the cross-gradient bedrock well COF–114BR. Furthermore, according to the commenter, the reason for installing downgradient bedrock wells so far away from the waste boundary was because geophysical methods confirmed fractures and preferential pathways, implying an existing connection to the CCR unit. While those connections serve as potential contaminant pathways, given the lack of bedrock wells installed at the downgradient waste boundary, it is unclear if those are the only contaminant pathways that exist in the bedrock. The permit record, even with the additional comments submitted on the Proposed Denial, does not demonstrate that all potential contaminant pathways are being monitored. As written, the permit is less protective than the Federal requirements at § 257.91(a)(2).

Comment: Commenter disagrees with EPA's position with respect to the screened or open intervals of monitoring wells and argues that site-specific technical information was considered during the design and approval of this monitoring well system. Commenter states that for monitoring wells COF–111 and COF–111BR, the shallow screened interval and the larger open borehole interval were targeted zones to ensure the presence of groundwater for monitoring. Commenter states that the ''57-foot vertical gap'' as described by EPA consists of a fat clay from a depth of 18 feet to approximately 60 feet and competent un-fractured limestone bedrock from 60 feet to 77 feet, both of which would likely not be a productive zone. Commenter maintains that it is also important to note that the zone within this ''gap'' should not be connected to the zone monitored by monitoring well COF–111BR to prevent cross-contamination. Commenter concludes that EPA has failed to consider the holistic battery of information and technical data in its post-issuance review of the Colbert Permit.

Response: EPA acknowledges the additional information provided by the commenter; however, it does not change EPA's assessment that critical zones are left unmonitored at COF–111 and COF–111BR. While the presence of a fat clay down to 60 feet may partially explain the rationale for a long casing, as EPA pointed out in its Proposed Denial, transition zones in karst environments such as residuum to epikarst and epikarst to ''unweathered'' bedrock are critical zones to monitor for potential contamination because the groundwater hydraulics at these transition zones are often complex. Therefore, it's EPA assessment that the transition from fat clay to ''un-fractured limestone bedrock'' is a potential contaminant pathway, especially considering that nearly all the downgradient compliance wells are not installed at the waste boundary. In other words, there is not sufficient evidence from other properly located compliance wells to rule out monitoring this transition zone.

Comment: Commenter states that EPA discusses four CCR facilities in Alabama for the proposition that ADEM has approved permits for facilities that are allegedly violating Federal standards. Commenter asserts that EPA has not identified any harm to human health or the environment at these facilities, nor has EPA provided evidence of risk of exposure to CCR constituents at harmful levels.

Commenter states that EPA's discussion of the Greene County ash pond provides a helpful example of how closure under a permit issued by ADEM addresses the kind of risks RCRA authorizes EPA to address. Commenter states that EPA describes various elements of the closure plan as reflected in the ADEM-approved permit and finds that the closure plan allows water to remain in contact with some ash within the disposal unit. Commenter states that fact alone is not direct evidence of any potential for harm to health or the environment, and to the contrary, the closure elements discussed by EPA show an effective plan for source control. Commenter states that CCR at Greene County will be consolidated into a smaller area within the original dikes, held in place by engineered soil containment berms, covered by a low-permeability artificial cover, and surrounded below the surface by a

slurry wall. Commenter states that EPA stated in the Proposed Denial that ''a barrier wall keyed into the low permeability Demopolis Chalk will be installed around the perimeter of the consolidated CCR material to create a hydraulic barrier that limits the movement of interstitial water through the constructed interior dike and existing northern dike,'' and asserts that EPA found ''[t]his hydraulic barrier will be connected to the geomembrane of the final cover system.''

Commenter argues that EPA thus acknowledges that the CCR at Greene County will be surrounded on all sides by features that completely separate the ash within the boundaries of the ash unit from the surrounding natural environment: on top by the cover system, on the sides by containment berms and subsurface barrier walls, and on the bottom by the Demopolis Chalk. Commenter states that EPA's analysis does not question the efficacy of any of these features. Commenters states as an example that EPA did not conclude that the cover or slurry wall will not perform as expected or that the Demopolis Chalk will not serve as an effective barrier to contaminant migration.

Commenter states that all of these protections are in addition to the removal of free-standing water from the pond. Commenter states that EPA has observed:

> EPA's risk assessment shows that the highest risks are associated with CCR surface impoundments due to the hydraulic head imposed by impounded water. Dewatered CCR surface impoundments will no longer be subjected to hydraulic head so the risk of releases, including the risk that the unit will leach into the groundwater, would be no greater than those from CCR landfills.

Commenter states that EPA estimates that 640,000 cubic yards will remain saturated post-closure. Commenter states that, assuming that number to be accurate, that amounts to roughly 6% of the total volume of ash, which is approximately 10,300,000 cubic yards. Commenter notes that historically all of the ash at Greene County was more or less fully saturated and there was also a sizable area of free-flowing ponded water. Commenter states that as the volume of water in the pond is reduced, the hydraulic head that drove exceedances in the past will be similarly reduced.

Commenter states that after the driving force behind exceedances (*i.e.,* free standing water and most other liquid) is removed, infiltration of stormwater is contained, and source control is achieved, the most reasonable conclusion based on the evidence is that post-closure migration of constituents from ash to the environment will cease. Commenter states that its assessment is backed by detailed analyses prepared by qualified and licensed professional engineers and geologists, which was submitted to ADEM and is publicly available on the internet in closure and corrective action documentation. Commenter concludes that the available evidence therefore indicates that CCR and its constituents will be safely contained in a manner that suggests ''no reasonable probability of adverse effects on health or the environment.'' Commenter states that EPA offers no evidence or even a theory of how appendix IV of part 257 constituents could move from ash inside the Greene County ash pond through the post-closure containment barriers and into the surrounding environment. Commenter asserts that EPA's discussion of the Colbert, Gadsden, and Gorgas facilities similarly lacks any plausible linkage from the ash ponds to a discernible risk of impacts to drinking water or ecological receptors.

Response: In the Proposed Denial, EPA acknowledges that the closure design outlined in the Closure Plan (Plan) at Plant Greene County could be implemented to be consistent with the Federal requirements. However, EPA's concern is that ADEM approved a Closure Plan without adequate details explaining how the closure requirements would be met, especially with respect to the saturated CCR that will remain in the unit. Essentially, EPA conducted the saturation analysis that ADEM should have required Alabama Power to complete. With that information ADEM may have been able to issue a permit specifying what the facility needed to do to meet the closure requirements or required the facility to submit a revised closure plan. ADEM did neither, and as a consequence, there is no binding and enforceable provision in the permit that requires the facility to comply with the closure performance standards. See Proposed Denial pages 55270–74.

EPA continues to believe that in many respects, the outlines of the closure presented in the Plan could be implemented to be consistent with the Federal requirements; however, ADEM approved the Plan without requiring Alabama Power to provide the information necessary to confirm that several critical closure requirements—which were not addressed or were insufficiently described—would be met. Specifically, neither the Closure Plan nor other materials in the Permit Application addressed how the performance standards in § 257.102(d)(2) will be met with respect to the saturated CCR that it appears will remain in the base of the consolidated unit. The Permit could either have specified what the facility needs to do to meet the requirements, or ADEM could have required the facility to submit a revised Closure Plan. ADEM did neither, and as a consequence, there is no binding and enforceable provision for the facility to comply with these performance standards. In essence, ADEM has issued a permit that allows the facility to decide whether to comply with § 257.102(b) and (d)(2), rather than ''requiring each CCR unit to achieve compliance with'' those provisions. 42 U.S.C. 6945(d)(1). Thus, while the closure plan for Plant Greene County may meet the Federal CCR regulations, the State CCR permit does not on its face require the necessary measures, so the permit is flawed even if closure actually complies with the Federal CCR regulations. In any case, EPA also identified groundwater monitoring and corrective action issues with the Plant Greene County permit, and neither the comments on the Proposed Denial or the State CCR permit record address those issues.

Further, Plant Greene County is not an adequate representation of closure plans for the other Alabama CCR permits discussed in the Proposed Denial because none of the other Alabama CCR permit closure plans require the types of measures that Plant Greene County plans to install (*e.g.,* a slurry wall) to ''control, minimize or eliminate, to the maximum extent feasible, post closure infiltration of liquids into the waste and releases of CCR leachate, or contaminated run-off to the ground or surface waters or to the atmosphere'' and to ''preclude the probability of future impoundment of water, sediment, or slurry.'' See 40 CFR 257.102(d)(1)(i) and (ii). In fact, the other permits do not adequately address those requirements or explain why it is not feasible to take some measure to prevent the flow of liquids into and out of the closed CCR units indefinitely. The lack of such analyses in the permit records further supports EPA's conclusion that Alabama's CCR permit program is not as protective as the Federal CCR regulations.

Finally, EPA disagrees that the permits ensure that contamination from the closed surface impoundments does not pose a hazard to human health or the environment. It is not possible to draw this sort of broad conclusion from the permit records because the monitoring well networks at those facilities discussed in the Proposed Denial are deficient and there are likely unmonitored potential contaminant

pathways that still exist. Further, in the preamble to the 2015 Federal CCR regulations, EPA explained the value of protecting groundwater as a resource, regardless of whether there are currently any nearby human receptors, and the Federal CCR regulations do not require such a finding before requiring corrective action. 80 FR 21452. See response to comment below.

Comment: Commenter states that EPA does not allege any conditions that cause harm to human health or the environment in the Proposed Denial. Commenter states that EPA does not identify any source of drinking water that has been impacted from an ash pond, nor does EPA assert that arsenic or any other CCR constituent is exposed to any habitat, fish, or wildlife in harmful concentrations. Commenter states that EPA provides no evidence that there is any risk of such harms developing at any site in Alabama. Commenter states that before source control at Plant Lowman is achieved through closure and while corrective action is still under consideration at ADEM that the groundwater is not connected to any source of drinking water. Commenter states that there is no evidence of any impacts off the plant site or of any harm to fish or wildlife or their habitat and commenter states that conditions will only improve after dewatering and capping. Commenter states that the plans were designed by experts whose entire careers are focused on closing waste sites safely and correcting groundwater issues. Commenter states that as the ash and gypsum dry out and stormwater is cut off with a protective cap, that the CCR unit is likely to achieve compliance with all applicable GWPS without any further action. Commenter states that it will be prepared to execute additional measures to protect groundwater if that proves to be necessary over time. Commenter states that given this there is every indication that ADEM's program is working as required by both RCRA and State law to protect human health and the environment.

Commenter states that if there is no harm to drinking water, to fish and wildlife, or to habitat under current conditions, then it follows that there is no opportunity to improve conditions for people or the environment. Commenter states that the CCR material is safely contained on the plant site, where it should be, and safety will only improve as closure and corrective action continue. Commenter states that, since EPA has yet to approve any engineering control measures, the only apparent alternative to closure in place is closure by removal. Commenter urges EPA to consider the location of landfills that could serve as potential disposal sites in this region and the character of neighborhoods near landfills and points between there and a power plant. Commenter states that off-site transportation and disposals impose challenges for people who live near the facility to avoid with a safe, on-site closure as planned.

Response: EPA agrees that safe on-site closure will avoid off-site transportation and disposal challenges, but EPA disagrees that the Alabama permits support a conclusion that the subject closure plans will protect groundwater resources or that they are as protective as the Federal CCR regulations requires. In fact, given the insufficiency of the groundwater monitoring networks, it is possible that unmonitored releases are occuring and, if so, it is possible those releases are posing a hazard to human health and the environment. In addition, with the exception of Plant Greene County, the permit records EPA reviewed do not support a conclusion that any efforts were made to identify and implement feasible engineering measures as required by 40 CFR 257.102(d)(1)(i). Absent such evaluations, EPA cannot conclude that the permits are as protective as the Federal CCR regulations.

Further, as discussed in the preamble to the final 2015 CCR Rule at 80 FR 21399, the objective of a groundwater monitoring system is to intercept groundwater to determine whether the groundwater has been contaminated by the CCR unit. Early contaminant detection is important to allow sufficient time for corrective measures to be developed and implemented before sensitive receptors are significantly affected. To accomplish this, the rule requires that wells be located to sample groundwater from the uppermost aquifer at the waste boundary.

Establishment of a groundwater monitoring network that meets each of the performance standards of 40 CFR 257.91 is a fundamental component of the CCR program. EPA noted significant deficiencies with the groundwater monitoring networks at each CCR unit that was reviewed as part of the Proposed Denial. Because of these deficiencies, there is potential for additional, unmonitored releases from the CCR units. Therefore, it is inappropriate to draw broad conclusions about receptors or the lack thereof until the deficiencies in the groundwater monitoring networks are addressed.

In the preamble to the 2015 CCR Rule, EPA explained the value of protecting groundwater as a resource, regardless of whether there are currently any nearby human receptors at 80 FR 21452. The preamble states that: whether the constituent ultimately causes further damage by migrating into drinking water wells does not diminish the significance of the environmental damage caused to the groundwater under the site, even where it is only a future source of drinking water. EPA further refers back to the preamble to the original 1979 open dumping criteria, which are currently applicable to these facilities. That preamble states that EPA is concerned with groundwater contamination even if the aquifer is not currently used as a source of drinking water. Sources of drinking water are finite, and future users' interests must also be protected. See 44 FR 53445–53448. EPA believes that solid waste activities should not be allowed to contaminate underground drinking water sources to exceed established drinking water standards. This means that whether or not receptors have been identified does not affect the need to comply with all corrective action requirements in the CCR regulations.

Further, Plant Lowman was not one of the sites reviewed, so EPA does not have comments on the adequacy of the groundwater monitoring networks at Plant Lowman.

Comment: Commenter states that TVA began closing Ash Disposal Area 4 at Colbert in accordance with State and Federal requirements and that the closure activities included decanting liquid from the unit, stabilizing the remaining waste and installing an engineered cap-and-cover system. Commenter states that the system was designed to be consistent with the relevant standards under subtitle D of RCRA. Commenter states that consistent with the self-implementing nature of the Federal CCR regulations, the closure was completed and certified by a qualified professional engineer in the State of Alabama as being in accordance with 40 CFR 257.102.

Commenter states that since completing closure and capping of Ash Disposal Area 4, TVA has continued to investigate and monitor groundwater as required by the Federal CCR regulations, ADEM's CCR Rule, and the First Amended Consent Decree. Commenter states that TVA also conducted a Comprehensive Groundwater Investigation (2018–2019) and installed 12 additional monitoring wells at Colbert pursuant to the consent decree, bringing the total number of monitoring wells at the site to 66. The investigation included an extensive evaluation of the

hydrogeologic conditions and groundwater quality at Colbert.

Response: EPA acknowledges the commenter's assertion that TVA has conducted a comprehensive groundwater investigation. However, EPA's assertion is that the permit is not as protective as the Federal requirements at § 257.91(a)(2). Specifically, a sufficient number of wells have not been installed at the downgradient waste boundary to ensure detection of groundwater contamination in the uppermost aquifer and that all potential contaminant pathways are not being monitored. From the available information, EPA concluded that the permit did not require a sufficient monitoring system to monitor all potential contaminant pathways, making the permit less protective than required by the Federal regulations.

Comment: Commenter stated that, in addition to installing new wells, TVA evaluated geochemical conditions within the underlying aquifer, performed geophysical surveys of the bedrock, completed offsite migration evaluations, and studied potential impacts to surface water using ADEM's risk-based model (RM2). Commenter states that the data from these activities indicate that the areas of elevated groundwater chemistry onsite are limited to a few constituents at low concentrations, are isolated to certain wells onsite (*i.e.,* not migrating offsite), and do not present a risk to adjacent properties or surface waters.

Commenter states that it is with this understanding that in 2019 TVA performed two ACMs involving Ash Disposal Area 4 to meet Federal and State requirements. Commenter states that one ACM was performed in accordance with the Federal CCR regulations and focused on groundwater in the vicinity of Ash Disposal Area 4 (the CCR Rule regulated unit) and it identified and evaluated various technologies for groundwater remediation. Commenter states that a second ACM was performed in accordance with the First Amended Consent Decree and it was based on the conceptual site model that was developed after the comprehensive groundwater investigation to consider remedies that are protective of human health and the environment. Commenter maintains that, as required by the First Amended Consent Decree, a remedy was proposed, which included MNA, an Environmental Covenant, and Adaptive Management. Commenter asserts that the proposed remedy was based on the determination that groundwater conditions at Colbert are protective of human health and the environment and are expected to continue improving in the future. Commenter states that TVA received comments from ADEM on this ACM and continues to work with ADEM and perform remedy-specific investigations at specific well locations to further develop the final approach for the site.

Response: As discussed previously, the changes requested by ADEM in its comments are not requirements of the permit, and the permit contains no deadline to address them or make changes. The permit does not contain a requirement to apply for a permit modification to incorporate remedy requirements once the work is completed. TVA may continue to comply with the permit without completing the study, selecting a remedy, or implementing the remedy. Therefore, the permit is less protective than the Federal requirements that include a series of deadlines for actions that are not included in Alabama's CCR permits.

Comment: Commenter disagrees with EPA's evaluation of the permit ADEM issued for Ash Disposal Area 4 at Colbert and disagrees with EPA's conclusions of deficiencies. Commenter states that EPA made incorrect assumptions.

Commenter states that EPA incorrectly states that TVA is using intrawell data comparisons described in the Groundwater Monitoring Plan approved by ADEM. Commenter states that EPA explains that this method does not require TVA to achieve compliance with the requirement in § 257.91(a)(1) to establish background groundwater quality in an upgradient well unless the criteria in § 257.91(a)(1)(i) or (ii) are met. See, 88 FR 55241, August 14, 2023.

Commenter states that ADEM approved the analyses of background conditions at Colbert based on interwell statistical methods, not intrawell statistics. Commenter agrees with EPA that intrawell comparisons are appropriate in certain circumstances; however, TVA is not proposing intrawell comparisons at Ash Disposal Area 4 at this time. Commenter states that all compliance data for Ash Disposal Area 4 submitted to ADEM or posted for the Federal CCR regulations used interwell statistical methods. Commenter states that the statistical analysis plan, which was developed in coordination with Dr. Kirk Cameron (the primary author of EPA's *Unified Guidance on Statistical Analysis of Groundwater Monitoring Data at RCRA Facilities*), merely identifies intrawell comparisons as a potential option. Commenter states it is appropriate to consider and include intrawell statistics in the groundwater monitoring plan approved by ADEM as a possible means of analysis of the groundwater quality, should conditions arise where an understanding of a well's history is warranted when evaluating groundwater conditions. Commenter states that TVA would have to notify ADEM before using intrawell statistical methods as the compliance method and that TVA will continue to work with Dr. Cameron, P.E.s, and ADEM to assure statistical methods used meet the requirements of the rules and adhere to EPA guidance.

Commenter states that ADEM approved interwell statistical methods in the CCR permit for Ash Disposal Area 4, the fact that this statistical approach is appropriate and justified, and that is the method currently employed under the permit, the use of this statistical method is not a factor that supports EPA's Proposed Denial.

Response: Regarding interwell vs. intrawell statistics, the commenter provides information about actions being taken by facilities which are not required by the permit. This is not relevant to this action. The permit issued to Colbert approves a groundwater monitoring plan which allows intrawell comparisons in some circumstances. When conducting intrawell comparisons, background levels are established using data from downgradient wells. The regulation in 40 CFR 257.91(a)(1) requires that background data have not been affected by leakage from a CCR unit. Downgradient wells at the boundary of a CCR unit that has been operating for decades do not meet this requirement. Because the procedures for updating background levels used in intrawell data comparisons are approved in the Final Permit, this permit does not require Colbert to achieve compliance with either the Federal requirements at § 257.91(a)(1) or an alternative State requirement that is equally protective.

Comment: Commenter states that EPA states that while the groundwater monitoring plan (GWMP) approved by ADEM includes bedrock monitoring wells COF–111BR, COF–112BR, COF–113BR, COF–114BR, CA17B, CA30B, MC1, MC5C, and COF108BR (future installation), CA6 (background), and COF–116BR (background) as part of the groundwater monitoring system for Ash Disposal Area 4, none of these bedrock wells are located at the downgradient waste boundary as required by § 257.91(a)(2). Commenter states that instead, EPA states they are located hundreds of feet away from this boundary. See, 88 FR 55239, August 14, 2023.

Commenter states that the groundwater monitoring system at Colbert includes 19 wells around the entire perimeter of Ash Disposal Area 4. Commenter states that to assure groundwater passing by the CCR unit boundary is accurately represented, the system was specifically designed to monitor groundwater quality in the alluvial aquifer (*i.e.,* the uppermost aquifer) at the unit boundary, at a location hydraulically downgradient of Ash Disposal Area 4. Commenter states that, in addition, because the underlying bedrock aquifer appears hydraulically connected to the alluvial aquifer, groundwater quality is also monitored in the bedrock aquifer in the downgradient direction of flow to evaluate this potential contaminant pathway. Commenter maintains this approach is consistent with the requirements of § 257.91.

Commenter states that the eight bedrock wells included in the Ash Disposal Area 4 Groundwater Monitoring Plan are positioned appropriately along the bedrock groundwater preferential pathways downgradient of Ash Disposal Area 4. Commenter states that the conceptual site model, informed by years of investigation and monitoring data, suggests that impacts to groundwater, if present, would be detected first in the upper groundwater zone downgradient of Ash Disposal Area 4 (the alluvial aquifer). Commenter states that this is based on the understanding that groundwater flow in alluvium and bedrock is primarily horizontal, with shallow groundwater flow towards Cane Creek. Commenter states, as such, monitoring wells screened in alluvium on the downgradient waste boundary are positioned to monitor the uppermost aquifer which is the most susceptible geologic unit at the downgradient waste boundary. Commenter states that the bedrock well locations were specifically selected based on documented groundwater flow pathways further from the waste boundary, and that these bedrock wells are positioned to monitor potential impacts along preferential pathways if impacts from Ash Disposal Area 4 were more extensive. Commenter maintains this approach of monitoring groundwater quality at both the alluvial aquifer at the downgradient unit boundary and the bedrock aquifer along potential pathways meets the requirements of § 257.91.

Response: EPA does not agree that the monitoring plan for Plant Colbert is as protective as the Federal CCR regulations. As discussed in the preamble to the Proposed Denial, to ensure detection of a release, the regulations establish a general performance standard that all groundwater monitoring systems must meet: all groundwater monitoring systems must consist of a sufficient number of appropriately located wells that will yield groundwater samples in the uppermost aquifer that represent the quality of the background groundwater and the quality of groundwater passing the downgradient waste boundary, monitoring all potential contaminant pathways. 40 CFR 257.91(a)(1) and (2). See Proposed Denial pages 55238–55239. Because hydrogeologic conditions vary so widely from one site to another, the regulations do not prescribe the exact number, location, and depth of monitoring wells needed to achieve the general performance standard. Rather the regulation requires installation of a minimum of one upgradient and three downgradient wells, as well as any additional monitoring wells necessary to achieve the general performance standard of accurately representing the quality of the background groundwater and the groundwater passing the downgradient waste boundary, monitoring all potential contaminant pathways. 40 CFR 257.91(c)(1) and (2).

Further, the number, spacing, and depths of the monitoring wells must be determined based on a thorough characterization of the site, including a number of specifically identified factors relating to the hydrogeology of the site (*e.g.,* aquifer thickness, groundwater flow rates and direction). 40 CFR 257.91(b).

EPA does not disagree with commenter that the installation of bedrock wells at some distance away from the downgradient edge of the waste boundary is beneficial to understanding and characterizing the uppermost aquifer. EPA also acknowledges that in some cases, groundwater contamination via vertical communication between the alluvial aquifer and bedrock aquifer may not occur until some distance beyond the downgradient waste boundary. However, installing bedrock wells at some distance away from the downgradient edge of the waste boundary is not as protective as § 257.91(a)(2). The commenter specifically acknowledges there is a hydraulic connection between the alluvial aquifer and bedrock aquifer. This can only happen via vertical communication and is precisely why compliance wells must be at the waste boundary. Installing compliance wells at appropriate horizontal locations and vertical depths at the waste boundary provides the best opportunity to detect worst case situations where contamination is leaving the unit. By ensuring that both the § 257.91(a)(2) and the § 257.91(b) requirements are met, the facility could definitively conclude that the compliance well network accurately represents the quality of groundwater passing the waste boundary and that vertical communication via preferential pathways between the alluvial aquifer and bedrock aquifer does not occur until some distance beyond the downgradient boundary. Currently, ADEM cannot definitively claim either based on the permit record.

Comment: Commenter states that EPA takes the position that the corrective measures the permittee is required to take to achieve compliance with the regulations must be determined prior to final permit issuance because the permit must contain the requirements. See, 88 FR 55242, August 14, 2023. Commenter maintains that permitting actions require adherence to the regulatory framework (*e.g.,* RCRA), but do not contemplate the specifics of corrective actions. Commenter states that in most cases, identification and selection of corrective actions would be impossible at the time of permitting. Commenter states that, for example, Class II landfills that have solid waste permits have detection monitoring, assessment monitoring, and corrective action frameworks built into the permit. Commenter states that once assessment monitoring begins, the permit is modified to include additional needs to address potential remedial actions, but the permit is not issued with remedial actions already required. Commenter states that, on the contrary, the permit is issued based on design and construction performance standards, but EPA appears to imply that the Federal CCR regulations differs from other permitting actions in that permits cannot be issued until a remedial action is selected.

Commenter states that because ADEM has provided a framework that is required and consistent with the Federal CCR regulations, the permits issued by ADEM are sufficient. Commenter states that ADEM is providing oversight to TVA to identify appropriate remedial actions for Ash Disposal Area 4 at Colbert, and that these remedial activities will need to satisfy ADEM and meet the State and Federal CCR regulations before ADEM will approve the proposed alternative, which they have not yet done.

Response: The Commenter misconstrues EPA's position as implying that a permit cannot be issued until a remedy is selected. This is not

the case. The corrective action requirements include a series of actions, beginning with data collection to characterize a release and site conditions that may ultimately affect the remedy selected (40 CFR 257.95(g)). This is followed by requirements to complete an ACM, hold a public meeting, and select a remedy. Remedy Selection Reports must specify a schedule to implement remedial activities and then the remedy must be implemented. Permit applicants may not be subject to corrective action at the time of permitting, or they may be at any step in the corrective actions process.

Permits must implement the underlying regulations by establishing clear and enforceable requirements that a facility must satisfy to comply with the underlying regulations. This includes reviewing application materials and determining which requirements apply, which applicable requirements have already been met, and which have not yet been met. The applicable requirements the permittee has not yet met must be included in the permit. ADEM failed to do this in permits reviewed by EPA. The permit record indicates that the ACM at Colbert had been submitted to ADEM prior to permit issuance, but ADEM did not determine in the permitting action whether the ACM met the requirements in the regulation, or whether a revised ACM must be submitted to address any deficiencies. ADEM simply copied and pasted corrective action requirements from the regulations into the permit, without applying those requirements to the specific facts at the site. That is not adequate oversight and implementation.

ADEM's failure to adjudicate the requirements applicable to Colbert, or to review and either approve or disapprove submitted application materials, means its permit program is not operating as a ''system of prior approval.'' In the example of Colbert, ADEM should have reviewed the ACM and either approved it or included requirements in the permit to revise it as needed to satisfy the requirements in the regulations. If the ACM was approved, ADEM should have included requirements in the permit to hold a public meeting by a particular deadline and prepare a Remedy Selection Report. ADEM should have established a deadline to prepare the Remedy Selection Report and required it to be submitted in an application for a permit modification. The Remedy Selection Report must include a plan to implement the remedy, with actions and deadlines for them. ADEM must review and approve the selection of the remedy and the schedule to incorporate those requirements into the permit through a modification.

Additionally, these approvals and modifications are subject to public participation requirements. Commenters have provided information that implies ADEM is circumventing its public participation requirements by working with the permittees outside of the permitting process to approve plans and reports, without allowing the opportunity for public comment. If correct, this is a further indication that ADEM is not implementing its program in a manner that ensures its program is at least as protective as the Federal CCR regulations.

Comment: Commenter states that EPA suggests that ADEM approved wells that were not constructed in accordance with § 257.91(e), and consequently, EPA implies that the groundwater monitoring system will not accurately yield samples that are representative of the overall the quality of groundwater around Ash Disposal Area 4. Commenter states that EPA calls into question TVA's use of Rotosonic drilling, claiming that it may alter, pulverize, or otherwise destroy or obfuscate acquired sample materials. See 88 FR 55240, August 14, 2023. Commenter states that § 257.91(e) of the Federal CCR regulations, however, does not specify a drilling method. Commenter states that EPA's self-implementing CCR regulations relies on P.E.s to provide assurance that activities meet industry standards in the absence of technical criteria in the CCR regulations and that this reliance extends to selecting appropriate drilling methods based on site-specific conditions. Commenter states that Rotosonic drilling was selected as the most appropriate method for Colbert to complete soil borings and install monitoring wells.

Commenter states that Rotosonic drilling, more often referred to simply as sonic drilling, is an effective and widely used technique for collecting soil and rock samples and is far superior to formerly employed techniques such as air rotary, air hammer, and mud rotary. Commenter maintains that sonic drilling is arguably the best drilling technique available for environmental investigations in a wide variety of geologic settings because it provides continuous, nearly undisturbed sample cores, maintains borehole integrity and geochemistry, and can be used for both soil and rock while significantly reducing the introduction of drilling fluids and the generation of drilling wastes. Commenter states that sonic drilling demonstrably does not ''alter, pulverize or otherwise destroy'' acquired samples because the vibrations employed reduce the friction between the drill bit and the soil/rock, allowing it to cut through the material with less resistance and, therefore, less disturbance. Commenter states that, by contrast, it is the air rotary and air hammer techniques that ''alter, pulverize or otherwise destroy'' the penetrated rock, and this obliteration of formation material results in the poor return of samples, very often intermixing penetrated intervals when the shattered cuttings are ejected at the surface. Commenter maintains that mud rotary has also been shown to have these same disadvantages along with substantially altering groundwater geochemistry. For these reasons, commenter states that TVA and its contractor used the sonic drilling technique at Colbert in lieu of these other methods.

Commenter states that the TSD in support of the Proposed Decision includes a discussion of alleged technical issues related to ADEM's permits and site-specific conditions. Commenter states that Rotosonic drilling is a commonly used drilling method in the industry, as EPA recognized in the TSD, however, the TSD implies that Rotosonic drilling may not be an appropriate drilling method, noting that ''it occasionally suffers from poor physical sample recovery issues depending on site conditions and other factors, and the resulting data gaps must be considered in assessments which depend on such samples.''

Commenters state that the examples of poor recovery cited by EPA in the Proposed Denial Volume I TSD (Unit II.d) are limited and not applicable to the geological conditions at Colbert. Commenter maintains that EPA acknowledges as much when it refers to these examples as ''particular site-specific issues.'' Commenter states that TVA has had very good results using sonic drilling at Colbert and has installed 22 monitoring wells, totaling nearly 2,000 linear feet of borings using this technique. Commenter states that the average percent recovery was 91 percent. Commenter states that the use of sonic drilling at Colbert resulted in substantial recovery of soil and bedrock cores in a continuous, nearly undisturbed condition. Commenters state that site experts used multiple lines of evidence such as downhole geophysics logging to confirm competent zones of bedrock as well as permeable zones that are potential conduits for transmissive groundwater flow. Commenter concludes that TVA believes EPA's concerns about sonic

drilling at Colbert are unwarranted and that the monitoring wells comply with the performance criteria outlined in § 257.91(e) and thus, is not a factor that supports EPA's denial of ADEM's permit program.

Response: The selection of the drilling method or methods is an important step in the overall well installation process. EPA did not intend to call into question whether Rotosonic drilling was an appropriate method in general or even inappropriate for this site. Instead, EPA intended to convey concern with the adequacy of the selected monitoring zones, based on the details noted in the Rotosonic drill logs. EPA maintains that the zones of ''no recovery'' recorded for specific intervals in specific wells may represent data gaps, particularly if such zones occur at key locations and depths along potential flow pathways. The central issue EPA raised in the Proposed Denial in this respect related to the uncertainties regarding the nature of the geologic materials which were *not sampled, i.e.,* the depth intervals resulting from site-specific application of the Rotosonic method where no recovery of geologic materials occurred. A comprehensive assessment of the relevant issues must therefore include not only the technicalities of the Rotosonic method, but also the characteristics of the local geology, data gap intervals resulting from application of Rotosonic methods at Colbert, and the locations and depths of these data gaps in the site-specific hydrogeologic context. A comprehensive discussion of the limitations of the monitoring network at TVA needs to consider all these factors, as well as how such information was used in making decisions which produced the existing monitoring network. EPA remains concerned that the resulting monitoring network may not comply with the requirements § 257.91(a)(2) in that all potential contaminant pathways may not be monitored at the unit boundary.

In a karst setting such as the Colbert site, the zones of ''no recovery'' while employing Rotosonic drilling methods can represent void space or extremely weathered materials. While such intervals are problematic for all drilling methods, the original comment identified these zones of 'no recovery' or *no data,* to potentially represent void spaces or highly weathered intervals which could be of critical importance to monitoring efforts.

Comment: Commenter states that ADEM appropriately approved TVA's use of open borehole wells and disagrees with EPA's suggestion that the long-screened interval open-borehole monitoring wells yield blended or otherwise unrepresentative samples, and thus do not comply with the performance standards in § 257.91(a)(1) and (2) and (e). See 88 FR 55240, August 14, 2023. Commenter states that use of open-borehole wells in limestone bedrock is compliant with EPA's CCR regulations, the American Society for Testing and Materials (ASTM) standards, USEPA Region 4 guidance, and Interstate Technology and Regulatory Counsel (ITRC) guidance. Commenter maintains that ASTM D5092/D5092M–161 clearly states that the practice of screening wells and installing filter packs is ''not applicable in fractured or karst rock conditions.'' Commenter states that USEPA Region 4 and ITRC3 also acknowledge that open bedrock completions are warranted in karst conditions and fractured rock. During the Comprehensive Groundwater Investigation (CGWI) conducted at Colbert in 2019, commenter asserts that TVA and its contractor performed surface geophysics and borehole geophysical logging of the CGWI monitoring wells that provided an understanding of the bedrock structure. Commenter states that using the borehole geophysical logging data, including the heat pulse flowmeter, the essential preferential flow fractures in each CGWI monitoring well were identified, and the dedicated groundwater low flow pumps were positioned precisely to monitor groundwater in the most representative intervals of the Tuscumbia limestone (*i.e.,* zones of highest groundwater flow), while preserving the ability to monitor other intervals if the need should arise.

Commenter maintains that TVA's analyses of older screened wells at Colbert indicated that well casings have blocked/sealed off significant water-bearing fractures and are not representative of overall Tuscumbia bedrock aquifer conditions. Commenter states that ASTM and USEPA Region 4 clearly recognize that using screened wells to monitor groundwater in a bedrock aquifer of this type is technically unsound if for no other reason than introducing an unacceptable sampling bias that could produce misleading and unreliable groundwater quality data. Commenter states that utilizing open-hole monitoring wells avoids the unfavorable limitations of screened wells that can only yield samples from discrete isolated fractures that are not representative of large-scale groundwater quality in the bedrock aquifer, and that, by contrast, wells with an open-hole completion represent more completely the groundwater quality of the upper portion of the bedrock unit that could potentially affect surface water quality (*i.e.,* the Tennessee River and Cane Creek). Commenter and P.E. contend the construction of the open-borehole wells comply with the performance standards in § 257.91(a)(1) and (2) and (e), and thus, is not a factor that supports EPA's denial of ADEM's permit program.

Response: EPA appreciates the additional information provided by the commenter. However, the comment is somewhat self-contradictory, and in some respects tangential to the issues raised in the original comment. It is conceivable that low flow sampling within an open borehole, if appropriately deployed, may be used to monitor discrete zones within a bedrock aquifer. However, this presumes that certain preconditions are met, which are discussed further below. First it must be acknowledged that the goal of such sampling is not to assess ''large-scale groundwater quality'' of the bedrock aquifer as the commenter suggests. Such a ''large-scale'' assessment of groundwater quality would require an approach altogether different from low-flow methods. Instead, the purpose of low-flow sampling is to collect *representative* groundwater samples from key depth-discrete zones. Each sample is intended to be representative of the specific depth interval where the pump intake is deployed, rather than an ''average'' or ''blended'' sample of an entire borehole.

It is for this reason that guidance documents for low flow sampling generally indicate a preference for permanent monitoring well installations with short, screened intervals (*e.g.,* 10-feet or less), to be used in conjunction with low-flow approaches. Short screened or open intervals are installed at targeted depths based on geologic and other information to enable and facilitate sampling of a specific zone or zones with low-flow methods. Long-screened intervals or open intervals in open bedrock boreholes should be generally avoided. To this point, EPA Region 4 guidance document, entitled *Design and Installation of Monitoring Wells, January 1, 2018,* states the following:

> Another limitation to the open rock well is that the entire bedrock interval serves as the monitoring zone. In this situation, it is very difficult or even impossible to monitor a specific zone because the contaminants being monitored could be diluted to the extent of being non-detectable. The installation of open bedrock wells is generally not acceptable in the Superfund and RCRA programs, because of the uncontrolled

monitoring intervals. However, some site conditions might exist, especially in cavernous limestone areas (karst topography) or in areas of highly fractured bedrock, where the installation of the filter pack and its structural integrity are questionable. Under these conditions the design of an open bedrock well may be warranted.

While this guidance does not *preclude* the use of open bedrock wells in ''cavernous limestone'' or ''highly fractured bedrock,'' it does not generally support the commenter's assertion that, ''Use of open-borehole wells in limestone bedrock is compliant . . . '' It should be noted that many of the open bedrock boreholes at Colbert do not indicate the presence of the voids or highly fractured zones listed above as conditions justifying open boreholes. More importantly, the presence of long open intervals in boreholes, while not addressed by the commenter, is listed as a particular limitation implied in the Region 4 guidance excerpted above (*i.e.,* ''*the entire bedrock interval serves as the monitoring zone. . . .*''). In addition to the concerns listed by the Region 4 guidance, long open boreholes commonly exhibit issues such as vertical flow and multiple inflow and outflow zones. Unless this ''short circuiting'' intra-borehole flow is understood at a high level of resolution, it would be difficult to determine precisely what a particular low flow sample from such a borehole represents, other than some sort of blended average. For this reason, inflatable straddle packers are commonly employed in long open boreholes to isolate zones of typically 10-feet or less in vertical length to minimize the confounding effects of intra-borehole flow. Even so, straddle packers also have potential leakage or other problems. For these reasons, conventionally screened wells should be installed or at least strongly considered where conditions allow for their installation. Another limitation of long open-hole intervals not discussed by the commenter is the potential blending of zones of different chemistry, *e.g.,* redox potential, or other parameters. Cross connecting independent zones with different redox potential is highly inadvisable as it may produce non-representative samples resulting from in-situ redox reactions not likely to occur without the presence of the borehole conduit.

The commenter provides little information which would outweigh the many negatives listed above for using long open borehole wells with or without low-flow sampling techniques, and in many cases the assertions are factually incorrect. For example, the commenter states, ''ASTM and USEPA Region 4 clearly recognize that using screened wells to monitor groundwater in a bedrock aquifer of this type is technically unsound if for no other reason than introducing an unacceptable sampling bias that could produce misleading and unreliable groundwater quality data.'' This statement is in direct conflict with the excerpted material from the Region 4 guidance presented just above. Similarly, the comment states, ''Utilizing open-hole monitoring wells avoids the unfavorable limitations of screened wells that can only yield samples from discrete isolated fractures . . . ''

As discussed previously, this assertion confuses limitations of *low-flow sampling* with limitations of *screened wells.* The intention of low-flow sampling is in fact to yield samples from discrete zones or fractures, and it is commonly accepted that low flow sampling is less effective to this intention in open boreholes, or wells or boreholes with excessively long open or screened intervals. The comment misses these points entirely in attempting to justify the unusual and problematic combination of low-flow sampling methodologies with long open boreholes selected by TVA and approved by ADEM.

It is not clear what is intended by the statement in the following comment:

> TVA's analyses of older screened wells at Colbert indicated that well casings have blocked/sealed off significant water-bearing fractures and are not representative of overall Tuscumbia bedrock aquifer conditions.

EPA concurs with this concern which suggests that the older screened wells are indeed problematic in that they have inadvertently excluded significant water-bearing fractures from the monitoring network. For example, EPA's analysis of monitoring wells COF–111 and COF–111BR indicates similar concerns, *i.e.,* that potentially significant water-bearing zones in the epi-karst materials in the uppermost portion of the bedrock have been effectively sealed off and isolated by steel casings and have therefore been similarly excluded from the monitoring well network and sampling program. It appears that there may be a systematic problem in that the potential contributions of these cased-off water-bearing zones have been in many cases inappropriately excluded from the monitoring network, and their potential contributions to the inputs of the totality of groundwater affecting the quality of surface water in Cane Creek have not been determined. This particular issue with the permit record could have been avoided with the use of clustered monitored wells, which are multiple groundwater monitoring wells placed in close proximity to one another. This well installation method would allow for the monitoring of groundwater conditions at various discrete-depth zones.

In conclusion, the explanations in the comment do not resolve the issue in that the long-screened interval open-borehole monitoring wells have the potential to yield blended or otherwise unrepresentative samples, and thus do not comply with the performance standards in § 257.91(a)(1) and (2) and (e). As discussed above, options are available to redevelop and reconfigure these existing open boreholes to fully comply with the regulations, including installing standard monitoring wells (*e.g.,* with discrete screened intervals) within the open boreholes with discrete screened intervals targeted to the most important discrete fracture zones, or a variety of specialized technologies and methods developed to address fracture-specific sampling in fractured bedrock environments. ADEM chose to approve the GWMP without requiring the necessary analysis and as a result none of these compliant alternatives were considered. Further, to the extent the comments do clarify the situation, such information should have already been in the permit record if necessary to adequately explain the groundwater monitoring network.

Comment: Commenter disagrees with EPA's Proposed Denial with respect to delineation of the uppermost aquifer. Commenter states that EPA conjectures the groundwater monitoring well network ADEM approved does not meet the performance standards in § 257.91(a) or (b), that the approved groundwater monitoring system is not based on a thorough characterization of the elements listed in § 257.91(b), and that the groundwater monitoring system does not ''yield groundwater samples from the uppermost aquifer'' as required by § 257.91(a). Commenters maintains this is due to EPA's conclusion that the subject facilities have failed to delineate the uppermost aquifer.

Commenter maintains there is simply no requirement for the compliance groundwater monitoring network to vertically delineate the uppermost aquifer and that EPA has, once again, read requirements into the Federal rules that simply do not exist. Commenter states that 40 CFR 257.91(a)(2) requires that the groundwater monitoring system consist of a sufficient number of wells, installed at appropriate locations and depths, to yield groundwater samples from the uppermost aquifer that

accurately represent the quality of groundwater passing the waste boundary of the CCR unit. Commenter states that these performance standards do not speak to complete delineation of the aquifer, but only to obtaining samples that accurately reflect the quality of groundwater passing the waste boundary. Commenter maintains that complete vertical delineation is not only not required on all cases, it is not logical or practical to require it in all cases, and that furthermore, EPA has approved, overseen, or itself installed groundwater monitoring systems around the Nation in the RCRA and CERCLA program, and, at no time, has taken a remotely similar position requiring complete vertical aquifer delineation in all of them.

Commenter states that with respect to Plant Gadsden, EPA specifically mentions, ''the variable nature of the bedrock/overburden contact was not sufficiently characterized to meet the performance standards in 40 CFR 257.91(a) or (b).'' Commenter states that EPA continues by stating ''[i]n addition, the top-of-bedrock surface has not been adequately resolved in all areas of the site because some boring logs lack reliable confirmatory data. According to the boring logs that were included in the Permit Application, there are multiple missing intervals of ''no recovery'' from numerous borings advanced into bedrock, which indicate a large potential for hydraulically significant zones that are currently insufficiently characterized. EPA is proposing to determine that the thickness, variability, nature, and hydrogeologic significance of the transitional zone of weathering in the uppermost part of bedrock has not been established, as required by 40 CFR 257.91(b).'' Commenter states that nineteen of the twenty-four monitoring wells and piezometers included within the Permit were drilled utilizing a sonic drilling method—a method known for the benefit of reliably providing continuous and minimally disturbed core samples, and that, as such, characterization of the uppermost portion of the bedrock has been successfully achieved through the thorough descriptions of recovered materials produced during activities related to installation of monitoring wells, piezometers, and vertical delineation wells that were provided on the very boring logs referenced by EPA.

Commenter states that EPA expands on their claim that the uppermost aquifer has not been sufficiently characterized and the depth of the lower confining unit has not been established with respect to Plant Gorgas, contending that contradictory information has been portrayed in the facility file by stating, ''the Pratt Coal System and the American Coal Systems are mapped together and separately in different groundwater monitoring reports.'' Commenter maintains that this faulty conclusion stems from EPA's limited and perfunctory review of the massive amount of data available for the facility. Commenter maintains that the separation of the Pratt and American flow systems stemmed from the receipt of additional site cross-sections with the Supplemental Site Hydrogeologic Characterization Report dated March 5, 2021. Commenter asserts that it is a well-established fact that a successful conceptual site model is continually improved as more data becomes available, as was the case with this distinction of the Pratt Coal and American Coal Systems. Commenter concludes that a complete vertical delineation may not be logical or practical in every case, and as such, the uppermost aquifer has been characterized to the extent that is technically feasible.

Response: Regarding the regulations outlining the requirements for groundwater monitoring systems, EPA disagrees with the commenter's statement that EPA has read requirements into the Federal CCR regulations that simply do not exist. Furthermore, contrary to the commenter's claims, EPA is not contending that the level of detail discussed in the comment is required to meet the Federal requirements.

According to the commenter, 40 CFR 257.91(a)(2) requires that the groundwater monitoring system consist of a sufficient number of wells, installed at appropriate locations and depths, to yield groundwater samples from the uppermost aquifer that accurately represent the quality of groundwater passing the waste boundary of the CCR unit. However, that is only one half of the regulation. Section 257.91(a)(2) also states the downgradient monitoring system must be installed at the waste boundary to ensure (1) detection of groundwater contamination in the uppermost aquifer; and (2) monitoring of all potential contaminant pathways. Potential contaminant pathways can only be identified by conducting a thorough characterization of the uppermost aquifer. In fact, 40 CFR 257.91(b) outlines several technical criteria, such as aquifer thickness and the materials comprising the confining unit defining the lower bound of the uppermost aquifer, that needs to be evaluated before installing the compliance monitoring wells. Characterization, including the delineation of the upper and lower bounds of the uppermost aquifer and the potential contaminant pathways within, can be accomplished by scientific literature and a site-specific investigative tool such as exploratory borings and geophysics. Plant Gorgas is a very complex site, and the information available as part of the permit record does not support that all preferential pathways are being monitored.

In short, EPA's statements in the Proposed Denial regarding groundwater monitoring systems was in response to ADEM's approval of groundwater monitoring plans containing a poor characterization of the uppermost aquifer at each facility. Identifying the upper and lower bounds of the uppermost aquifer has not been achieved resulting in potential unmonitored contaminant pathways. Lastly, the permits do not provide any indication of how and when the groundwater monitoring system requirements will be met.

Comment: Commenter states that EPA asserts multiple times throughout its post-issuance critiques of multiple permits that there is an insufficient number of wells laterally and vertically along the downgradient perimeter of the unit to monitor all potential contaminant pathways. Commenter states that the performance standard for groundwater monitoring systems requires a sufficient number of wells installed at appropriate locations and depths to accurately represent the quality of groundwater passing the waste boundary of the CCR unit. Commenter states that a minimum spacing between well locations and well depths is not specified by the Federal rules, and that instead it is then left to the professional judgement of ADEM staff scientists, geologists, and engineers, working collectively with the permittees to design/approve the most practical system to monitor the quality of groundwater entering the uppermost aquifer from the units. Commenter maintains this is an ongoing effort.

Commenter further asserts that groundwater monitoring systems are continuously evaluated and modified as more data is collected and analyzed. Commenter maintains that EPA seeks to substitute its judgement, based on a cursory review of limited information, for that of ADEM, whose professional staff have conducted extensive reviews and analyses of the holistic battery of data available for each facility.

Response: The Commenter describes an approach to designing a groundwater monitoring system that is inconsistent with the CCR regulations. First, the CCR regulations present criteria for designing

a groundwater monitoring system for each CCR unit (40 CFR 257.91) with a deadline for installation of the system and collection of the first 8 samples from each well no later than October 17, 2017 (40 CFR 257.90(b)). Thorough characterization of site-specific hydrogeological characteristics (*e.g.,* groundwater flow rate and direction, aquifer thickness, hydraulic conductivities) was required to support this design (40 CFR 257.91(b)). This design should not be an ongoing process six years after the deadline. Along those lines, while collaboration is a good thing, ADEM and the facility should not be ''working collectively to design/approve'' a groundwater monitoring system. It was the facility's responsibility to design the system years ago, and it is ADEM's responsibility to thoroughly evaluate the facilities system and only approve it if all the requirements of the regulations are met.

In this case, it appears that ADEM simply approved the systems submitted by the facilities. To the extent there was meaningful evaluation, that is not included in the permit record and available for review, which again highlights the concern that ADEM is not adequately overseeing and documenting its decisions. EPA must rely on the available permit record whether the groundwater monitoring system (GWMS) is designed in compliance with the Federal CCR regulations, and, at this time, the GWMSs reviewed in the proposal appear inadequate based on the available information in the permit record.

Post hoc explanations not included in the permit record do not cure the deficient permits. For the reasons provided in the Proposed Denial and discussed in this document, EPA finds that the permits are not as protective as the Federal rule and that the permit records are insufficient.

Comment: Commenter states that with respect to lateral spacing, one of the considerations ADEM took into account is that most of the CCR units are unlined, and for this reason, it would be reasonable to assume that potential leakage from these units would not follow the same pattern as those from a lined unit. Commenter states that a leak resulting from a failure or breach to a liner system would likely represent an individual ''point of release,'' whereas with an unlined unit, the leakage would likely result in more widespread impacted areas dependent on the variable permeability of the clay base, and, as such, a tighter-spaced network of wells would be required to adequately monitor and detect a release from a lined unit, whereas the monitoring well network for adequately detecting a release from an unlined unit would not be required to be as closely spaced.

Commenter states that in other cases ADEM had to consider the topographic relief, geometric footprint, or other site conditions at the waste boundary, verified, at times, by ADEM staff conducting site visits, that prohibited access or installation directly at the limits of the CCR unit. Commenter states that in situations where installation at the waste boundary was considered to be technically infeasible, as was the case with Plant Gorgas, monitoring well locations were selected based on best professional judgement. For example, commenter asserts that monitoring wells were strategically placed in areas that receive groundwater from multiple directions occurring from the finger-like features of the CCR unit.

Commenter states that much of EPA's commentary on vertical spacing seems to orbit the idea that Federal rules require compliance monitoring wells throughout the entire depth of the uppermost aquifer including its upper and lower bounds. Commenter states that this is neither correct nor feasible, because, as ADEM explained in response to the delineation issue, the Federal CCR regulations require a monitoring network that detects contamination released from the unit, not one that characterizes the entire depth of the aquifer and that it is not practical to do so. Commenter states, for example, that the majority of the lower boundary of the CCR unit at Plant Gadsden is at approximately 500 to 505 feet AMSL (above mean sea level). Commenter states that monitoring wells installed at depths of 100 feet or greater, or at elevations near 415 feet AMSL, as suggested by EPA would not detect contamination from a breach of the liner system and would not accurately represent the quality of groundwater passing the waste boundary. Commenter maintains that contaminants breaching the liner system would have to immediately descend to the lower bounds of the aquifer perfectly along the vertical plane of the waste boundary for EPA to be correct, but commenter asserts that contaminant migration is simply not expected to occur in this manner in any of the geological systems at any of Alabama's CCR facilities.

Commenter states that EPA goes further with this faulty notion by asserting that an insufficient number of monitoring wells are screened within Unit 1 of the uppermost aquifer at Plant Greene County, resulting in inadequate vertical spacing of compliance wells. Commenter notes that it is true that the majority of monitoring wells have been screened within Unit 2 of the uppermost aquifer, but EPA does not appear to understand the site geology and characteristics of each unit. Commenter states that the quaternary alluvium and low terrace deposits comprise the uppermost aquifer; that these units overlie the Demopolis Chalk, which acts as a lower confining unit for the aquifer; Unit 1 of the uppermost aquifer consists of lean-to-fat clays that thin and become slightly more sandy towards the southwest; Unit 2 consists of fine-to-medium-grained sands that coarsen downward and include gravel lenses; and groundwater tends to sit on top of the chalk and within Unit 2, and Unit 1 acts as a semi-confining unit across much of the site. Based on these statements, commenter concludes that the compliance monitoring wells are appropriately screened within the Unit 2 sands and gravels to have the highest probability to detect any constituents that may be released from the CCR unit.

Response: EPA disagrees with the commenter's explanation and justification for the lateral spacing of compliance wells. While it is true that the exact location and magnitude of a release can affect plume geometry, these variables are often unknown regardless of if the unit is lined or unlined. Using the commenter's examples of a ''point release'' and a ''broad release'', a broad release from an unlined unit could easily mimic a point release from a lined unit if part of the CCR unit is in direct contact with groundwater. Conversely, a point release from a lined unit could mimic a broad release from an unlined unit if the leachate first disperses laterally for several feet (''fans out''), then gradually downward through a heterogeneous soil several feet before reaching the groundwater table. Lastly, the commenter's technical reasoning for the lateral spacing of compliance wells largely ignores the hydrogeology of the geologic units above and within the uppermost aquifer. The hydrogeology of these geologic units, based on an investigation of the criteria outlined in § 257.91(b), plays a much larger role in plume geometry and the lateral and vertical spacing of compliance wells than presumptions about the location, magnitude, and type of release.

The commenter's concern that the Agency did not understand the site geology and characteristics of each unit is also unfounded. The Agency evaluated the site geology based on the information in the permit record and determined that the saturated portion of Unit 1 is part of the uppermost aquifer. Nothing in the commenter's response

changes that determination. Rather, the commenter's response supports the Agency's position that the current groundwater monitoring network only monitors specific portions of the uppermost aquifer. Detection monitoring wells should have been screened in all transmissive zones that may act as contaminant transport pathways. This issue could have been resolved with the installation of multiple monitoring wells (well clusters or multilevel sampling devices) in places where a single well cannot adequately intercept and monitor the vertical extent of a potential pathway of contaminant migration, or when there is more than one potential pathway of contaminant migration in the subsurface at a single location.

Comment: Commenter states that Alabama Power's plans address groundwater quality at and around the commenter's sites and the groundwater monitoring systems are tailored to site geological conditions, certified by qualified professional engineers and geologists, and exceed EPA's monitoring requirements. Commenter asserts that Alabama Power's approach to corrective action is also tailored to site-specific risk considerations in accordance with the 2015 regulations, certified by qualified professional engineers and geologists, and designed to be responsive to any changes in site specific conditions. Commenter maintains this approach can include both passive and active measures, each working together with closure to achieve groundwater protection standards (GWPS) in compliance with both the Federal and State CCR regulations.

Response: The commenter does not provide any explanation of why the plans, including the proposed remedy, comply with the 2015 regulations. While it is understood that P.E. certifications have been obtained, in noted instances EPA does not agree with the conclusions of the P.E. EPA has provided significant analysis of why the plans fail to satisfy the 2015 regulations in those cases, and this comment does not respond to that analysis. The role of a permitting authority is to review the site-specific facts and determine whether the P.E. certification is true and whether the approach proposed by the facility does, in fact, achieve compliance with the regulations. ADEM should not assume compliance based on a P.E. certification and the P.E. certification does not prevent EPA from independently evaluating the permit. Finally, while EPA appreciates that Alabama Power's approach to corrective action may well be ''tailored to site-specific risk considerations in accordance with the 2015 regulations, certified by qualified professional engineers and geologists, and designed to be responsive to any changes in site specific conditions,'' the relevant standard to evaluate the adequacy of Alabama Power's corrective action remedy is in § 257.97(b) and (c). The commenter has presented nothing to address the specific concerns EPA identified in the proposal.

Comment: Commenter states that EPA includes in a TSD supporting the Proposed Denial a discussion of alleged technical issues related to ADEM's permits and site-specific conditions. Commenter does not comment on the site-specific conditions, but instead urges EPA to revise or clarify the following technical approaches. With respect to unit elevations, the commenter states that EPA relies on an average bottom elevation instead of modeling the available elevation data points, and that using an average incorrectly assumes that the bottom of the unit is flat.

Response: The commenter is correct that EPA used an average bottom elevation to estimate the amount of CCR in the unit that remains saturated by groundwater. EPA fully acknowledges that the bottoms of the CCR units are not likely to be flat over the span of the entire unit; however, EPA relied on the only data available from the permit application packages and documents available for review on the public CCR websites. Commenters do not claim that no CCR remains saturated in the closed units. Any further detailed analysis was unnecessary, and the approach used was appropriate and sufficient given the amount of data that is available. The purpose of this review was to determine whether Alabama's CCR permit program is as protective as the Federal CCR regulations, not to take action to bring the identified facilities into compliance with the Federal CCR regulations.

While the actual amount of groundwater in contact with CCR may differ to some degree, the Agency's approach provided a reasonable estimate of the amount of waste potentially below the water table. The Agency remains confident that, based on the information available to us in the permit applications and publicly available documents, that these units currently have waste in contact with the groundwater and will continue to have waste in sustained contact with the groundwater moving forward. In addition, with the exception of Plant Greene County, none of the sources evaluated, much less implemented, measure(s) designed to limit the flow of liquids into and out of the unit from the bottom and sides indefinitely.

Comment: Commenter states that saturation of waste, or the presence of a water table within the waste, does not necessarily indicate that the waste is in an unstable condition or contains readily separable liquids. Commenter asserts that material density and dewatering performed prior to cap construction also are factors that affect CCR stability. Commenter states that EPA describes how its review of permits issued under Alabama's program influenced the Proposed Denial and that EPA indicates ''. . . EPA is proposing to determine that ADEM issued multiple permits allowing CCR in closed units to remain saturated by groundwater, without requiring engineering measures that will control the groundwater flowing into and out of the closed unit.'' Commenter states that following this overall discussion of the permit review, the Proposed Denial details specific observations from the permit review for four power plants, including specific observations regarding saturated CCR, groundwater levels within CCR, and free liquids within CCR. Commenter states that with respect to Colbert, EPA stated ''it is clear from the post-closure 2019–2021 Annual Inspection Reports that whatever measures were taken as part of closure did not actually eliminate free liquids from Ash Pond 4. Commenter states that these reports document average groundwater elevations within the Ash Pond that significantly exceed 422 above MSL.'' Commenter states that with respect to Gadsden, EPA states, ''[a]s previously explained, in situations such as this, where the waste in the unit is continually saturated with groundwater, the requirement to eliminate free liquids obligates the facility to take engineering measures to ensure that the groundwater, along with the other free liquids, has been permanently removed from the unit prior to installing the final cover system. See, 40 CFR 257.102(d)(2)(i).'' Commenter states that the discussion continues on the same page with ''[a] further concern is that, given the failure to eliminate the free liquids from the saturated CCR underlying the consolidated unit, it is not at all clear that the remaining wastes have been stabilized sufficiently to support the final cover system, as required by § 257.102(d)(2)(ii). Creating a stable working surface for earthwork equipment while the cover system is being installed is not the same as ensuring that the unit has been sufficiently dewatered prior to installation of the cover system and that

over the long term there will be no differential settlement of the CCR in the closed unit that would disrupt the integrity of the cover system and allow liquids to infiltrate into the closed unit. Neither the approved Closure Plan nor ADEM's permit provides any details of engineering measures that were taken to address the groundwater that continues to flow into and out of the unit from the sides and bottom. In the absence of such measures, EPA has no basis for concluding that the standard in § 257.102(d)(2) has been met.''

Commenter states that in many cases the Proposed Denial's discussion of the four permits involves the level of documentation necessary to demonstrate compliance with the closure performance standards. Commenter states it cannot address the necessary level of documentation; however, within the Proposed Denial's discussion, there appears to be an underlying assumption regarding the behavior of saturated CCR.

Commenter states it has conducted considerable research on the geotechnical behavior of CCR that describes stability and drainage, and that a focus of research has been understanding CCR behavior using physical models and geotechnical centrifuges (3002001146; 3002006290; 3002020566; Madabhushi, 2020; Madabhushi, 2022a; Madabhushi, 2022b; Madabhushi, 2022c; Madabhushi, 2023). Commenter states that geotechnical centrifuges enable the evaluation of geotechnical behavior of large structures such as slopes and embankments through testing of much smaller scale models in controlled laboratory settings (Schofield 1980).

Commenter states that its centrifuge modeling has shown that the behavior of saturated coal fly ash depends on its density. Commenter states that relatively dense ashes behave much differently than relatively loose ashes, and that the key distinction is the relationship between the ash deposit's density and the critical state line (the critical state line describes the relationship between volume ratio of inter-particle spaces and particles and the effective stress between particles where shearing of a particulate material may continue indefinitely without change in volume). Commenter states that dewatering influences fly ash behavior, both through the increased effective stress in the dewatered zone and through the densification of the entire deposit that results from increased effective stress.

Commenter states that Figure 1 in their comment submittal shows the 9-meter geotechnical centrifuge (left) and the test box being filled with coal fly ash slurry (right). In the front of the test box (foreground, right image) are two aluminum doors with actuators. Commenter states that opening the doors rapidly creates a loss of confinement for ash slurry deposit, enabling the study of runout behavior of CCR. Commenter states that when spinning at 60 g in the centrifuge, this model represents a prototype with an ash thickness of about 70 feet.

Commenters states that the behavior of relatively dense coal fly ash in their centrifuge model experiments does not support a presumption that saturated CCR lacking engineering measures to reduce saturation will be unstable or jeopardize the integrity of a final cover system. Commenter states that to the extent that additional information beyond an engineer's certification is necessary to demonstrate compliance, they observe that in-situ density is an important parameter to consider in assessing stability of CCR deposits.

Commenter states that centrifuge modeling also shows that partial dewatering of saturated CCR increases the density and stability of an initially loose ash deposit. Commenter states that Figure 3 illustrates the difference in behavior between saturated (water table at surface) and partially dewatered loose coal fly ash (water table at 59% of ash thickness). Commenter states that on the left, the saturated loose ash exhibited a more rapid liquid-like flow, and on the right the partially dewatered ash exhibited a slow, soil-like slumping.

Commenter states that based on this experience from physical modeling, a presumption that partially dewatered CCR is unstable without further measures to eliminate saturation is not supported. Commenter states that it observes that in-situ densities and depth of dewatering are also parameters to consider in assessing stability of partially dewatered CCR deposits.

Commenter states that centrifuge modeling and laboratory experiments show that the water within saturated CCR is not necessarily readily separable. Commenter states that Figure 4 shows a birds-eye (top) view of the runout at four times from loss of confinement (left) to 1 hour following loss of confinement (right). Commenter states that the runout at the fourth/last time was previously shown in oblique view in Figure 2 (left). Commenter states that water only becomes visible on the surface of the ash late in the runout process, and that the delay in the appearance of water on the ash surface is interpreted to be caused by negative pore pressures from shearing- induced dilation. That is, the loss of confinement produced shear forces within the ash deposit, and the interaction of ash particles under these shearing forces increased the volume of spaces between the ash particles, thereby reducing the pore pressure in the water filling the spaces. Commenter states that water appears on the surface only when the negative pore pressures are dissipated by the redistribution of water within the pores. Commenter states that because of the small pore sizes and low hydraulic conductivity of the fly ash, the redistribution of porewater and emergence on the surface of the fly ash took considerable time.

Commenter states that the Paint Filter Liquids Test (PFLT) was developed by EPA to identify wastes containing free liquids for compliance with 40 CFR 264.314 and 265.314 (SW–846 Method 9095B) and involves observations over a period of 5 minutes following placement of a specimen in the test apparatus. Commenter states that during this time, the behavior of the specimen is influenced by its properties and, in the case of particulate solids such as CCR, the stress conditions resulting from its placement in the apparatus. Commenter states that a saturated CCR may not release water during the 5-minute PFLT due to the combination of CCR properties and stress conditions. Commenter states that Figure 5 illustrates the results of an ongoing, not-yet-published lab mixing study using CCR samples from two power plants. Commenter states that increments of water were added until each sample contained free liquids according to PFLT (released a drop of water within 5 minutes). Commenter asserts that the geotechnical moisture content of each sample at the last increment before the CCR contained free liquids, as defined by PFLT, is reported in Figure 5. Commenter maintains that many samples in this study have high fines contents, which correlate with small pore sizes and low hydraulic conductivities and exhibited no free liquids at geotechnical moisture content in excess of 40%, and some as high as 70%. (Geotechnical moisture content is calculated as the mass of water divided by the mass of solids; saturation is calculated as water-filled pore volume divided by the total pore volume.) Commenter states that it did not measure the density or degree of saturation within the PFLT, but it stated that the highest moisture content values are similar to saturated conditions observed based on densities and moisture contents of intact samples collected at Site 1 and previous

characterization of ashes from Site 2 (TR–101999).

Commenter states that based on its experience from centrifuge modeling and lab testing, a presumption that saturated CCR contains readily separable liquids, as determined by a PFLT, is not always supported. Commenter states that while degree of saturation, or moisture content, is important to free liquids determination, commenter observations suggest that CCR particle size distribution and in-situ density are also factors that influence the determination of readily separable liquids.

Response: The commenter's response is focused primarily on case studies and past laboratory testing of CCR within a controlled environment and does not appear to simulate groundwater flowing through a CCR unit. As noted in the proposed decision, neither the approved Plant Gadsden Closure Plan nor ADEM's permit that the commenter referenced in their response provided any details of engineering measures that were taken to address the groundwater that continues to flow into and out of the unit from the sides and bottom. In the absence of such measures, EPA had no basis for concluding that the standard in § 257.102(d)(2) had been met. EPA generally agrees with the commenter that PFLT is not the only and best tool for identifying readily separable liquids. It is only one of many tools, including such as cone penetrometers, piezometers, and monitoring wells, that can be used to detect readily separable liquids. Finally, the commenter notes that its findings are not absolute and that instead they depend on site conditions. As with many other issues, the permits do not show an analysis of the type described to support a conclusion that the stability of the cap is ensured or that measures were taken to limit the post closure flow of water into the units from the sides and bottom.

Comment: Commenter states that EPA has refused to confront the consequences of its new interpretations by effectively removing any option but to close existing unlined cells by removal. Commenter states that the choice to close-in-place, clearly provided in 40 CFR part 257, is taken away because there is no practical design protocol that would allow a final cover system to address lateral movement of liquids at depth in an existing, unlined impoundment. Commenter asserts this can only be accomplished by retrofitting the cell, and that this was pointed out to EPA leadership in one of the conference calls where EPA first began to review ADEM CCR permits. Commenter states that EPA had no answers for what alternative options would be available for those impoundments closing with material below the known water table, and, in the absence of any guidance from EPA, the possible alternatives to closure-in-place are limited. Commenter asserts that retrofitting the cell would involve dewatering and removing the waste material and temporarily staging it while the liner system for the cell is constructed and that provisions would have to be made to protect the staged material from leaching and erosion. Commenter states that the facility would have the expense of the construction of the staging area, handling/moving the waste mass twice (first to remove the waste to the staging area, then to replace it in the newly-lined cell) and of constructing a liner system within the newly emptied cell in addition to the costs of the final cover system, post-closure maintenance, groundwater monitoring, and, if necessary, corrective action. Commenter states that EPA's own estimates put these costs at $734M to $7.240B (80 FR 21459, Apr. 17, 2015), and that it is clear that retrofitting an existing cell is completely impractical.

Commenter states that the second alternative would be the permitting and construction of a new disposal cell on or near the site. Commenter states this is certainly a possible option, provided there is available space for such construction, but this would involve siting, permitting, and constructing the new disposal unit (a process which in itself often requires five or more years to complete before the new cell can be certified complete to begin receiving wastes) at the facility, and the facility occupying double the amount of land for CCR management and double the cost and regulatory burdens. Commenter states that this option does not address the common public concern for the waste's proximity to nearby surface water bodies and it is presumed that EPA would be opposed to this option since it also proposes to deny Alabama's permitting authority for new CCR management units.

Commenter maintains this leaves only one impractical option, the complete removal and offsite disposal of all residual material. Commenter states that other parties at the Public Hearing in Montgomery on September 20, 2023, raised the issue that truck transportation is not a viable transportation option due to the vast quantities of material to be moved, and the associated risks of highway transportation, leaving rail transport as the remaining option for most facilities. Commenter states that there is only one facility which has rail access currently permitted to manage CCR, the Arrowhead Landfill in Uniontown, Perry County, Alabama, and this landfill has been the subject of many environmental justice (EJ) concerns and a Title VI complaint, which EPA took 5 years to review and resolve. Commenter states that it is simply impractical to assume any other facility would be chosen for offsite disposal. Commenter states that the Arrowhead Landfill is owned by interests located primarily in New York and New Jersey, two States with some of the most stringent environmental justice requirements in the country. Commenter states that discussing the acquisition of the Arrowhead facility, Co-Founder & CEO William Gay stated, ''Our vision was to capitalize on the macro trends of declining disposal capacity and rising transportation and disposal costs in the Northeast and create a novel disposal solution for customers in the region.'' Commenter states that EPA and advocacy groups appear to seek to undermine their stated goals of protecting underserved and vulnerable communities from becoming the dumping ground for the waste disposal needs in more affluent areas. Commenters maintains that requiring the movement and re-disposal of vast amounts of CCR will only exacerbate this situation. Commenter asserts that it appears that the current EPA administration, and the environmental advocacy groups supporting this action, are intent on pushing wholesale CCR disposal to EJ area landfills, such as in Perry County, Alabama. Commenter states that Alabama's citizens, those who are the utility rate payers, and many of whom live in these underserved and vulnerable communities, will ultimately pay the enormous increased cost of this movement.

Commenter states that EPA remains unprepared to face the harsh realities of its new interpretation of requiring re-disposal of the hundreds of millions of tons of CCR that would result from this new interpretation. Commenter states that Alabama landfills currently dispose of approximately 9 million tons per year of solid waste (municipal solid waste, industrial, construction/demolition), and estimated volumes of Alabama CCR alone amount to 12 to 13 times this annual volume of other solid waste and would quickly consume all of the currently available airspace in all of Alabama's currently permitted MSW landfills, leaving no room for meeting the routine MSW disposal needs of the State and its citizens.

Commenter states that ADEM CCR permit program follows the letter and

spirit of EPA's CCR program, which was based on sound engineering and technological principles. Commenter states that EPA's program as originally designed, expressly permitted ''closing in place'' as a safe approach for permanently disposing of CCR, and EPA's program recognizes that the alternative to closing in place entails significant risks through excavating and transporting millions of tons of material across populated areas. Commenters states that it is its understanding that removing the material would entail a drawn-out process, requiring many years to complete and that it would lead to greatly increased costs which will negatively impact Alabama consumers.

Commenter states that Alabama's CCR permit program reflects the same options for closure established by EPA and that ADEM has issued permits to Alabama Power approving plans to close its ash ponds using the closure-in-place method. Commenter states that if closure-in-place is not available, the only alternative is closure-by-removal, and Alabama Power estimates the costs of closure-in-place to be $3.5 billion, which is estimated to be three to five times more costly than closure-in place. Commenter states this is due to, for example, the associated cost of excavation, transportation, and disposal in an offsite landfill compared to the costs of closure in place.

Commenter states that not only are the costs associated with closure-by-removal significantly higher and more burdensome to Alabama citizens, but the timeframe to complete closure is also significantly greater. Commenter states that Alabama Power has already completed closure-in-place at one of its plants, with the remainder projected to be completed by 2032 or earlier. Commenter states that based on initial evaluations, closure-by-removal can take anywhere from 16 years to 54 years, depending on the plant site, and that these initial evaluations assumed landfill sites within a reasonable proximity to each plant would be readily available. Commenter states this has proven not to be the case, which may further extend the time necessary to complete closure-by-removal.

Commenter states that it understands that no party has identified discernible impacts to any source of drinking water in Alabama attributable to closure of its unlined ash ponds. Commenter maintains that under these circumstances, closure-in-place appears to be an appropriate means to protect the health and safety of the public. Commenter states that it has grave concerns regarding the impact to customers if Alabama Power is required to incur significant additional costs associated with closure by removal costs that do not appear necessary to accomplish reasonable environmental objectives. Commenter urges EPA to carefully consider these impacts before issuing a final determination regarding ADEM's CCR program because Alabama ratepayers should not be unduly burdened by policy changes that are not absolutely necessary.

Response: The commenter has misunderstood EPA's construction of the regulations. As EPA has repeatedly stated, whether any particular unit can meet the closure in-place standards is a fact and site-specific determination that will depend on a number of considerations, such as the hydrogeology of the site, the engineering of the unit, and the kinds of engineering measures implemented at the unit. See Gavin RTC page 69 and 103 (discussing closure requirements of Federal CCR regulations). Accordingly, the fact that prior to closure the base of a unit intersects with groundwater does not mean that the unit may not ultimately be able to meet the performance standards for closure with waste in place. In other words, EPA is not mandating that a unit submerged in groundwater prior to closure must necessarily close by removal. Depending on the site conditions the facility may be able to meet the performance standards in § 257.102(d) by demonstrating that a combination of engineering measures and site-specific circumstances will ensure that, after closure of the unit has been completed, the groundwater would no longer remain in contact with the waste in the closed unit. Since as early as 1982, feasible engineering methods have been available to control, minimize or eliminate the continuous infiltration of groundwater or release of contaminants from surface impoundments. No commenter claimed that those method are unavailable to control CCR surface impoundments. Closure of Hazardous Waste Surface Impoundments, SW–873, p 81. Also, potential options that weren't mentioned in this comment include construction of in-situ impermeable barrier systems, CCR consolidation within portions of the unit that are out of the water table or CCR recycling. But if a facility cannot meet the performance standards in § 257.102(d), the facility must close by the only other method allowed under the regulations: closure by removal under § 257.102(c). See 40 CFR 257.102(a). And if a facility that has waste in contact with groundwater has installed only a cover system and taken no measures to address the continued infiltration of groundwater or the continued releases of leachate to the groundwater, or the CCR that EPA estimates could still be saturated—and would remain so indefinitely—has not met the performance standards for closure with waste in place. The lack of consideration of these factors in the permit records to support the final ADEM permits supports EPA's determination that Alabama's CCR permit program is not as protective as the Federal CCR regulations.

Concerning alternative waste disposal options, EPA recognizes that it may be difficult to find disposal sites but that does not relieve a facility from complying with Federal CCR regulations. Further, the commenters have not explained why they cannot address the short-term risks associated with removal of CCR to an alternative properly protective landfill. In addition, as noted in response to other comments, the Federal CCR regulations requirements for closure and corrective action are not premised on identifying a specific risk before compliance is required.

C. Miscellaneous Comments

1. EPA Should Update 2017 Guidance Document

Comment: Commenters state that EPA's 2017 Guidance Document is the only formal written guidance provided to States on the requirements for developing and submitting a State CCR Permit Program to EPA. Commenters state that Chapter 2 item 1 of the 2017 Guidance Document states that EPA is using 40 CFR part 239 as a guide for what a State submission should include: (a) A transmittal letter, signed by the State Director, requesting program approval; (b) A narrative description of the State permit program; (c) A legal certification; (d) Copies of all applicable State statutes, regulations, and guidance; and (e) A completed part 257 Checklist. The commenter states that there is no requirement in the 2017 Guidance Document to include State-issued permits in their CCR permit program application. For this reason, the commenters encourage EPA to either update the 2017 Guidance Document to include EPA's new interpretation of what is required or to review State permit program applications in accordance with the 2017 Guidance Document.

Response: See response to comment in Unit III.A.3 above explaining why the scope of the Guidance Document does not change EPA's responsibility to consider all relevant and reasonably

available information when determining whether to approve a State CCR permit program.

2. EPA Should Act on State CCR Permit Program Applications in a Timely Manner

Comment: Commenters argue that EPA must act on State CCR permit program applications in a timely manner. Commenters state that the WIIN Act requires EPA to approve a State CCR permit program application meeting the requisite criteria within 180 days of submission. Commenters state that EPA did not act in a timely manner and did not propose to deny ADEM's application for more than 18 months after submission. Commenter maintain that as more States submit CCR permit program applications, it is critical that EPA act on such applications within the statutory timeframe. Commenters state that Congress intended for States to be able to operate EPA-approved CCR permit programs in lieu of Federal regulation and that EPA's failure to act on State applications frustrates congressional intent and undermines the principle of cooperative federalism that underlies RCRA.

Commenters state that EPA cannot delay acting on State CCR permit program applications by indefinitely delaying a completeness determination, or by conflating substantive review with the completeness determination. Commenters state that in this case, EPA received a final, complete application on December 29, 2021, and should have acted within 180 days of that submission. Commenters state that upon receipt of a complete application, the Agency should promptly issue an official completeness determination, triggering the 180-day timeline. Commenters state that in the three prior CCR permit program decisions, EPA issued a formal letter to applicants notifying them that their application was complete. Commenters state that EPA did not do so for ADEM and, instead, first noted that the application was deemed complete in a legal filing five months after EPA allegedly made the completeness determination.

Commenters state that under RCRA section 4005(d)(1)(B), EPA must approve a State permit program, within 180 days after a State submits an application to the Administrator for approval, if the Administrator determines that the State program meets certain statutory requirements and public notice and opportunity to comment is provided prior to approval. Commenters state that EPA did not follow this timeline for Alabama's State CCR permit application. Commenters state that on December 29, 2021, ADEM submitted its revised State permit program application to EPA Region 4 for approval, on July 7, 2022, EPA put ADEM's application on hold, claiming that it had not demonstrated that it was implementing the program consistent with the Federal CCR regulations, and on Apr. 3, 2023, the State of Alabama and ADEM filed a complaint in the U.S. District Court for the District of Columbia seeking to compel EPA to determine whether its permitting program met the statutory standards. Commenters state that EPA issued the preliminary denial of ADEM's CCR permit program 593 days after receiving the revised application. Commenters maintain that EPA's slow pace of review will impact other States who are currently seeking or plan on seeking approval of their own State CCR permit programs.

Commenters argue that EPA's delay is particularly concerning in light of the Agency's basis for denial. Commenters maintain a State's implementation of their CCR permit program is beyond the scope of EPA's initial review of the program and is appropriately left for EPA's program review, which specifically addresses implementation of the State's approved program. According to commenters EPA delayed acting on Alabama's application and now is proposing to deny the application based not on the text of Alabama's regulations but on Alabama's issuance of permits pursuant to those regulations. Commenters maintain that such a posture sets EPA up to effectively delay acting on a complete application until the Agency can evaluate how the State implemented its regulations, *i.e.,* by waiting until the State issues a CCR permit. Commenters argue that EPA cannot withhold a completeness determination or a final decision to evaluate a State's implementation of their regulations.

Commenters further argue that basing a CCR permit program decision on implementation may disincentivize States from implementing their own CCR program as the WIIN Act intended. Commenters maintain that States seeking approval of a CCR permit program may wish to begin developing and issuing CCR permits while EPA reviews their application, particularly if EPA's review process is prolonged. Commenters argue that a CCR permit program denial based on permits issued and differences of professional judgment on highly detailed technical matters rather than the clear text of the regulations may cause States to delay implementing their program until receiving a decision from EPA, which, as evidenced here, may take years.

Commenters state that they are concerned about the slow pace of this review. Commenters note that EPA has completed its review and approval of only three State permit programs and that several more States have submitted applications for WIIN Act approval or have been working with EPA to do so. Commenters encourage EPA to review and act on State applications in a timely and efficient manner, and in accordance with the WIIN Act, so that the benefits of such programs (*e.g.,* removal of dual and potentially inconsistent regulatory regimes and addition of regulatory certainty) can be realized as soon as possible.

Response: The WIIN Act provides that the Administrator must make a final determination, after providing for public notice and an opportunity for public comment, within 180 days of determining that the State has submitted a complete application consistent with RCRA section 4005(d)(1)(A). See U.S. Environmental Protection Agency; Guidance Document (providing that the 180-day deadline does not start until EPA determines the application is complete). In the case of Alabama, On February 1, 2023, EPA responded to ADEM's Notice of Intent to Sue letter and informed the State that the 180-day timeframe does not start until EPA determines that a State's Application is administratively complete and that, in this case, EPA did not start the clock because EPA's concerns with ADEM's interpretation of the minimum requirements of the Federal CCR regulations had yet to be resolved and EPA was providing an opportunity for ADEM to submit further Application information. EPA further stated that the Agency could evaluate the State's program on the current record if ADEM decided not to supplement its Application with an explanation of how the State's interpretation of its regulations is at least as protective as the Federal CCR regulations, but EPA expressed concern that the current record would not support a proposal to approve the State's partial CCR permit program. On February 17, 2023, ADEM responded to EPA that it did not intend to supplement the record and that EPA should evaluate its program accordingly. EPA thereafter continued to review the Application based on the information submitted to date.

EPA also disagrees that the potential that States will delay implementing State programs means that EPA should ignore what appear to be industry wide issues with implementing the closure standards for unlined surface

impoundments, groundwater monitoring networks, and corrective action. Despite commenters assertions to the contrary, once EPA approves a State program the State permits apply in lieu of direct application of the Federal CCR regulations. Further, State permits do not only list provisions of the State CCR permit program as several commenters imply. Instead, the permits also apply those regulatory provisions and explain what exactly a facility has to do to comply with the relevant provision and the permits provide a shield that says as long as the facility meets the provisions of the permit then the facility is in compliance with the both the State and Federal standards. Thus, a permit from an approved State that allows compliance with requirements less protective than the Federal standards with respect to closure, groundwater monitoring, and corrective action will protect a facility from having to comply with the minimum level of protection.

Finally, EPA recognizes concerns of commenters about the pace of approval of State programs, but EPA must act consistent with the statutory mandate when evaluating State program applications. For this reason, EPA intends to continue to consider State permits as part of initial and periodic program reviews and the Agency is currently working with States to ensure their programs are approvable before EPA makes a completeness determination.

3. Considerations Regarding Qualified Professional Engineers

Comment: Commenters state that EPA has not identified any clear inconsistencies with the Federal CCR regulations and instead that all of EPA's assertions concern the State's technical judgment that the groundwater systems and measures put in place at each site meet the relevant regulatory performance standard. Commenters assert EPA must defer to this judgment. Commenters state that the Federal CCR regulations establish general performance standards for both the design of the groundwater monitoring system and any required corrective action when groundwater contamination above certain levels is identified and that when issuing the Federal regulations in 2015, that EPA specifically developed a groundwater monitoring program that ''is flexible and allows facilities to design a system that accounts for site specific conditions.'' 80 FR 21398. Commenters state that the rule's groundwater corrective action provisions set forth numerous factors that must be considered when developing a corrective action remedy, allowing facilities to take into account site specific conditions when determining the best approach for remediating groundwater. Id. at 80 FR 21406–21407.

Commenters maintain that under the self-implementing rule, P.E.s and facility personnel most familiar with the site are responsible for ensuring compliance with the rule's groundwater monitoring and corrective action performance standard. Under a State CCR program, the State agency fills this role. See 83 FR 36435, 36447 (July 30, 2018). Commenters state that ADEM has reviewed the plans and that EPA calls into question the technical judgement of ADEM staff. Commenters maintain that second-guessing of ADEM's expertise in implementing its State CCR permit program is both inappropriate and inconsistent with the WIIN Act's directive that States serve as the primary mechanism for implementing the Federal CCR regulations.

Response: EPA does not agree that Agency is prohibited from evaluating decisions made by ADEM in permits issued prior to program approval. EPA also disagrees that the fact that ADEM employs qualified professional engineers (P.E.s) means that EPA cannot find that an issued permit fails to require compliance with applicable requirements of subpart D. The commenters are also incorrect that EPA should defer to the P.E.s at ADEM regarding whether proposed compliance approaches in the permit applications achieve compliance with subpart D, because even if ADEM staff are more familiar with the facilities, that does not render EPA incapable of an independent evaluation of the permit and supporting record.

While it is true that the WIIN Act provides that compliance with a permit issued by an approved State program (or by EPA in a Federal permit program) serves as compliance with subpart D, there is no such provision for State programs which have not been approved by EPA to operate in lieu of the Federal program under section 6945(d)(1). Prior to approval of a State program, the State agency is not the primary authority to implement subpart D, and CCR units in that State are required to comply with all applicable provisions of subpart D. In the Proposed Denial, EPA identified numerous examples of permit terms that failed to require compliance with subpart D, in numerous CCR permits issued by ADEM.

EPA agrees that the preamble to the 2015 CCR regulations discusses flexibilities to allow facilities to take into account site-specific conditions when developing groundwater monitoring and corrective action compliance strategies. However, the commenters err when they imply flexibility means that the discretion to consider site specific conditions when establishing groundwater monitoring (§§ 257.90 through 257.95) and corrective action (§ 257.97(b)) plans means that those plans once established and ''stamped'' by a P.E. become immune to evaluation, or that such plans inherently comply with the standards set forth in the regulations. The performance standards are requirements that must be met at any CCR unit, regardless of site-specific circumstances, and if EPA has concerns with compliance, RCRA authorizes it to take action to ensure compliance. EPA cannot ignore a permit's failure to require compliance with performance standards simply because it was reviewed or written by a P.E. The 2015 CCR Rule preamble made this intent clear, in response to commenters concerned that the proposed regulations would rely too heavily upon the judgment of P.E. to determine whether performance standards were achieved. See 80 FR 21335, April 17, 2015.

The final rule relies on multiple mechanisms to ensure that the regulated community properly implements requirements in this rule. As one part of this multi-mechanism approach, owners or operators must obtain certifications by qualified individuals verifying that the technical provisions of the rule have been properly applied and met. However, regardless of certification, the performance standards that the rules lay out must be met. These standards impose specific technical requirements. The certifications required by the rule supplement these technical requirements, and while they are important, they are not the sole mechanism ensuring regulatory compliance. 80 FR 21335, April 17, 2015. The commenters cite to no RCRA or other authority to support the contention that the findings of a P.E. are binding. See also Gavin Final Decision pages 91–93.

Comment: Commenters state that in the Proposed Denial EPA makes only one reference to P.E.s, and then only for the purpose of noting that ADEM was not seeking approval for the provision allowing States to issue certifications in lieu of requiring a P.E. certification. Commenters maintain that, as a result, under the Alabama program and the Federal program, P.E.s are responsible for certifying compliance with the relevant standards for closure, groundwater monitoring and corrective

action. Commenters maintain that the Proposed Denial fails to address the role of the P.E. in certifying compliance and that EPA makes zero reference to such certifications.

Commenters state that EPA's own regulations underscore the importance of the P.E. role in certifying compliance, based on their specialized training and technical knowledge. Commenters state that in the 2015 CCR Rule, EPA explained ''that [P.E.s], whether independent or employees of a facility, being professionals, will uphold the integrity of their profession and only certify documents that meet the prescribed regulatory requirements; and that the integrity of both the professional engineer and the professional oversight boards licensing professional engineers are sufficient to prevent any abuses.'' Commenters state that EPA justified reliance on P.E. certifications and that the Agency stated that it ''re-evaluated the performance standards throughout the final [2015] rule to ensure that the requirements are sufficiently objective and technically precise that a qualified professional engineer will be able to certify that they have been met.''

Commenters maintain that EPA cannot simply dismiss this regulatory approach in favor of EPA using its own unilateral judgment as to whether P.E.-certified compliance documents in fact meet the regulatory performance standards. Commenters further argue that EPA certainly cannot fault ADEM for accepting such certifications, especially when ADEM is not seeking approval to displace the P.E. role.

Commenters state that the opportunity for an approved State to take on the P.E. role arises out of EPA's Phase One, Part One rule (83 FR 36435, July 30, 2018), which EPA adopted, at least in part, to implement the WIIN Act. In that rule, EPA explained that the original 2015 rule ''required numerous technical demonstrations made by the owner or operator be certified by a [P.E.] in order to provide verification of the facility's technical judgments and to otherwise ensure that the provisions of the rule were properly applied.'' EPA went on to note that ''the availability of meaningful third-party verification provided critical support that the rule would achieve the statutory standard, as it would provide a degree of control over a facility's discretion in implementing the rule.'' Commenters assert that EPA then explained that the situation had changed with the passage of the WIIN Act, which provided the opportunity for State oversight under an approved permit program, and that EPA added the provision allowing States to seek approval to certify that the regulatory criteria have been met in lieu of the exclusive reliance on a P.E. Commenters maintain that, in so doing, EPA noted that States retained discretion to choose whether to provide their own certifications, or alternatively, to continue to rely solely on certifications from P.E.s (*i.e.,* the status quo based on current regulations). Commenters maintain that ADEM's regulations include provisions that mirror EPA's as to the role of the P.E. in certifying compliance with the rule's technical requirements, consistent with both the original 2015 and currently applicable Federal rules.

Commenters further states that EPA claims that during its review of ADEM's application, the Agency ''identified a consistent pattern of ADEM approving documents submitted by the facilities, such as closure plans, groundwater monitoring plans, and assessments of corrective measures, even though the submissions lacked critical information or are otherwise deficient.'' Commenters state that noticeably absent from EPA's position is any reference to the P.E. certifications associated with each and every one of those documents, the P.E.'s professional obligation to ''only certify documents that meet the prescribed regulatory requirements,'' or the role that EPA defined for P.E.s to ''provide verification of the facility's technical judgments and to otherwise ensure that the provisions of the rule were properly applied.'' Commenters argue that EPA cannot lawfully overlook, ignore, or reject certifications from P.E.s that EPA itself has prescribed for purposes of regulatory compliance.

Commenters further argue that if EPA has concerns, based on its new interpretations, with how P.E.s are reviewing and certifying closure plans, groundwater monitoring networks or corrective action documents in any particular State or for any particular facility or unit, then EPA must first provide additional direction to States, the regulated community, and engineering community on what is expected or required. Commenters state that this is especially important in the context of EPA's new interpretations of the closure in place performance standards because EPA has not provided clear technical direction or guidance on the ''engineering measures'' that EPA believes must be implemented to address groundwater.

Commenters conclude that EPA must at a minimum recognize the critical role that EPA devised for P.E.s in the Federal CCR regulations and the importance of clear technical direction and guidance on meeting the regulatory performance standards so that P.E.s can properly certify compliance with those standards. Commenters state that asserting concerns with P.E.-certified plans here without proper direction or any reference to the P.E. role is misplaced, especially in the context of a State permit program submittal.

Response: EPA acknowledges that P.E.s play a role under the CCR regulations and that the regulations are self-implementing. EPA also agrees that the Agency did not address the role of the P.E. in certifying compliance in the Proposed Denial, but the Agency disagrees that there was a need to mention P.E. certifications in the Proposed Denial. P.E.s are not regulators and do not substitute for the oversight provided by a State or Federal government agency inherent in its implementation of a regulatory program on behalf of the public. Further, EPA did not base its denial on the role of P.E.s so there was no need to evaluate the certifications to determine whether the permits are in compliance with the Federal CCR regulations. The EPA has the expertise necessary to independently evaluate compliance with the Federal CCR regulations.

The commenter cites provisions in a 2018 Phase One Part One rulemaking (83 FR 36435, July 30, 2018), which was involved in litigation that was resolved through a voluntary remand. (See *Waterkeeper Alliance Inc.* v. *EPA,* No. 18–1289 (D.C. Cir. 2019) However, even if the provisions were still legally valid, the commenter misconstrues the intent of the cited provisions of that rulemaking. Those provisions were intended to provide a State an approach that did not require P.E. certifications because, since the State would be issuing permits, it would be evaluating all the strategies and plans in the compliance documents through its permitting process. However, a P.E. certification cannot replace review and approval or denial by a permitting authority. The preamble in the 2010 proposed CCR regulations clearly distinguishes P.E.s from regulators. That preamble at 75 FR 35194 stated that EPA recognized that relying upon third party certifications is not the same as relying upon the state regulatory authority and would most likely not provide the same level of ''independence.''

EPA does not agree with the commenters' assertion that EPA cannot lawfully overlook, ignore, or reject certifications from P.E.s that EPA itself has prescribed. EPA's incorporation of certifications by P.E.s into the CCR regulations for specified requirements did not create a shield against

noncompliance determinations for regulated facilities if they comply with the P.E. requirement but still fail to comply with the performance standards. Instead, the regulations allow regulatory authorities to review P.E. certifications and performance standards may be enforced regardless of P.E. certifications. In any case, the commenters have not explained how, legally, EPA could through regulations shield facilities from noncompliance if they obtain a certification from a P.E., thereby prejudging compliance for all facilities based on an evaluation by contractors hired by a regulated facility.

If performance standards cannot be enforced if a facility obtains a P.E. certification, there would be no reason to require posting on a publicly accessible website of the majority of compliance data which underly the certifications. Public posting of this information is required. In the preamble to the 2015 regulations, EPA stated that making this information available to other parties (*e.g.,* State agencies and citizens) was another mechanism to ensure technical performance standards established in the regulations would be achieved. ''EPA has developed a number of provisions designed to facilitate citizens to enforce the rule pursuant to RCRA section 7002. Chief among these provisions is the requirement to publicly post monitoring data, along with critical documentation of facility operations, so that the public will have access to the information to monitor activities at CCR disposal facilities.'' 80 FR 21335, April 17, 2015. This is also consistent with requirements in the Part A Rule to submit in the Demonstration documents other than P.E. certifications to demonstrate compliance, even for performance standards for which a P.E. certification is required (*e.g.,* design of a groundwater monitoring system). 40 CFR 257.103(f)(1)(iv)(A).

The commenters also state that any concerns with P.E. certifications in any particular State or for any particular facility or unit must first be addressed by issuing additional direction to States, the regulated community, and engineering community on what is required. Commenters do not provide any regulatory or statutory support for their assertion. See also Gavin Final Decision pages 91–93.

Comment: Commenters state that the 2015 CCR Rule was promulgated by EPA as self-implementing consistent with RCRA's statutory framework at that time, meaning that the standards and criteria were to be implemented without interaction with regulatory officials. See 80 FR 21302, 21330, April 17, 2015. Commenters further state that the regulations set forth standards that are ''sufficiently objective and technically precise'' so that regulated parties and their P.E.s can implement the standards. See id. at 80 FR 21335. Commenters state that EPA used terminology and standards that had been applied in long-standing solid and hazardous waste programs established under RCRA. Commenters state that TVA followed the CCR regulations requirements as evidenced in part by the P.E. certifications posted on TVA's CCR Rule Compliance Data and Information website.[27] Commenters assert that the P.E.s are experts with experience in long-established practices for closing waste units and groundwater remediation that have been deemed protective over the course of RCRA's history, and that TVA has relied on third-party professional engineers with extensive site knowledge and on site-specific scientific data, analysis, and professional judgment to support its CCR Rule P.E. certifications and permit application to ADEM and to ensure that its plans and designs are protective of human health and the environment. Commenters state that with the oversight of ADEM's permitting program, this has added the expertise of regulatory professionals with experience implementing RCRA permit programs in Alabama. Commenters further state that ADEM has actively engaged in providing oversight of Ash Disposal Area 4 investigations by providing detailed technical review of TVA's characterization of the site to independently verify the effectiveness of potential remedies. Commenters believe that working with ADEM will result in the most appropriate approach for the community and the State.

Response: EPA acknowledges that P.E.s have experience with long-established waste management practices over the course of RCRA's history and that ADEM can bring additional expertise to evaluation of CCR facilities. None of this takes away from EPA's own authority to evaluate CCR permits and State permit programs, and, even if ADEM's analysis was detailed and technical, the level of effort itself does not ensure that a permit is in compliance with Federal CCR regulations. See also Gavin Final Decision pages 91–93.

In addition, EPA's analysis and review of particular compliance documents approved in permits, in order to assess the protectiveness of the permitting program, was not directed toward any particular person who may have been involved in development of a permit, but instead to determine whether the Alabama CCR permit program ensures that each CCR unit complies with the minimum level of control. To do this, EPA analyzed and reviewed the site-specific facts and information included in the permit record, the requirements of subpart D and the Federal CCR regulations, and other relevant publicly available information EPA found during review of the permits. EPA disagrees that this approach is inappropriate or illegal and the comments did not provide any statutory or regulatory support that would prevent EPA from conducting such an analysis. Further, despite comments to the contrary, EPA cannot approve a State program when the Agency concludes the program is not as protective as the Federal program, per the requirements of RCRA section 4005(d).

4. EPA Should Provide Partial Approval for Alabama's CCR Permit Program

Comment: Commenters state that throughout the Proposed Denial EPA refers to the fact that Alabama is seeking partial not full program approval. Commenters maintain that states are forced to seek partial, instead of full, program approval because EPA has not determined: (1) Requirements for legacy CCR surface impoundments, to replace the vacated regulation 40 CFR 257.50(e); (2) Requirements for vegetative cover for slope stability, to replace the vacated regulations 40 CFR 257.73(a)(4) and (d)(l)(iv), 257.74(a)(4) and (d)(l)(iv); (3) Requirements for suspending groundwater monitoring, to replace the vacated regulation 40 CFR 257.90(g), and; (4) Requirements for treatment standards for constituents in Appendix IV having no maximum contaminant levels (MCLs), for which States must wait for EPA to act on the vacated regulation 40 CFR 257.95(h)(2). Commenter recommends EPA revise the language stating that Alabama is seeking partial, not full, program approval and make a statement clarifying that, at this time, no State can request full program approval because EPA has not acted on the above listed regulations.

Response: Alabama is in fact seeking approval of a partial State CCR permit program. The Agency will allow States to update their programs as additional requirements are promulgated.

5. Other Miscellaneous Comments Opposed to the Proposed Denial

Comment: Commenters cite comments on the January 2022

[27] *https://www.tva.com/environment/environmental-stewardship/coal-combustion-residuals.*

proposed CCR Part A demonstration decisions asserting that EPA's positions on the closure performance standards are inconsistent with the plain text of the Federal CCR regulations. Commenters maintain that the CCR regulations does not require facilities to address contact between CCR and groundwater as part of the closure performance standards under 40 CFR 257.102(d). Commenters further maintain that the CCR regulations requires ''[f]ree liquids [to] be eliminated by removing liquid wastes or solidifying the remaining wastes and waste residues.'' Commenters further argue that the Federal CCR regulations provides a specific technical definition of ''free liquids,'' which does not include ''groundwater'' (a separately defined technical term).

Commenters assert that EPA's positions on the closure requirements at 40 CFR 257.102(d) were first put forth in site-specific determinations issued in January 2022. Commenters state that in the proposed Part A decisions EPA established new positions on ''free liquids'' and ''infiltration'' that the commenter asserts are inconsistent with the plain text of the CCR regulations and retroactively broaden the scope of the CCR regulations without proper notice and comment. Commenter state that EPA's January 2022 decisions, and the new positions contained therein, were challenged in *Electric Energy* v. *EPA I*, and the litigation remains ongoing. The commenter further asserts that the Gavin Denial—which was based in part on EPA's new positions—is also subject to legal challenge. Commenters state that EPA references the Gavin Denial several times in the Proposed Decision—without a single reference to the pending litigation—in support of the Agency's position that a CCR unit cannot be closed with CCR in contact with groundwater.

Response: As commenters note, EPA cited the pending litigation in the Proposed Denial. To the extent the comments imply the need to cite to or discuss the litigation more, the Agency disagrees.

6. Other Miscellaneous Comments in Support of the Proposed Denial

Comment: Commenter states that ADEM has already violated the Federal CCR regulations by issuing permits to CCR facilities that simply cap in place the CCR disposals in existing unlined ponds and lagoons. Commenter states that, in many locations and scenarios, these CCR storage facilities also violate the Clean Water Act and that the risk of groundwater contamination is very real—not a hypothetical. Commenter notes the following: in 2019, Alabama Power was fined $250,000 by ADEM for CCR disposal violations in the Gadsden area. Groundwater tests around the Plant Gadsden CCR pond near the Coosa River revealed ''elevated levels of arsenic at two locations and one incidence of elevated radium.'' The previous year, ADEM fined Alabama Power $1 million ($250,000 per location) for groundwater contamination at five of its facilities due to CCR pond leakage. PowerSouth, another Alabama utility, was fined $250,000 for CCR pond leakage at its Charles R. Lowman Power Plant in Leroy, Alabama.

Response: EPA agrees that Alabama's CCR permits are not as protective as the Federal CCR regulations and the Agency is taking final action to deny Alabama's CCR permit program application. Comments on compliance with Clean Water Act (CWA) requirements are out of scope and are not further addressed.

D. Out of Scope Comments

1. Comments on Additional ADEM CCR Permits

Comment: Commenters state that, at Plant Barry, ADEM has authorized a cap in place closure that will leave millions of tons of CCR saturated in water in an unlined pit on the banks of the Mobile River, and that will waste untold millions of dollars on a harmful and unlawful cap in place closure. Commenters state that, according to EPA's estimates, of the 21.7 million tons of CCR in the Plant Barry impoundment, over 8 million tons of CCR are currently saturated in water while Alabama Power has begun implementing its cap in place closure, and over 5 million tons will be saturated in water when capping is complete. Commenters maintain that Alabama Power admits that it has begun implementing its cap in place closure with over 8 million tons of CCR saturated in water and admits that it will leave almost 1.1 million tons of CCR saturated in water. Commenters state that Alabama Power describes this huge amount of saturated CCR as ''less than 5% of the total volume,'' but that attempt to minimize the problem merely highlights the massive total amount of CCR in the Plant Barry impoundment: five percent of 21.7 million tons is approximately 1.1 million tons. A more relevant comparison is that this amount of saturated ash is approximately the same as all the CCR contained in the Plant Gadsden unlined CCR impoundment. Commenters note that over 1 million tons of water-saturated CCR is a very serious environmental problem and a blatant violation of the CCR regulations performance standards. Commenters state that the true amount of saturated ash post-closure is much more.

Commenters state that ADEM's failure to prevent this result further demonstrates the inadequacy of its permitting program. Commenter states that ADEM initially shared some of these same concerns. Specifically, commenters state that the ADEM criticized Alabama Power's Corrective Measures Assessments, stating that they ''do not meet the level of detail required in the regulations.'' ADEM further stated that, under Alabama Power's plans, ''source control will not be achieved for an average of 10 years and that no other mechanism is proposed to reduce the potential for further releases to the 'maximum extent feasible.' '' Indeed, even Alabama Power admits the uncertainty of achieving GWPS, stating in its plan, ''[t]ime for [monitored natural attenuation] to achieve GWPS is currently unknown and would require additional studies.'' Commenters state that ADEM still approved the plan notwithstanding Alabama Power's stated uncertainty about the efficacy of its closure plan. Commenters state that this abrupt about face confirms ADEM's inability to stand up to utilities and enforce the CCR Rule's requirements.

Commenters also discussed final CCR permits for Alabama Power's Plants Gaston and Miller and PowerSouth's Plant Lowman. Commenters state that combined, these facilities house approximately 48 million cubic yards of CCR. The Plant Gaston 270-acre ash pond contains almost 25 million cubic yards of CCR on the banks of the Coosa River, and its smaller gypsum pond contains 500,000 cubic yards of ash. Attachment 1 at 3–4.[28] The Plant Miller ash pond was constructed by damming tributaries that flowed into the Locust Fork of the Black Warrior River, and it contains approximately 19.5 million cubic yards of CCR. Id. at 5. The Plant Lowman ash pond complex is located along a significant bend in the Tombigbee River and is surrounded by wetlands. Commenters state that the three ponds at Plant Lowman contain approximately 2.5 million cubic yards of CCR, and that there is ongoing groundwater contamination at each of these facilities, as confirmed by ADEM Administrative Orders issued to each facility in 2018 for MCL exceedances. Commenters state that groundwater monitoring at the Plant Gaston ash pond found MCL exceedances for arsenic, lead, and combined radium. In addition, recent groundwater monitoring reports

[28] Comment from the Southern Environmental Law Center EPA–HQ–OLEM–2022–0903–0260.

have also shown significant groundwater contamination. For example, Alabama Power's 2019 Groundwater Monitoring Report for Plant Miller reported ''statistically significant changes to groundwater quality by ash-related parameters, including: Arsenic, Boron, Calcium, Chloride, Cobalt, Fluoride, Lithium, Sulfate, TDS and pH in wells located downgradient of the ash pond.'' Attachment 1 at 6. Commenters maintain that the utilities' own data on ash pond depth and groundwater depth show that the ash is saturated in groundwater. At Plant Gaston, more than 30 feet of saturated CCR exist in some areas of the ash pond. Id. at 4. At Plant Miller, 75 to 80 feet of CCR will be left below the current groundwater table in some portions of the impounded ash pond after closure. Id. at 6. And at Plant Lowman, ''the closure plan is estimated to leave 4 to 9-feet of CCR waste submerged in groundwater.'' Id. at 2. Commenters assert that, despite the documented saturated ash and groundwater contamination at each of these sites, ADEM's final permits authorize Alabama Power and PowerSouth to close the ash ponds in place, leaving ash permanently saturated in the groundwater. Commenters note that ADEM's permits for each of these facilities allow CCR to continue contaminating groundwater in the future due to their failure to prevent post-closure groundwater flow through the ash. Commenters state that ADEM's failure to ensure compliance with the CCR Rule's performance standards for these permits further demonstrates the inadequacy of its permitting program.

Response: EPA did not evaluate the permits for Plant Barry, Plant Gaston, Plant Miller or Plant Lowman for the Proposed Denial or this final action, therefore, these comments are out of scope and are not further addressed. See page 55224 for a discussion of why EPA began its review of permits with Plants Greene County, Gadsden, Gorgas, and Colbert. EPA did not focus on Plant Barry due to ongoing enforcement activities. EPA's review of the four permits mentioned above identified systemic problems with groundwater monitoring, closure and corrective action and there was no need to review additional permits.

Comment: A commenter submitted comments on Plant Barry stating that science experiments being proposed by Alabama Power and the idea of leaving the CCR in place at the Barry site in Bucks, AL, are dangerous, if not also criminal. Commenter states that removal of the dangerous heavy metal laden CCR and proper disposal away from sea level, away from hurricane paths and away from one of the most important estuary systems in North America is the only long term, safe solution guaranteed to last for centuries. The idea that Alabama Power can leave the CCR in place and be free of any liability after only 30 years is unconscionable. Commenter states that the dangers of CCR are going largely un-noticed by the general public in south Alabama and the commenter questions whether it is because the news media, Alabama Power, local and State politicians and environmental agencies all complicit in allowing this dangerous experiment to be approved. Commenter states that attempts to dewater and cap in-place the over 20 million tons of CCR can never ensure that the toxic heavy metals won't continue leaching out the bottom of the unlined surface impoundment or be spilled into the river.

Commenter states that the aquifer systems in the delta, the strength of the systems and subsurface architecture of the aquifer systems can never be fully understood. Commenter states they have degrees in geology and engineering, and after 30 years working as a reservoir engineer for a major, multinational energy company, the commenter states that they are sure that Alabama Power cannot competently incorporate all of the unknowns into their models. Commenter states that anyone who tells you they understand the aquifer systems under the Mobile-Tensaw delta, under the Barry site, are making absolute untenable conclusions and false assumptions in a mitigation plan. In addition to aquifer pressure, there are extreme unknowns that they cannot fully and competently incorporate into their models. Note the lack of control points or well locations and cross section line on the Hydrogeologic map relative to the Barry Plant unlined surface impoundment. Commenter states that if the CCR is left in place, it is eminent that the toxic pollutants will continue to destroy people's health and way of life on the Alabama Gulf Coast. Commenter states that the only long-term safe solution is for the CCR to be removed from the unlined surface impoundment.

Commenter states that Plant Barry is a coal and natural gas electric power generation facility in Bucks, Mobile County, Alabama, and, that the plant has been in operation since 1954 and at 600+ acres, has one of the largest unlined CCR surface impoundments in the Southeastern United States. Commenter states that the CCR surface impoundment is located on the eastern edge of the Mobile River and is separated from the river by a fragile 30 to 50' wide dam that extends roughly 2 miles along the river's edge in the middle of the delta.

Commenter states that in 2021 the volume of CCR at the Barry site is estimated to be in the range of 20 to 25 million tons. Commenter states that contamination can leach out of the bottom of the unlined surface impoundment into the river and aquifer systems, and that once these deadly carcinogens are released into the aquifer and river delta, they can never be remediated, and they will cause destruction to the environment while creating poor health condition for the Alabama Gulf Coast area.

Commenter states that Alabama Power is proposing a cap in-place solution to contain the CCR as opposed to moving the ash to a safe, final storage location. The concerns that EPA should all have regarding this proposed solution are multiple; a hurricane could still cause a breach in the dam allowing the CCR to enter the river and delta, there is no guarantee that leaching out of the carcinogens into the subsurface and ground water systems would not continue, the plastic capping system has not been proven to last but for a few decades, not for centuries, etc.

Commenter maintains that Alabama Power's estimates of the number of trucks and the years required to remove the ash from the Barry plant exceed the time limits required by law. Commenter states that the estimates are not consistent with the observed data from other companies in other States who are removing the ash from locations next to major rivers. Commenter acknowledges that physically moving over 20 million tons of CCR to a safe, long term, properly lined dry storage facility is no small issue, but other utility companies in other States are doing it. Commenter states that a more detailed solution and data are needed to explore and quantify the myriad of alternatives that exist to safely remove and relocate the 20 plus million tons of CCR from the Barry Plant, and that it must be secured in a lined, dry storage facility that is above sea level, away from hurricanes and river systems or into a salt dome that is beneath the water aquifer and river systems, securely underground.

Commenter further states that the mammoth cost to the tourism industry and the environment that would occur with a significant spill from the Barry plant far exceeds the cost of removal estimated at $3.3 billion. A catastrophic event like the ones that have occurred in other parts of the U.S. could devastate the tourism business and way of life on the Gulf Coast. Spill examples include the Kingston, TN, spill in 2008

(''Kingston CCR spill workers treated as 'expendables,' lawsuit by sick and dying contends'' (*knoxnews.com*)), the 2011 spill in Lake Michigan, and the 2014 spill in North Carolina.

Response: EPA did not address Plant Barry in the Proposed Denial, therefore, the comments are out of scope and not further addressed.

2. Comments on CCR Permits for Unlined Surface Impoundments in Other States

Comment: One commenter identified five Illinois facilities that have closed federally regulated units with waste in place, and the commenter examined State permits and groundwater documentation posted to State and Federal CCR compliance websites and found significant violations of the CCR regulations. Commenter discussed Luminant's Baldwin Energy Complex—Baldwin, IL; Grand Tower Energy Center—Jackson County, IL; Luminant's Hennepin Power Station—Hennepin, IL; Luminant's Coffeen Power Station—Montgomery County, IL; and Luminant's Duck Creek Power Station—Fulton County, IL.

Commenter reviewed CCR permits for unlined surface impoundments in Ohio and the commenter identified one facility that closed federally regulated CCR units with the approval of the Ohio Environmental Protection Agency (OEPA) despite its failure to meet Federal closure requirements. The commenter discussed American Electric Power's Gavin Power Plant—Gallia County, Ohio.

Commenter reviewed CCR permits for unlined surface impoundments in Kentucky and the commenter identified one particularly problematic closure at a site for which the commenter has documentation as a result of past advocacy. Commenter suggests that a comprehensive evaluation of more Kentucky sites would reveal a number of facilities where there has been closure in groundwater. Commenter discussed Louisville Gas & Electric and Kentucky Utilities' E.W. Brown Generating Station—Mercer County, KY.

Commenter reviewed permits for utility facilities in Missouri and the commenter identified problems. Commenter states that Missouri has not issued permits for the closure of CCR units, but they have issued National Pollutant Discharge Elimination System (NPDES) permits at sites with CCR units that are actively contaminating groundwater. In many of these permits, Missouri included language and guidance that directly conflict with the Federal CCR regulations. While the permits often state that the permittee must abide by any applicable Federal regulations, Missouri's inclusion of explicit directions that directly conflict with the CCR regulations at best creates confusion and at worst sanctions and compels noncompliance. Commenter reviewed several facilities with CCR units: Ameren's Rush Island Energy Center, Festus, MO; Associated Electric Cooperative's New Madrid Power Plant, Marston, MO; Ameren's Labadie Energy Center, Labadie, MO; City of Independence's Blue Valley Generating Station, Independence, MO; and City of Independence's Missouri City Generating Station, Independence, MO.

Commenter reviewed CCR permits for unlined surface impoundments in Indiana and the commenter identified two sites discussed below demonstrate that the Indiana Department of Environmental Management (IDEM) has approved closure plans for CCR units that are clearly non-compliant with the CCR regulations and its critical requirement that units not be allowed to close in place where CCR remains in contact with groundwater. The commenter reviewed permits for Duke Energy's Gallagher, New Albany, IN, and Duke Energy's Cayuga Station, Vermillion County, IN. Commenter states that IDEM has approved closure-in-place for at least two additional CCR ponds where there is clear evidence of CCR in contact with groundwater, Duke Energy Wabash River's North Ash Pond in Terre Haute, IN, and Duke Energy Gibson's South Ash Fill Area in Owensville, IN. Commenter states that Duke Energy claims that neither of these ponds is subject to the CCR regulations and IDEM has taken no steps to evaluate or refute this characterization.

Response: Comments on CCR permits in other States are outside the scope of the Proposed Denial and are not further discussed.

IV. Final Action

EPA has determined that the Alabama CCR permit program does not meet the statutory standard for approval. Therefore, in accordance with 42 U.S.C. 6945(d), EPA is denying the Alabama CCR permit program.

Michael S. Regan,

Administrator.

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Last List May 29, 2024

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