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# Rules and Regulations

Federal Register
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## DEPARTMENT OF HOMELAND SECURITY

## Coast Guard

## 33 CFR Part 117

**[Docket No. USCG–2024–0463]**

**RIN 1625–AA09**

## Drawbridge Operation Regulation; Three Mile Slough, Near Rio Vista, CA

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary interim rule and request for comments.

**SUMMARY:** The Coast Guard is temporarily modifying the operating schedule that governs the draw of the California Department of Transportation Route 160 bridge, across Three Mile Slough, mile 0.1 near Rio Vista, CA. This action is necessary to allow the bridge owner to complete electrical and mechanical rehabilitation of the bridge.

**DATES:** This temporary interim rule is effective from July 2, 2024 through 7 p.m. on August 30, 2024.

Comments and related material must reach the Coast Guard on or before August 1, 2024.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to *https://www.regulations.gov.* Type the docket number (USCG–2024–0463) in the ''SEARCH'' box and click ''SEARCH.'' In the Document Type column, select ''Supporting & Related Material''.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this temporary interim rule, call or email Carl Hausner, Chief, Bridge Section, Eleventh Coast Guard District; telephone 510–437–3516, email *Carl.T.Hausner@uscg.mil.*

**SUPPLEMENTARY INFORMATION:**

### I. Table of Abbreviations

CFR Code of Federal Regulations
Caltrans California Department of Transportation
DHS Department of Homeland Security
FR Federal Register
NPRM Notice of proposed rulemaking
Pub. L. Public Law
§ Section
U.S.C. United States Code

### II. Background Information and Regulatory History

The Coast Guard is issuing this temporary interim rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are ''impracticable, unnecessary, or contrary to the public interest.'' Under 5 U.S.C. 553(b), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because it is impracticable. This bridge is non-operational and will be non-operational until rehabilitation work can be completed.

On December 14, 2023, the Coast Guard issued a General Deviation which allowed the bridge owner, Caltrans, to deviate from the current operating schedule in 33 CFR 117.5 in order to conduct major mechanical and electrical rehabilitation of the bridge. Due to delays caused by weather, design changes, and supply chain issues the project will run past the end date of the General Deviation on June 30, 2024. As such, the bridge cannot be brought back to operating condition until the work is complete, which remains dependent on continuing good weather and the resolution of supply chain issues. Therefore, there is insufficient time to provide a reasonable comment period and then consider those comments before issuing the modification.

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

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

### III. Legal Authority and Need for Rule

The Coast Guard is issuing this temporary interim rule under authority in 33 U.S.C. 499. The Coast Guard is modifying the operating schedule that governs the draw of the California Department of Transportation Route 160 bridge, across Three Mile Slough, mile 0.1 near Rio Vista, CA. The Route 160 bridge has a vertical clearance in the closed position of 12.4 feet at mean high water, and 107.4 feet of vertical clearance when in the fully opened-to-navigation position.

The existing drawbridge regulation, 33 CFR 117.5, states ''Except as otherwise authorized or required by this part, drawbridges must open promptly and fully for the passage of vessels when a request or signal to open is given in accordance with this subpart.'' Caltrans, the bridge owner, has requested additional time to complete the bridge rehabilitation.

### IV. Discussion of the Temporary Interim Rule

The Coast Guard is issuing this rule, which permits a temporary deviation from the operating schedule that governs the draw of the California Department of Transportation Route 160 bridge, across Three Mile Slough, mile 0.1 near Rio Vista, CA. This rule allows the bridge to be secured in the closed-to-navigation position through 7 p.m. on August 30, 2024.

As part of the bridge rehabilitation, Caltrans has removed and is replacing all the electrical and key mechanical components that control the draw span's operation. On May 21, 2024, Caltrans informed the Coast Guard their contractor had parts and material on backorder due to supply chain issues, and the original design for the rehabilitation work needed revisions. In addition, Caltrans informed the Coast Guard that delays due to weather extended the completion date of the project. The supply chain issue, the redesign, and an active storm season have delayed the completion of the bridge rehabilitation. Currently, the draw span remains inoperable until the work is completed. The anticipated completion date for the rehabilitation is August 30, 2024.

**V. Regulatory Analyses**

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

*A. Regulatory Planning and Review*

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

This regulatory action determination is based on the fact that even though vessels, which require this draw span to open may be impacted by this action, vessels still can take an alternate route to reach either side of the bridge. Furthermore, the draw span of the bridge, as of date of the publication of this rule, is not operational and cannot resume operations until rehabilitation work is complete.

*B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601–612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term ''small entities'' comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule 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 bridge 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 contact 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 calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

*D. Federalism and Indian Tribal Government*

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

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it 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 Management Directive 023–01, Rev. 1, associated implementing instructions, and Environmental Planning Policy COMDTINST 5090.1 (series) which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4370f). The Coast Guard has determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule promulgates the operating regulations or procedures for drawbridges and is categorically excluded from further review, under paragraph L49, of Chapter 3, Table 3–1 of the U.S. Coast Guard Environmental Planning Implementation Procedures.

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

**List of Subjects in 33 CFR Part 117**

Bridges.

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

## PART 117—DRAWBRIDGE OPERATION REGULATIONS

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

**Authority:** 33 U.S.C. 499; 33 CFR 1.05–1; Department of Homeland Security Delegation No. 0170.1.

■ 2. Add § 117.T198 to read as follows:

**§ 117.T198 Three Mile Slough**

The draw of the California Department of Transportation Route 160 bridge, mile 0.1, near Rio Vista need not open for the passage of vessels.

Dated: June 26, 2024.

**Andrew M. Sugimoto,**

*Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.*

[FR Doc. 2024–14545 Filed 7–1–24; 8:45 am]

**BILLING CODE 9110–04–P**

## DEPARTMENT OF HOMELAND SECURITY

### Coast Guard

### 33 CFR Part 165

**[Docket No. USCG–2024–0572]**

## Safety Zones; Annual Events in the Captain of the Port Eastern Great Lakes Zone

**AGENCY:** Coast Guard, DHS.

**ACTION:** Notification of enforcement of regulation.

**SUMMARY:** The Coast Guard will enforce multiple safety zones located in federal

regulations for recurring marine events taking place in August and September of 2024. This action is necessary and intended for the safety of life and property on navigable waters during these events. During the enforcement periods, no person or vessel may enter the respective safety zone without the permission of the Captain of the Port Eastern Great Lakes or a designated representative.

**DATES:** The regulations listed in 33 CFR 165.939 Table 165.939, will be enforced for the following events during the dates and times indicated in the **SUPPLEMENTARY INFORMATION SECTION**.

**FOR FURTHER INFORMATION CONTACT:** If you have questions about this notice of enforcement, call or email MST1 Cody Mayrer, Waterways Management Division, U.S. Coast Guard Marine Safety Unit Cleveland; telephone 216–937–6007, email *D09-SMB-MSUCLEVELAND-WWM@uscg.mil.*

**SUPPLEMENTARY INFORMATION:** The Coast Guard will enforce multiple safety zones for annual events in the Captain of the Port Eastern Great Lakes Zone listed in 33 CFR 165.939, Table 165.939 for events occurring in the months of August and September as listed in the **DATES** section above. Pursuant to 33 CFR 165.23, entry into, transiting, or anchoring within these safety zones during an enforcement period is prohibited unless authorized by the Captain of the Port Eastern Great Lakes or his designated representative. Those seeking permission to enter the safety zone may request permission from the Captain of Port Eastern Great Lakes via channel 16, VHF–FM. Vessels and persons granted permission to enter the safety zone shall obey the directions of the Captain of the Port Eastern Great Lakes or his designated representative. While within a safety zone, all vessels shall operate at the minimum speed necessary to maintain a safe course.

The safety are listed in 33 CFR 165,939 in Table 165.939. The specific zones and the Coast Guard plans to enforce are:

(c)(1) Whiskey Island Paddlefest—from 7 a.m. through 1:30 p.m. on August 17, 2024, in Cleveland Harbor, Lake Erie.

(c)(2) D-Day Conneaut—from 12:30 p.m. through 5:30 p.m. on August 15 through August 17, 2024, in U.S. waters of Lake Erie adjacent to Conneaut Township Park, Ohio.

(d)(1) Madison Light Up the Park (Madison Township Light Up the Park)—from 9 p.m. through 10:30 p.m. on August 10, 2024, in U.S. waters of Lake Erie adjacent to Madison Township, Ohio.

(d)(2) Cleveland National Air Show—from 11 a.m. through 5:30 p.m. on August 29, 2024; from 7 a.m. through 5:30 p.m. on August 30, 2024; and from 7:30 a.m. through 6:30 p.m. August 31 through September 2, 2024, in Cleveland Harbor, Lake Erie.

This notice of enforcement is issued under authority of 33 CFR 165.939 and 5 U.S.C. 552 (a). In addition to this notice of enforcement in the **Federal Register**, the Coast Guard will provide the maritime community with advance notification of this enforcement period via Broadcast Notice to Mariners or Local Notice to Mariners. If the Captain of the Port Eastern Great Lakes determines that the safety zone need not be enforced for the full duration stated in this notice, he may use a Broadcast Notice to Mariners to grant general permission to enter the respective safety zone. This notification is being issued by the Coast Guard Sector Eastern Great Lakes Prevention Department Head at the direction of the Captain of the Port.

Dated: June 26, 2024.

**J.B. Bybee,**

*Commander, U.S. Coast Guard, Sector Eastern Great Lakes Prevention Department Head.*

[FR Doc. 2024–14432 Filed 7–1–24; 8:45 am]

**BILLING CODE 9110–04–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 180

**[EPA–HQ–OPP–2023–0083; FRL–11889–01–OCSPP]**

## B.F. Strain 11604; Exemption From the Requirement of a Tolerance

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** This regulation establishes an exemption from the requirement of a tolerance for residues of *Bacillus velezensis* strain 11604 in or on all food and feed commodities when used in accordance with label directions and good agricultural practices. BioConsortia, Inc., submitted a petition to the EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of *Bacillus velezensis* strain 11604 under FFDCA when used in accordance with this exemption.

**DATES:** This regulation is effective July 2, 2024. Objections and requests for hearings must be received on or before September 3, 2024 and must be filed in accordance with the instructions provided in 40 CFR part 178 (see also Unit I.C. of the **SUPPLEMENTARY INFORMATION**).

**ADDRESSES:** The docket for this action, identified by docket identification (ID) number EPA–HQ–OPP–2023–0083, is available at *https://www.regulations.gov* or at the Office of Pesticide Programs Regulatory Public Docket (OPP Docket) in the Environmental Protection Agency Docket Center (EPA/DC), West William Jefferson Clinton Bldg., Rm. 3334, 1301 Constitution Ave. NW, Washington, DC 20004. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room and OPP Docket is (202) 566–1744. Please review the visitor instructions and additional information about the docket available at *https://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Madison H. Le, Biopesticides and Pollution Prevention Division (7511M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; main telephone number: (202) 566–1400; email address: *BPPDFRNotices@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. How can I get electronic access to other related information?*

You may access a frequently updated electronic version of 40 CFR part 180 through the Office of the Federal Register's e-CFR site at *https://ecfr.federalregister.gov/current/title-40.*

*C. How can I file an objection or hearing request?*

Under FFDCA section 408(g), 21 U.S.C. 346a(g), any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. You must file your objection or request a hearing on this regulation in accordance with the instructions provided in 40 CFR part 178. To ensure proper receipt by the EPA, you must identify docket ID number EPA–HQ–OPP–2023–0083 in the subject line on the first page of your submission. All objections and requests for a hearing must be in writing and must be received by the Hearing Clerk on or before September 3, 2024.

The EPA's Office of Administrative Law Judges (OALJ), in which the Hearing Clerk is housed, urges parties to file and serve documents by electronic means only, notwithstanding any other particular requirements set forth in other procedural rules governing those proceedings. *See* ''Revised Order Urging Electronic Filing and Service,'' dated June 22, 2023, which can be found at *https://www.epa.gov/alj/revised-order-urging-electronic-filing-and-service.* Although the EPA's regulations require submission via U.S. Mail or hand delivery, the EPA intends to treat submissions filed via electronic means as properly filed submissions; therefore, the EPA believes the preference for submission via electronic means will not be prejudicial. When submitting documents to the OALJ electronically, a person should utilize the OALJ e-filing system at *https://yosemite.epa.gov/OA/EAB/EAB-ALJ_upload.nsf.*

In addition to filing an objection or hearing request with the Hearing Clerk as described in 40 CFR part 178, please submit a copy of the filing (excluding any Confidential Business Information (CBI)) for inclusion in the public docket. Information not marked confidential pursuant to 40 CFR part 2 may be disclosed publicly by the EPA without prior notice. Submit the non-CBI copy of your objection or hearing request, identified by docket ID number EPA–HQ–OPP–2023–0083, 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 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.*

## II. Background

In the **Federal Register** of March 24, 2023 (88 FR 17778) (FRL–10579–02–OCSPP), the EPA issued a notice pursuant to FFDCA section 408(d)(3), 21 U.S.C. 346a(d)(3), announcing the filing of a pesticide tolerance exemption petition (PP 2F8991) by BioConsortia, Inc., 279 Cousteau Place, Davis, CA 95618. The petition requested that 40 CFR part 180 be amended by establishing an exemption from the requirement of a tolerance for residues of the fungicide and bactericide *Bacillus velezensis* strain 11604 in or on all food and feed commodities. That notice referenced a summary of the petition prepared by the petitioner BioConsortia, Inc., and available in the docket via *https://www.regulations.gov.* The EPA received two comments on the notice of filing. The EPA's response to these comments is discussed in Unit III.C.

Based upon review of data and other information supporting the petition, the EPA modified the active ingredient name. In addition, the EPA also changed the commodity to be reflected in the tolerance exemption expression from ''in or on all raw agricultural crops'' to ''in or on all food and feed commodities.'' The reason for this change is explained in Unit III.D.

## III. Final Rule

*A. The EPA's Safety Determination*

Section 408(c)(2)(A)(i) of FFDCA allows the EPA to establish an exemption from the requirement of a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if the EPA determines that the exemption is ''safe.'' Section 408(c)(2)(A)(ii) of FFDCA defines ''safe'' to mean that ''there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information.'' This includes exposure through drinking water and in residential settings but does not include occupational exposure. Pursuant to FFDCA section 408(c)(2)(B), in establishing or maintaining in effect an exemption from the requirement of a tolerance, the EPA must take into account the factors set forth in FFDCA section 408(b)(2)(C), which require the EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance or tolerance exemption and to ''ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue. . . .'' Additionally, FFDCA section 408(b)(2)(D) requires that the EPA consider ''available information concerning the cumulative effects of [a particular pesticide's] . . . residues and other substances that have a common mechanism of toxicity.''

The EPA evaluated the available toxicological and exposure data on *Bacillus velezensis* strain 11604 and considered its validity, completeness, and reliability, as well as the relationship of this information to human risk. A full explanation of the data upon which the EPA relied, and its risk assessment based on those data can be found within the document entitled ''Human Health Risk Assessment of *Bacillus velezensis* strain 11604, a New Active Ingredient, in Crimson (End-use Product) Proposed for Registration and an Associated Petition Requesting a Tolerance Exemption'' (Human Health Risk Assessment of *Bacillus velezensis* strain 11604). This document, as well as other relevant information, is available in the docket for this action as described under **ADDRESSES**.

Based on its evaluation, EPA concludes that *Bacillus velezensis* strain 11604 is not toxic, pathogenic, or infective via the injection route of exposure. *Bacillus velezensis* strain 11604 is not anticipated to be toxic, pathogenic, or infective via the oral or pulmonary routes of exposure based on rationale supported by acute toxicity data conducted with a mixture of *Bacillus velezensis* strain 11604 and other (inert) ingredients. Additionally, the acute injection toxicity/pathogenicity study demonstrated a pattern of clearance of *Bacillus velezensis* strain 11604 from the test animals. Significant dietary and non-occupational exposures to residues of *Bacillus velezensis* strain 11604 are not anticipated because levels of *Bacillus velezensis* strain 11604 after application on food and feed commodities will rapidly decrease to naturally occurring background levels. Furthermore, *Bacillus velezensis* is naturally present in the soil, on the surface of a variety of plant-based foods, and in water processed through water treatment facilities with no reported human

disease or illness. Even if dietary and non-occupational exposures to residues of *Bacillus velezensis* strain 11604 were to occur, there is not a concern due to the lack of potential for adverse effects. EPA determined that the additional margin of safety referred to as the Food Quality Protection Act Safety Factor is not necessary to protect infants and children as part of the qualitative assessment conducted.

Based upon its evaluation in the Human Health Risk Assessment of *Bacillus velezensis* strain 11604, which concludes that there are no risks of concern from aggregate exposure to *Bacillus velezensis* strain 11604, the EPA concludes that there is a reasonable certainty that no harm will result to the U.S. population, including infants and children, from aggregate exposure to residues of *Bacillus velezensis* strain 11604.

*B. Analytical Enforcement Methodology*

An analytical method is not required for *Bacillus velezensis* strain 11604 because the EPA is establishing an exemption from the requirement of a tolerance without any numerical limitation.

*C. Response to Comments*

Comments were not directly related to the petition for a tolerance exemption for *Bacillus velezensis* strain 11604 and have been acknowledged. The comments received were unrelated to *Bacillus velezensis* strain 11604 and did not relate to the protection of human health and the environment.

*D. Revisions to the Requested Tolerance Exemption*

EPA Revised the tolerance exemption expression to specifically include the establishment of the exemption from the requirement of a tolerance for residues of the microbial pesticide *Bacillus velezensis* strain 11604 in or on all food and feed commodities. Although not expressly stated in the petition, EPA interpreted the petition as requesting an exemption covering all food and feed commodities.

*E. Conclusion*

Therefore, an exemption from the requirement of a tolerance is established for residues of *Bacillus velezensis* strain 11604 in or on all food and feed commodities when used in accordance with label directions and good agricultural practices.

## IV. Statutory and Executive Order Reviews

This action establishes a tolerance exemption under FFDCA section 408(d) in response to a petition submitted to the EPA. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled ''Regulatory Planning and Review'' (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355, May 22, 2001), or Executive Order 13045, entitled ''Protection of Children from Environmental Health Risks and Safety Risks'' (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.,* nor does it require any special considerations under Executive Order 12898, entitled ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations'' (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance exemption in this action, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or Tribes. As a result, this action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the EPA has determined that this action will not have a substantial direct effect on States or Tribal Governments, on the relationship between the National Government and the States or Tribal Governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian Tribes. Thus, the EPA has determined that Executive Order 13132, entitled ''Federalism'' (64 FR 43255, August 10, 1999), and Executive Order 13175, entitled ''Consultation and Coordination with Indian Tribal Governments'' (65 FR 67249, November 9, 2000), do not apply to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require the EPA's consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (15 U.S.C. 272 note).

## V. Congressional Review Act

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

## List of Subjects in 40 CFR Part 180

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

Dated: June 24, 2024.

**Edward Messina,**

*Director, Office of Pesticide Programs.*

Therefore, for the reasons stated in the preamble, the EPA is amending 40 CFR chapter I as follows:

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

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

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

■ 2. Add § 180.1408 to subpart D to read as follows:

### § 180.1408 Bacillus velezensis strain 11604; exemption from the requirement of a tolerance.

An exemption from the requirement of a tolerance is established for residues of *Bacillus velezensis* strain 11604 in or on all food and feed commodities when used in accordance with label directions and good agricultural practices.

[FR Doc. 2024–14351 Filed 7–1–24; 8:45 am]

BILLING CODE 6560–50–P

**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 300**

**[Docket No. 240624–0174]**

**RIN 0648–BM67**

# International Fisheries; Pacific Tuna Fisheries; Safe Handling and Release Practices for Sharks on Longline Vessels and Revision to Vessel Monitoring System Requirements in the Eastern Pacific Ocean

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

**ACTION:** Final rule.

**SUMMARY:** NMFS is issuing regulations under the Tuna Conventions Act (TCA) of 1950, as amended, to implement Resolutions C–23–07 (*Conservation Measures for the Protection and Sustainable Management of Sharks*) and C–23–11 (*On the Establishment of a Vessel Monitoring System*) adopted by the Inter-American Tropical Tuna Commission (IATTC) at its meeting in August 2023 in Victoria, Canada. This final rule implements provisions of these Resolutions and requires U.S. longline vessels fishing for tuna or tuna-like species in the eastern Pacific Ocean (EPO) to release incidentally caught sharks by leaving them in the water and cutting the branchline so that less than 1 meter remains on each animal. The final rule also requires large vessels fishing for tuna or tuna-like species in the EPO to make manual reports every six hours in the event of a malfunctioning vessel monitoring system (VMS) unit. This action is necessary for the United States to satisfy its obligations as a member of the IATTC.

**DATES:** This rule is effective August 1, 2024.

**ADDRESSES:** Copies of supporting documents that were prepared for the proposed rule, including the Regulatory Impact Review, are available via the Federal e-Rulemaking Portal: *https://www.regulations.gov,* docket NOAA–NMFS–2024–0041.

**FOR FURTHER INFORMATION CONTACT:** Amanda Munro, NMFS, (619) 407–9284.

**SUPPLEMENTARY INFORMATION:**

## Background on the IATTC

On April 25, 2024, NMFS published a proposed rule in the **Federal Register** (89 FR 31708) to implement Resolutions C–23–07 (*Conservation Measures for the Protection and Sustainable Management of Sharks*) and C–23–11 (*On the Establishment of a Vessel Monitoring System*). These Resolutions were adopted at the 101st Meeting of the IATTC in August 2023. The proposed rule contains additional background information, including information on the IATTC and its Convention Area, the international obligations of the United States as an IATTC member, and the need for regulations. The 30-day public comment period for the proposed rule closed on May 28, 2024.

The final rule is implemented under the TCA (16 U.S.C. 951 *et seq.*). This final rule applies to U.S. longline vessels of any size and all U.S. vessels longer than 24 meters (78.74 feet) fishing for tuna or tuna-like species in the IATTC Convention Area. The IATTC Convention Area is defined as waters of the EPO within the area bounded by the west coast of the Americas and by 50° N latitude, 150° W longitude, and 50° S latitude.

## IATTC Resolutions on Sharks and VMS

The IATTC held its 101st Meeting in August 2023 in Victoria, Canada. During this meeting, the IATTC adopted several resolutions, including the two implemented by this final rule—IATTC Resolutions C–23–07 (*Conservation Measures for the Protection and Sustainable Management of Sharks*) and C–23–11 (*On the Establishment of a Vessel Monitoring System*).

IATTC Resolution C–23–07 includes new requirements regarding safe handling and release procedures for sharks caught by longline vessels. Paragraph 11(f) of the Resolution includes the requirements to ''leave the shark in the water, where possible'' and ''use a line cutter to cut the branchline as close to the hook as possible, and so that less than 1 meter remains on the animal, to the extent practicable.'' It also includes provisions applicable to all vessels prohibiting shark finning and requiring sharks be landed with fins naturally attached, which are already required in the United States by the Shark Conservation Act of 2010.

To ensure that vessel locations and identification numbers remain available to relevant authorities at a consistent interval even in the event of a technical failure, IATTC Resolution C–23–11 specifies a manual reporting requirement in the event of a malfunctioning VMS unit for vessels above 24 meters (78.74 feet) in length. The Resolution states in paragraph 4 that ''a fishing vessel with a defective satellite tracking device shall communicate to the . . . relevant competent authority at a minimum every 6 hours, reports containing [vessel identification number, location, date, time, speed, and course] by appropriate telecommunication means (*e.g.,* radio, web-based reporting, electronic mail, telefax or telex).''

## Final Regulations for Sharks

This final rule amends part 300, subpart C of title 50 of the Code of Federal Regulations (CFR) to include shark handling and release requirements for longline vessels. Specifically, the rule requires U.S. longline vessel owners and operators to leave live, unretained sharks in the water and cut the branchline so that less than 1 meter of trailing gear remains on the animal. If this procedure is not possible without compromising the safety of any persons, the vessel owner or operator is required to cut the branchline as close to the hook as possible.

To facilitate the trimming of the branchline to the appropriate length, longline vessel owners or operators must carry a line clipper meeting minimum design standards onboard the vessel and use it to cut the branchline. The standards for this line clipper are the same as those already required for Hawaii-based longline vessels (see 50 CFR 665.812(a)(5)), which make up the majority of longline vessels fishing in the EPO. The standards for the line clipper include a protected cutting blade with an edge capable of cutting monofilament line or braided mainline that is securely fastened to an extended reach holder of at least 6 feet.

Shark finning (*i.e.,* the practice of removing any fin from the body of a shark at sea) is prohibited in the United States by the Shark Conservation Act of 2010, which was implemented by regulations at 50 CFR part 600, subpart N. The statute and regulations also prohibit the possession, transfer, and landing of any shark fin that is not naturally attached (*i.e.,* attached to the corresponding shark carcass through some portion of uncut skin). As part of this rulemaking, NMFS is including a cross-reference to these regulations in the regulations governing EPO tuna fisheries, which are found in 50 CFR part 300, subpart C. The cross-reference is intended to make clear the regulations in 50 CFR part 600, subpart N apply to vessel owners and operators fishing for tuna and tuna-like species in the IATTC Convention Area.

## Final Regulations for VMS

Any U.S. commercial fishing vessel that is 24 meters or more in overall length and engaging in fishing activities for tuna or tuna-like species in the

IATTC Convention Area is already required to have a VMS unit installed, per regulations at 50 CFR 300.26(b). In the rare event of a technical failure of a VMS unit while the vessel is at sea, vessel operators are required to notify NOAA Office of Law Enforcement (OLE) and follow OLE's instructions (see 50 CFR 300.26(c)(4)(ii)).

This final rule adds the requirement of manual reporting in the event of a malfunctioning VMS unit. Specifically, vessel owners and operators must provide manual reports to OLE with specific information every 6 hours by appropriate telecommunication means such as radio, email, or telephone. The manual reports must include: the vessel's identification, the vessel's geographical position (latitude and longitude) accurate to within 100 meters, the date and time of the fixing of the vessel's position, and the vessel's speed and course. These reports must continue until the VMS unit issue is resolved or the vessel is back in port.

**Public Comments and Responses**

NMFS received four comments from individual members of the public during the 30-day comment period on the proposed rule, which closed on May 28, 2024. One comment was outside the scope of the proposed rule and is not addressed. Two comments expressed support for the regulations as proposed, and one comment expressed concerns. These comments are detailed below with responses from NMFS.

*Comment 1:* One individual commenter expressed support for the safe handling and release procedures for sharks, noting the vulnerability of many shark species.

*Response:* NMFS thanks the commenter for the support for safe handling and release practices for sharks on longline vessels as included in the Resolution and rule.

*Comment 2:* One individual commenter expressed support for the safe handling and release procedures for sharks, applauding NMFS' efforts to promote consistency across fisheries. The commenter noted the importance of sharks to the ecosystem and emphasized the importance of best handling practices to improve survival of sharks interacting with fishing vessels. The commenter also suggested that NMFS encourage fishers to remove the hook from sharks rather than simply cut the branchline, as this may decrease the chances of infection and mortality.

*Response:* NMFS thanks the commenter for the support for safe handling and release practices for sharks on longline vessels, and agrees that sharks are important for the health of the marine ecosystem. Post-release survival data are limited, but current scientific data from NOAA Pacific Islands Fisheries Science Center suggest that cutting the line to less than one meter can improve shark survivorship by as much as 40 percent over 360 days. Cutting the branchline is also a relatively simple procedure that does not require additional burdens for vessel owners and operators.

Hook removal may also be helpful for shark survival, but few studies compare the difference in survival rates between cutting the line and removing the hook. Depending on the species and size of the shark, removing hooks can also be difficult to accomplish and may require bringing the shark on board, resulting in additional stress to the animal and risk to the crew. NMFS will continue to consider additional best handling practices for sharks as more research becomes available.

*Comment 3:* The third individual commenter asked if extra safety precautions were considered when requiring fishers to cut the branchline close to the hook. This commenter also asked how these regulations would be implemented internationally.

*Response:* NMFS recognizes that cutting the branchline closer to the mouth of a shark may pose a risk to crew members, which is why the regulation requires the use of a line clipper with an extended reach of at least 6 feet. The regulation also states that if it is not possible to cut the branchline to less than 1 meter without compromising the safety of any persons, the requirement is to cut the branchline as close to the hook as possible.

Regarding international implementation, other members of the IATTC are required to implement IATTC resolutions in their own domestic regulations.

**Changes From the Proposed Rule**

In the proposed rule, the manual VMS reports would have included ''the vessel's geographical position (latitude and longitude) with an error of less than 100 meters at a confidence level of 98 percent.'' This language mirrored IATTC language from Resolution C–23–11. However, that language comes from the accuracy specifications for actual VMS positions, not for manual reports. In the event of a VMS unit failure, vessel owners/operators would be relying on other navigation equipment to determine the vessel's position, in which case this level of accuracy would likely be unavailable. Therefore, the language referring to error and confidence level has been removed. The new text now reads that vessel owners/operators must report ''the vessel's geographical position (latitude and longitude) accurate to within 100 meters.''

**Classification**

The NMFS Assistant Administrator has determined that this rule is consistent with the Tuna Conventions Act and other applicable laws.

*Executive Order 12866*

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

*Paperwork Reduction Act*

The VMS section of this rule contains a revision to a collection-of-information requirement for purposes of the Paperwork Reduction Act of 1995 (PRA) and amendments to Office of Management and Business (OMB) Control Number 0648–0498 have been submitted to OMB for review and approval with regarded to the changes identified in this final rule. NMFS is amending the supporting statement for the *West Coast Region Vessel Monitoring System and Pre-Trip Reporting System Requirements,* OMB Control Number(s): 0648–0498, to include the manual reporting requirement in the event of a technical VMS unit failure. All VMS and pre-trip reporting requirements under that collection-of-information continue to apply.

Send comments on these or any other aspects of the collection of information to the **ADDRESSES** above, and by email to *OIRA_Submission@omb.eop.gov,* or fax to (202) 395–5806. Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number. All currently approved NOAA collections of information may be viewed at: *https://www.reginfo.gov/public/do/PRAMain.*

*Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (RFA), 5 U.S.C. 605(b), The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration during the proposed rule stage that this action would not have a significant economic impact on a substantial number of small entities. The factual basis for the certification was published in the proposed rule (89 FR 31708, April 25, 2024) and is not repeated here. No

comments were received regarding this certification. As a result, a regulatory flexibility analysis was not required and none was prepared.

**List of Subjects in 50 CFR Part 300**

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: June 26, 2024.

**Samuel D. Rauch, III,**

*Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.*

For the reasons set out in the preamble, NMFS amends 50 CFR part 300 as follows:

## PART 300—INTERNATIONAL FISHERIES REGULATIONS

### Subpart C—Eastern Pacific Tuna Fisheries

■ 1. The authority citation for part 300, subpart C, continues to read as follows:

**Authority:** 16 U.S.C. 951 *et seq.*

■ 2. In § 300.24, revise paragraph (z) to read as follows:

**§ 300.24 Prohibitions.**

* * * * *

(z) In the event of VMS unit failure or interruption: fail to repair or replace a VMS unit; fail to notify the Assistant Director, NOAA Office of Law Enforcement, Pacific Islands Division (or designee) and follow the instructions provided; fail to manually report as required in § 300.26(c)(4)(ii); or otherwise fail to act as provided in § 300.26(c)(4).

* * * * *

■ 3. In § 300.26, revise paragraph (c)(4)(ii) to read as follows:

**§ 300.26 Vessel monitoring system (VMS).**

* * * * *

(c) * * *

(4) * * *

(ii) If the vessel is at sea: The vessel owner, operator, or designee must contact the Assistant Director (AD) of NOAA Office of Law Enforcement (OLE) by telephone, facsimile, or email at the earliest opportunity during the AD's business hours and identify the caller and vessel. The vessel operator must follow the instructions provided by the AD which could include, but may not be limited to, ceasing fishing, stowing fishing gear, and/or returning to port. The vessel operator must also manually report to OLE every 6 hours by appropriate telecommunication means reports containing: the vessel's identification, the vessel's geographical position (latitude and longitude) accurate to within 100 meters, the date and time (UTC) of the fixing of the vessel's position, and the vessel's speed and course. These reports must continue until the vessel returns to port or the VMS unit is once again functioning normally. The vessel operator must repair or replace the VMS unit and ensure it is operable before starting the next trip.

* * * * *

■ 4. In § 300.27, revise paragraph (k) and add paragraphs (m) and (n) to read as follows:

**§ 300.27 Incidental catch and tuna retention requirements.**

* * * * *

(k) *Shark handling and release requirements.* (1) For purse seine vessels: the crew, operator, or owner of a U.S. commercial purse seine fishing vessel must promptly release unharmed, to the extent practicable, any shark (whether live or dead) caught in the IATTC Convention Area, as soon as it is seen in the net or on the deck, without compromising the safety of any persons. If a shark is live when caught, the crew, operator, or owner must follow these release procedures:

(i) Sharks must be released out of the purse seine net by directly releasing the shark from the brailer into the ocean. Sharks that cannot be released without compromising the safety of persons or the sharks before being landed on deck must be returned to the water as soon as possible, either utilizing a ramp from the deck connecting to an opening on the side of the boat or through escape hatches. If ramps or escape hatches are not available, the sharks must be lowered with a sling or cargo net, using a crane or similar equipment, if available.

(ii) No shark may be gaffed or hooked, lifted by the head, tail, gill slits or spiracles, or lifted by using bind wire against or inserted through the body, and no holes may be punched through the bodies of sharks (*e.g.,* to pass a cable through for lifting the shark).

(2) For longline vessels: the crew, operator, or owner of a U.S. commercial longline fishing vessel must promptly release unharmed, to the extent practicable, any shark (whether live or dead) caught in the IATTC Convention Area that is not retained, as soon as it is seen on the line, without compromising the safety of any persons. If a shark is live when seen on the line, the crew, operator, or owner must follow these release procedures:

(i) Leave the shark in the water.

(ii) Use a line clipper meeting the minimum design standards in paragraph (m) of this section to cut the branchline so that less than 1 meter (or 3.3 ft) of line remains on the animal. If this is not possible without compromising the safety of any persons, cut the branchline as close to the hook as possible.

* * * * *

(m) *Possession and use of required mitigation gear.* (1) NMFS has established minimum design standards for line clippers. At least one line clipper meeting these design standards must be present onboard any longline vessel fishing in the IATTC Convention Area. The minimum design standards are as follows:

(i) The line clipper must have a protected cutting blade. The cutting blade must be curved, recessed, contained in a holder, or otherwise afforded some protection to minimize direct contact of the cutting surface with animals or users of the cutting blade.

(ii) The cutting blade edge must be capable of cutting 2.0–2.1 mm monofilament line and nylon or polypropylene multi-strand material commonly known as braided mainline or tarred mainline.

(iii) The line clipper must have an extended reach handle or pole of at least 6 ft (1.82 m) for the cutting blade.

(iv) The cutting blade must be securely fastened to the extended reach handle or pole to ensure effective deployment and use.

(2) [Reserved]

(n) *Prohibition on shark finning.* Vessel owners and operators must comply with regulations governing the harvest, possession, landing, purchase, and sale of shark fins found at 50 CFR part 600, subpart N.

[FR Doc. 2024–14495 Filed 7–1–24; 8:45 am]

**BILLING CODE 3510–22–P**

# Proposed Rules

Federal Register
Vol. 89, No. 127
Tuesday, July 2, 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.

## NUCLEAR REGULATORY COMMISSION

### 10 CFR Part 51

**[NRC–2018–0300]**

**RIN 3150–AK54**

## Categorical Exclusions From Environmental Review

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) is proposing to amend its regulations on categorical exclusions for licensing, regulatory, and administrative actions that individually or cumulatively do not have a significant effect on the human environment. The proposed revisions would eliminate the preparation of environmental assessments for such NRC actions. The proposed rule would not change any requirements for applicants or licensees. The NRC plans to hold a public meeting to promote full understanding of the proposed rule and facilitate public comment.

**DATES:** Submit comments by September 16, 2024. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure consideration only for comments received before this date.

**ADDRESSES:** You may submit comments by any of the following methods; however, the NRC encourages electronic comment submission through the Federal rulemaking website:

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID: NRC–2018–0300. Address questions about NRC dockets to Dawn Forder; telephone: 301–415–3407; email: *Dawn.Forder@nrc.gov.* For technical questions contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Email comments to: Rulemaking.Comments@nrc.gov.* If you do not receive an automatic email reply confirming receipt, then contact us at 301–415–1677.
- *Fax comments to:* Secretary, U.S. Nuclear Regulatory Commission at 301–415–1101.
- *Mail comments to:* Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff.
- *Hand deliver comments to:* 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 a.m. and 4:15 p.m. eastern time, Federal workdays; telephone: 301–415–1677.

You can read a plain language description of this proposed rule at *https://www.regulations.gov/docket/NRC-2018-0300.* For additional direction on obtaining information and submitting comments, see ''Obtaining Information and Submitting Comments'' in the **SUPPLEMENTARY INFORMATION** section of this document.

**FOR FURTHER INFORMATION CONTACT:** Nancy Martinez, Office of Nuclear Material Safety and Safeguards, telephone: 630–829–9734, email: *Nancy.Martinez@nrc.gov* and Gregory Trussell, Office of Nuclear Material Safety and Safeguards, telephone: 301–415–6244, email: *Gregory.Trussell@nrc.gov.* Both are staff of the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

**SUPPLEMENTARY INFORMATION:**

### Table of Contents



## I. Obtaining Information and Submitting Comments

### *A. Obtaining Information*

Please refer to Docket ID NRC–2018–0300 when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2018–0300.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time, Monday through Friday, except Federal holidays.

### *B. Submitting Comments*

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2018–0300 in your comment submission.

The NRC cautions you not to include identifying or contact information that you do not want to be publicly

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

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

**Background**

The National Environmental Policy Act of 1969 (NEPA) requires Federal agencies to undertake an assessment of the environmental effects of their proposed actions prior to deciding whether to approve or disapprove the proposed actions. The NRC's NEPA implementing regulations are contained in part 51 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions.''

*A. General Overview of Categorical Exclusions*

There are three types of NEPA analyses: environmental assessments (EAs), environmental impact statements (EISs), and categorical exclusions. If a Federal agency believes that the environmental impacts of a proposed action are not likely to be significant, the agency may prepare an EA. An EA is a concise document that provides sufficient evidence and analysis for determining whether to make a finding of no significant impact (FONSI) or to prepare an EIS. If a Federal agency believes that the environmental impacts of a proposed action may be significant (for example, because an EA did not result in a FONSI), the agency will prepare an EIS. An EIS is a detailed written statement of the environmental impacts of a proposed action and alternatives to the proposed action.

A categorical exclusion, by contrast, falls into the category of actions that do not have a significant effect on the human environment, as defined by a Federal agency in its NEPA implementing regulations. If the Federal agency finds that actions in a given category have no significant effect on the human environment, either individually or cumulatively, then the agency may establish a categorical exclusion for that category of actions. The NRC has the option to prepare and issue an EA or EIS for any proposed action, even if the proposed action meets the criteria for a categorical exclusion. Once it has established a categorical exclusion, the agency is not required to prepare an EA or EIS for any action that falls within the scope of the categorical exclusion unless the agency finds, for any particular action, that there are special circumstances that would preclude use of the categorical exclusion. Categorical exclusions increase efficiency in the environmental review process, saving time, effort, and resources.

*B. NRC Categorical Exclusion Regulations*

On March 12, 1984 (49 FR 9352), the NRC published 10 CFR part 51, including § 51.22, ''Criterion for categorical exclusion: identification of licensing and regulatory actions eligible for categorical exclusion or otherwise not requiring environmental review.'' The regulation included the NRC's first list of 18 categorical exclusions in § 51.22(c). Since 1984, the NRC has made 18 amendments to the categorical exclusions in § 51.22(c). The NRC's categorical exclusions include administrative, organizational, and procedural amendments to certain types of NRC regulations, licenses, and certificates; minor changes related to application filing procedures; certain personnel and procurement activities; and activities for which environmental review by the NRC is excluded by statute.

On September 24, 2003 (68 FR 55954), the Council on Environmental Quality (CEQ) National Environmental Policy Act Task Force published a report, ''Modernizing NEPA Implementation'' (Task Force Report) that recommended Federal agencies periodically review and update their categorical exclusion regulations. The Task Force Report stated that an agency can use, among other things, information from past actions to establish the basis for the determination of no significant effects. It also provided that ''[w]hile the criteria for identifying new categorical exclusions might vary from agency to agency, some candidates for categorical exclusions include repetitive actions that do not individually or cumulatively have significant effects on the human environment, those that generally require limited environmental review, and those that are noncontroversial.''

In a December 6, 2010, **Federal Register** notification (75 FR 75628), the CEQ issued final guidance, ''Establishing, Applying, and Revising Categorical Exclusions under [NEPA]'' (hereafter ''CEQ guidance memorandum''), which recommends agencies periodically review categorical exclusions to assure their continued appropriate use and usefulness. The review should help determine if the existing categorical exclusions are still relevant or if there are additional eligible actions. Further, the CEQ recommended that agencies develop a process and timeline to periodically review their categorical exclusions to ensure that their categorical exclusions remain current and appropriate, and that those reviews should be conducted at least every seven years. The NRC last amended its categorical exclusion regulations in 2010 (75 FR 20248; April 19, 2010).

Consistent with the CEQ recommendations, the NRC reviewed its environmental programs and organization to identify potential opportunities to continue to protect people and the environment in different ways that would enhance the process, save time, and reduce resources. That review resulted in SECY–20–0065, ''Rulemaking Plan-Categorical Exclusions from Environmental Review,'' which recommended to the Commission that the staff conduct this rulemaking activity (ADAMS Accession No. ML20021A160).

*C. Basis for Proposed Amendment of Categorical Exclusion Regulation*

In staff requirements memorandum (SRM) SRM–SECY–20–0065, ''Rulemaking Plan—Categorical Exclusions from Environmental Review,'' dated November 30, 2020 (ADAMS Accession No. ML20336A009), the Commission approved the staff's recommendation to initiate a rulemaking to add new categorical exclusions and amend existing categorical exclusions.

This proposed rule is based upon a review of NRC regulatory actions, consistent with the CEQ guidance memorandum, which recommends that agencies evaluate past EA/FONSIs for particular categories of actions to develop new or expand existing categorical exclusions. Consistent with this recommendation, the NRC conducted an in-depth review of the NRC activities, including EA/FONSIs, completed since the 2010 rulemaking was conducted. The review identified several recurring categories of regulatory actions that are not addressed in § 51.22 and have no significant effect on the human environment, either individually or cumulatively. These categories of

actions were considered in developing this proposed rule.

The NRC held a public meeting on June 16, 2021, to help facilitate comments on the advance notice of proposed rulemaking (ANPR) that was published on May 7, 2021 (86 FR 24514). The ANPR identified potential rulemaking changes that would allow the NRC to continue to protect people and the environment in different ways that would enhance the process, save time, and reduce resources. The ANPR raised the possibility of reorganizing the existing categorical exclusions and adding new categorical exclusions. During the meeting, the NRC presented background information, the NRC's regulations on categorical exclusions, and the potential rulemaking changes under consideration. Participants asked clarifying questions on the NRC's approach and were provided details on how to submit their comments.

The NRC received more than 2,300 comment submittals on the ANPR; most were identical comments on topics that the NRC determined were out of scope for this rulemaking. Approximately 20 unique comment submittals were within scope. The NRC evaluated and considered the comments during the development of this proposed rule. Some of the comments supported reorganizing the list of categorical exclusions to eliminate redundancy and add clarity. Additionally, some comments supported revisions to eliminate distinctions in categorical exclusions between license amendments, exemptions, rulemaking, and other forms of NRC actions to ensure that categorical exclusions are based on the activities that would be authorized rather than the administrative and legal differences between the different forms of NRC approvals.

The NRC received comments that did not support some of the categories considered in the ANPR. Based on an in-depth review of these comments, the NRC modified some of the changes under consideration; for example, the NRC is not pursuing categorical exclusions for four categories of actions considered in the ANPR: (1) the issuance of exemptions to low-level waste disposal sites for the storage and disposal of special nuclear material regulated by Agreement States; (2) approvals for alternative waste disposal procedures for reactor and materials licenses in accordance with 10 CFR 20.2002, ''Method for obtaining approval of proposed disposal procedures''; (3) the NRC's concurrence, under the Atomic Energy Act of 1954, as amended (AEA), section 274c., on termination by an Agreement State of licenses for AEA section 11e.(2) byproduct material where all decommissioning activities have been completed; and (4) approvals of long-term surveillance plans for decommissioned uranium mills.

In addition, based on a comment received on the ANPR, the NRC evaluated categorical exclusions adopted by other Federal agencies for potential adoption by the NRC. This evaluation did not identify any categorical exclusions for incorporation in this proposed rule.

*D. The Fiscal Responsibility Act of 2023*

The NRC acknowledges recent amendments to the NEPA statute enacted in section 321 of the Fiscal Responsibility Act of 2023 (Pub. L. 118–5, 137 Stat. 10).

The Fiscal Responsibility Act of 2023 added a new NEPA section 109, which includes a provision allowing agencies to adopt a categorical exclusion prepared by another agency, and NEPA now defines ''categorical exclusion'' in section 111(1). The NRC has not identified categorical exclusions prepared by other agencies that it would adopt under NEPA section 109, nor has the NRC identified any need to change its existing categorical exclusions or those proposed in this rule to address the new definition in NEPA section 111(1).

**III. Discussion**

*A. What action is the NRC taking?*

The NRC is proposing changes to its list of categorical exclusions to clarify the scope of existing categories, to improve consistency in their application, and to add new categories of actions that have no significant effect on the human environment. For example, the NRC is proposing to eliminate distinctions in categorical exclusions between license amendments, exemptions, rulemaking, and other forms of NRC actions to ensure that categorical exclusions are based on the activities that would be authorized (*e.g.,* certain maintenance activities) rather than on the different forms of the NRC approvals. The proposed amendments would ensure resources are directed to activities that have the potential to significantly affect the environment.

*B. How are categorical exclusions applied?*

If a Federal agency finds that actions in a given category have no significant effect on the human environment, either individually or cumulatively, then the agency may establish a categorical exclusion for that category of action. Once it has established a categorical exclusion, the agency is not required to prepare an EA or EIS for any action that falls within the scope of the categorical exclusion, unless the agency finds, for any particular action, that there are extraordinary circumstances (called special circumstances in the NRC's regulations) that may have a significant effect on the human environment. If such special circumstances are or are likely to be present, the agency would prepare an EA (which may result in a FONSI) or, if necessary, an EIS. If special circumstances are not present, the categorical exclusion may be applied and the agency will have satisfied its NEPA obligation for that proposed action.

Under NRC regulations, the determination of whether special circumstances are present is a matter of agency discretion. The determination that special circumstances are not present does not require the preparation of any specific or additional documentation beyond the documentation normally prepared indicating that the categorical exclusion is being invoked for the proposed action.

*C. Who would this action affect?*

The amendments would not impose any new requirements on NRC applicants or licensees but would ensure that NRC actions (including decisions on licensing requests) are completed in a more consistent, efficient and effective manner and would result in cost savings to the NRC and applicants and licensees. The proposed amendments would eliminate the NRC's preparation of EA/FONSIs for actions that the NRC knows from staff expertise or that routinely have no significant effect on the human environment (*e.g.,* administrative, procedural, or organizational licensee requests). For example, ambiguities in the current categorical exclusion regulations have resulted in resources being directed to EAs for approvals of organizational name changes, which do not significantly affect the environment.

The NRC is not required to provide opportunity for comment on draft EA/FONSIs. However, the NRC under certain circumstances does provide opportunity for comment on draft EA/FONSIs. Therefore, the NRC cannot rule out the possibility that adding new categorical exclusions (as proposed in this proposed rule) could result in fewer opportunities for public participation in the NRC's environmental review process, albeit only for activities where

the NRC has determined there will not be a significant effect on the human environment.

*D. Why is the NRC taking this action now?*

This proposed rule is based upon a review of NRC regulatory actions. As noted, the CEQ guidance memorandum recommends that Federal agencies regularly review their categorical exclusion regulations to identify potential revisions that would ensure resources are directed to activities that have the potential to significantly affect the environment.

*E. How did the NRC determine which categorical exclusions to modify or add?*

In accordance with CEQ's 2010 guidance memorandum, the NRC reviewed and analyzed past actions, including their supporting NEPA documentation, to develop initial candidates for potential changes to categorical exclusion regulations. The NRC then solicited input from internal stakeholders and, through an ANPR, from the public on the initial candidates and to identify any additional potential candidates. The NRC then considered available information and experience to determine whether the candidates for categorical exclusion and revisions to the existing categorical exclusions could be substantiated.

The CEQ guidance memorandum provides four methods for substantiating a new or revised categorical exclusion. The NRC used two of those methods in substantiating its proposed changes. The methods used in the NRC's proposal are based on (1) data from implementing comparable past actions and the expert judgment of the NRC staff who conducted the past actions, and (2) professional opinions and information from other NRC staff. Based on its review of all the information collected, the NRC determined that actions covered by the proposed changes would not individually or cumulatively have significant effects on the human environment.

The NRC has prepared a supporting rationale in Section III of this document for each of its proposed changes that provides specific background and context.

*F. What are the proposed revisions to address inefficiencies and inconsistencies?*

The NRC is proposing to reorganize the list of categorical exclusions to eliminate redundancy, add clarity, and improve consistency. The current regulation contains 25 separate paragraphs, several of which contain multiple categorical exclusions. The NRC has identified several actions where staff have cited different, potentially overlapping, categorical exclusions for similar or even identical actions (*e.g.,* § 51.22(c)(9) versus (c)(25)). The reorganization would eliminate distinctions in categorical exclusions between license amendments, exemptions, rulemaking, and other forms of NRC actions to ensure that categorical exclusions are based on the activities that would be authorized rather than the administrative and legal differences between the different forms of NRC approvals. The reorganization would remove the overlapping actions and consolidate similar actions into one categorical exclusion.

The proposed organization would list the categorical exclusions in four separate categorical exclusion paragraphs, paragraphs (a) through (d) based on threshold criteria used to more clearly and consistently identify the categories of actions being excluded. For example, each paragraph would be organized into similar actions to add clarity.

The NRC is proposing to remove the ''no significant hazards consideration'' criterion in § 51.22(c)(9), (25)(i) and (v). The ''no significant hazards consideration'' is a procedural standard from § 50.92, ''Issuance of amendment'' that governs whether an opportunity for a hearing must be provided before a license amendment action is taken by the NRC for a production and utilization facility under part 50 (51 FR 7746; March 6, 1986). It is not related to NEPA and not applicable to exemptions that do not include license amendments or actions related to materials licenses (*e.g.,* 10 CFR part 30, ''Rules of General Applicability to Domestic Licensing of Byproduct Material,'' or 10 CFR part 40, ''Domestic Licensing of Source Material,'' licenses). The remaining criteria in § 51.22(c)(9), (25)(i) and (v) are sufficient for determining whether the categorical exclusion applies to an action. Therefore, as part of the reorganization, the NRC is proposing to eliminate the criterion for no significant hazards considerations criteria currently in § 51.22(c)(9) and (25).

In addition, the ''no significant construction impact'' criterion in § 51.22(c)(6), (11), (12)(i), and (25)(iv) would be revised to ''provided that any ground disturbance is limited to previously disturbed areas.'' The purpose of this change is to provide clarification. The regulatory history indicates that the ''no significant construction'' impact criterion was intended to preclude actions that would result in ground disturbing activities in undisturbed areas, which would have the potential to alter, modify, or destroy important attributes of environmental resource areas (*e.g.,* land use, terrestrial ecology, historic and cultural resources). Based on experience with the use of these categorical exclusions, the NRC's view is that it would be clearer to explicitly state the relevant consideration in the regulations.

*G. What is the basis for proposed new categorical exclusions?*

The NRC is proposing to add the following categorical exclusions.

*Termination of licenses that were issued but for which no construction activities have begun or where all decommissioning activities have been completed and approved and license termination is a final administrative step.*

First, the termination of licenses that were issued but for which no construction has begun would remove authorization for activities that could affect the environment. Second, when all site decommissioning activities have been approved and completed, license termination is an NRC administrative action. To be eligible for license termination, facilities must complete necessary dismantlement and decontamination activities and have met radiological criteria in 10 CFR part 20, ''Standards for Protection Against Radiation,'' for site release and demonstrated that public health and safety and the environment will be protected. Therefore, the action of terminating a license after all site decommissioning activities have been approved and completed is administrative in nature and does not have the potential to individually or cumulatively affect the human environment. The NRC has historically cited various other categorical exclusions or prepared an EA for these activities. The inclusion of this example in proposed § 51.22(a)(1)(xiii) would provide clarity and consistency for future license terminations. This proposed categorical exclusion would not include the NRC's concurrence on termination by an Agreement State of an Agreement State license for AEA § 11e.(2) byproduct material. It would also not include partial site releases or license termination plans.

*Actions on or changes to requirements for decommissioning funding plans under 10 CFR parts 30, 40, 50, 70, or 72.* Decommissioning funding actions only relate to changes in the management of funds allowed for managing irradiated fuel activities. They do not authorize new land-disturbing activities that could affect land use, soils and geology,

water resources, ecological resources, historic and cultural resources, air quality, traffic and transportation, socioeconomics, environmental justice, or accidents. Categorically excluding decommissioning funding plan submittals would provide clarity and surety for future such actions and eliminate inconsistencies in the decommissioning funding plan approval process. Licensees would continue to comply with all appropriate NRC regulations related to occupational and public radiation exposure and therefore decommissioning funding actions would not result in an increase to occupational or public doses. Finally, licensees are required to maintain adequate funding for radiological decommissioning and to provide information regarding this funding to the NRC. Since 2010 the NRC has completed approximately 30 EAs for decommissioning funding plans, all resulting in FONSIs. Therefore, the NRC determined that decommissioning funding actions are strictly financial in nature and do not have the potential to individually or cumulatively affect the human environment. These actions would be categorically excluded by proposed § 51.22(a)(1) and listed as an example in subparagraph (xii).

*Issuance of amendments to § 72.214 for new, amended, revised, or renewed certificates of compliance for cask designs used for spent fuel storage.* The codification of certificates of compliance for cask designs is accomplished by rulemaking to amend 10 CFR part 72. As background, on July 18,1990 (55 FR 29181), the NRC issued an amendment to 10 CFR part 72 to provide for the storage of spent fuel under a general license in cask designs approved by the NRC. The potential environmental impact of using NRC-approved storage casks was initially analyzed in the EA for the 1990 final rule. Currently, the NRC prepares EAs for new, amended, revised, and renewed certificates of compliance for cask designs used for spent fuel storage. Since the 2010 rulemaking the NRC has completed approximately 125 EAs for amendments to § 72.214 for new, amended, revised, or renewed certificates of compliance for cask designs, all resulting in FONSIs. Accordingly, the NRC determined that certificate of compliance cask design changes do not result in any radiological or non-radiological environmental impacts that significantly differ from the environmental impacts evaluated in the EA and FONSI supporting the 1990 final rule. Therefore, the NRC concludes that codifying certificates of compliance for cask designs do not individually or cumulatively affect the human environment. This categorical exclusion is proposed as § 51.22(a)(12).

*Actions under § 50.55a,* ''Codes and standards.'' Section 50.55a establishes minimum quality standards for the design, fabrication, erection, construction, testing, and inspection of certain systems, structures, and components of boiling and pressurized water-cooled nuclear power plants. Under § 50.55a, the NRC can authorize proposed alternatives to these standards (§ 50.55a(z)), grant relief from or impose augments to requirements for in service inspection and testing of components due to impracticality (§ 50.55a(f)(6)(i) and (g)(6)(i)), or approve the early use of later code editions for in service inspection and testing of components (§ 50.55a(f)(4)(iv) and (g)(4)(iv)). Categorically excluding these actions would provide clarity and surety for future actions of this type. For the following reasons, these approvals under § 50.55a do not individually or cumulatively have a significant effect on the human environment, which makes these actions eligible for categorical exclusion. Approvals under § 50.55a do not authorize new ground disturbance or the installation of new systems, structures, or components; rather, they relate to requirements for the design, construction, and maintenance of systems, structures and components authorized for use by other actions (*i.e.,* licensing). These approvals also do not increase the probability or consequences of accidents, result in changes to the types or amounts of effluents released offsite, result in an increase to occupational or public dose, or result in other radiological or nonradiological environmental impacts. Therefore, the NRC concludes that actions under § 50.55a do not individually or cumulatively affect the human environment. This categorical exclusion is proposed as § 51.22(a)(16).

*Changes to requirements for fire protection, emergency planning, physical security, cybersecurity, or quality assurance.* Since 2010, the NRC has completed 51 EAs/FONSIs associated with the approval of exemptions or license amendments related to emergency planning, physical security, or fire protection requirements. The EAs have concluded that these amendments or exemptions do not increase the probability or consequences of accidents and do not result in significant changes to the types or amounts of effluents released offsite, increases to occupational or public dose, or any other radiological or non-radiological environmental impacts. However, some of these actions include ground disturbing activities, such as construction of security fences. Therefore, the NRC concludes that these changes to requirements for fire protection, emergency planning, or physical security plans do not individually or cumulatively affect the human environment, provided that any associated ground disturbance is limited to previously disturbed areas.

Quality assurance programs are intended to provide adequate confidence that a structure, system, or component will perform satisfactorily in service. Elements of a quality assurance program include procedures, recordkeeping, inspections, corrective actions, and audits. Cybersecurity plans protect computer and digital communication systems and networks against cyber-attacks. Changes to quality assurance programs or cybersecurity plans affect activities that occur inside buildings. These changes do not increase the probability or consequences of accidents and do not result in significant changes to the types or amounts of effluents released offsite, increases to occupational or public dose, or any other radiological or non-radiological impacts and do not involve ground disturbance in undisturbed areas. Therefore, changes to requirements for quality assurance or cybersecurity do not have the potential to individually or cumulatively affect the human environment.

These actions would be categorically excluded by proposed § 51.22(d)(4).

*Changes to extend implementation dates for activities previously found to not have a significant environmental impact.* These revisions would categorically exclude actions authorizing licensees to delay implementation of certain new NRC requirements. This proposed categorical exclusion only applies to implementation date delays for activities previously found to have no significant environmental impact and where the delay would result in no significant increase in the potential for or consequences from radiological accidents, no ground disturbance in undisturbed areas, no changes in effluents released offsite, and no additional doses to individuals. The proposed categorical exclusion does not apply to authorizations for other date extensions, such as license term extensions. Since 2010 the NRC has completed approximately 44 EAs to extend implementation dates, all resulting in FONSIs. Therefore, the NRC determined that implementation date extensions do not have the potential to individually or cumulatively affect the

human environment. These actions would be categorically excluded by proposed § 51.22(d)(6).

*H. What is the basis for the proposed revisions to existing categorical exclusions?*

The NRC is proposing to reorganize the list of categorical exclusions to eliminate redundancy, add clarity, and improve consistency. The reorganization would eliminate distinctions in categorical exclusions between license amendments, exemptions, rulemaking, and other forms of NRC actions, to ensure that categorical exclusions are based on the activities that would be authorized rather than the administrative and legal differences between the different forms of NRC approvals. The reorganization would consolidate similar actions into one categorical exclusion. In some instances, the revisions would expand or clarify language used in the existing categorical exclusions (*e.g.,* focusing on ground disturbance rather than on whether there would be a significant construction impact). In these cases, the rulemaking analyzes these newly included actions for suitability for categorical exclusion but does not revisit the suitability of the existing categorical exclusion. The NRC would also make a small number of editorial revisions. This section provides the basis for the proposed revisions.

The proposed new categorical exclusion in § 51.22(a)(1) applies to all NRC actions that are administrative, procedural, or solely financial in nature including exemptions and orders pertaining to these actions. The list of activities in proposed paragraphs 51.22(a)(1)(i) through (xi) consolidates all existing categorical exclusions that fit into the new category, but is not exclusive; rather it provides examples of actions that are included in the category for clarity. The actions included in proposed § 51.22(a)(1) are limited to administrative, procedural, or solely financial in nature. The NRC notes that actions that are ''solely financial in nature'' do not include, for example, grants or contracts that enable activities that could have environmental effects. Instead, this refers to activities that relate only to sources or means of funding or verifying that adequate funding is available for approved activities. Actions that are solely financial in nature affect the financial arrangements of the licensees, but do not have environmental impacts. Accordingly, the NRC concludes that these actions would not have significant individual or cumulative effects on the human environment.

The proposed § 51.22(a)(8) would expand the categorical exclusion for issuance, amendment, or renewal of operators' licenses under 10 CFR part 55 to include all forms of related NRC actions, including exemptions and orders. Part 55 of 10 CFR prohibits persons from performing the functions of an operator or a senior operator at a licensed facility unless authorized to do so by a license issued by the Commission. Although issuance or denial of an operator's license may have a significant economic effect on the individual applicant, the action of the Commission in issuing, amending, or renewing an operator's license in accordance with the procedures of 10 CFR part 55 does not have an environmental effect. The environmental impact of the operation of a licensed facility by a licensed operator is fully considered in the EIS or EA prepared in connection with the licensing action authorizing operation of the facility. The formal action of certifying an operator does not authorize facility operation. Accordingly, the NRC finds that issuance, amendment, or renewal of operators' licenses under 10 CFR part 55 comprises a category of actions that do not individually or cumulatively have a significant effect on the human environment. For the same reasons, the NRC concludes that neither exemptions nor orders relating to these requirements would have significant effects on the human environment.

The proposed § 51.22(a)(10) would expand an existing categorical exclusion to include all forms of related NRC actions, including exemptions and orders, but not rulemakings. Specifically, it would expand the current categorical exclusions for issuance, amendment, or renewal of materials licenses issued under 10 CFR parts 30, 31, 32, 33, 34, 35, 36, 39, 40, or 70 authorizing the types of activities listed in the current § 51.22(c)(14). It has been the NRC's experience that additional NRC actions such as exemptions and orders involve insignificant amounts of source, byproduct, or special nuclear material in quantities and form similar to those categorically excluded in § 51.22(c)(14) and, therefore, have no significant individual or cumulative environmental impact. For the same reasons, the NRC concludes that neither exemptions nor orders relating to these requirements would have significant individual or cumulative effects on the human environment.

The proposed § 51.22(b) and (d) include a criterion stating that the actions would not result in disturbances to previously undisturbed areas. This wording replaces the previous wording of ''no significant construction impact.'' The purpose of this new wording is to clarify that ground disturbance in areas that are already disturbed can be a factor in determining whether an action would have potential impacts. Actions that involve ground disturbance in areas not already disturbed will be reviewed for potential environmental impacts. The proposed § 51.22(b) is otherwise substantively unchanged from the existing § 51.22(c)(6).

The proposed § 51.22(d)(1) through (3), and (5) would expand the following categorical exclusions to include rulemaking, orders, and license amendments, provided the actions would not disturb previously undisturbed areas, would not result in a significant change in the types or amounts of effluents released offsite, would not significantly increase individual or cumulative public or occupational radiation exposure, and would not increase the potential for or consequences from radiological accidents:

- changes to inspection or surveillance requirements (proposed § 51.22(d)(1)): this would also be expanded to apply to facilities other than reactors (*i.e.,* would eliminate reference to 10 CFR part 50 or 52). Expanding this categorical exclusion to include facilities other than reactors improves the consistency of the categorical exclusion. The NRC expects that the application of this categorical exclusion to non-reactor facilities would not be materially different from the current application to reactor facilities because the activities are substantially similar at all NRC licensed facilities;
- changes to equipment servicing or maintenance requirements (proposed § 51.22(d)(2));
- changes to safeguards plans or material control and accounting inventory requirements, including modifications to systems used for security and/or materials accountability (proposed § 51.22(d)(3)); and
- changes to scheduling requirements (proposed § 51.22(d)(5)).

In addition to exemptions, the NRC conveys its regulatory decisions using other forms, such as rulemaking, orders, and license amendments. The NRC previously found that requests for exemptions from requirements for inspection and surveillance, equipment servicing and maintenance, safeguards plans and material control and accounting, and scheduling requirements would not lead to significant environmental impacts on the human environment individually or cumulatively. Similarly, the NRC

concludes that changes to these requirements resulting from rulemakings, orders, and license amendments, assuming the changes meet the criteria in the proposed § 51.22(d), would not have significant individual or cumulative effects on the human environment.

The proposed § 51.22(d)(7) would expand an existing categorical exclusion, current § 51.22(c)(11), to include exemptions, orders, and rulemaking. Specifically, current § 51.22(c)(11) is a categorical exclusion for amendments to licenses for fuel cycle plants and radioactive waste disposal sites and amendments to materials licenses identified in § 51.60(b)(1) that are administrative, organizational, or procedural in nature, or that result in a change in process operations or equipment, provided that there is no significant change in the types or significant increase in the amounts of any effluents released offsite, no significant increase in individual or cumulative public or occupational radiation exposure, no significant construction impact, and no significant increase in the potential for or consequences from radiological accidents. In the NRC's experience, these actions also do not result in any significant adverse incremental impacts to the environment. Implementation of these minor and routine types of changes do not significantly alter the previously evaluated environmental impacts associated with the licensed activity, considering the potential for ground disturbance, types and amounts of effluents released by the operation, occupational exposure to employees, or potential accidents. The actions that would be categorically excluded do not affect the scope or nature of the licensed activity. Therefore, the issuance of exemptions and orders relating to these matters in and of themselves would not cause any significant individual or cumulative environmental effects.

The proposed § 51.22(d)(7) relating to authorizations that result in changes in process operations or equipment under certain licenses, would be subject to the criterion in proposed § 51.22(d) stating that the actions would not result in disturbances to previously undisturbed ground. This wording replaces the limitation in the existing categorical exclusion (at § 51.22(c)(11)) to activities that involve ''no significant construction impact.'' The purpose of this new wording is to clarify that ground disturbance can be a factor in determining whether an action would have potential impacts and should not be categorically excluded from environmental review.

The proposed § 51.22(d)(8), relating to certain authorizations under part 50 or 52, would expand the existing categorical exclusion in § 51.22(c)(9) to include rulemakings and orders. Specifically, it would expand the existing categorical exclusion for the issuance of an amendment to a permit or license for a reactor under 10 CFR part 50 or 52 that changes a requirement or issuance of an exemption from a requirement with respect to installation or use of a facility component. The proposed rule would also expand this categorical exclusion to include installation or use of a facility component outside the restricted area under certain circumstances. Changes which relate to the installation or use of a facility component located within a restricted area and which do not involve significant hazards considerations, significant changes in offsite effluents, or significant increases in occupational doses do not result in offsite effects that could have a significant individual or cumulative effects on the human environment. Associated effects, if any, would be minimal and would be confined to limited access areas on site.

The proposed § 51.22(d)(8) would be subject to the criterion in proposed § 51.22(d) stating that the actions would not result in disturbances to previously undisturbed areas. This criterion would replace restriction in the current categorical exclusion (at § 51.22(c)(9)) to facility components located within the restricted area. The purpose of the existing restriction is to ensure that ground disturbance is limited to previously disturbed areas, which was the basis for the previous limitation for this categorical exclusion to components in the restricted area. Thus, this proposed revision would continue to ensure that the categorical exclusion does not apply to activities that include ground disturbance in areas not already disturbed. As a result of this proposed change, this categorical exclusion would apply where a facility component is located inside or outside the restricted area as long as installation or use of the component would not disturb previously undisturbed areas (and meets the other criteria in § 51.22(d)).

*I. Why is the NRC proposing to remove existing categorical exclusions?*

The NRC evaluated all existing categorical exclusions to determine if any are no longer necessary or have proven to no longer meet the criteria for categorical exclusion. The NRC determined that two existing categorical exclusions are no longer necessary because they are obsolete. The remaining existing categorical exclusions continue to be valid. The NRC is proposing to remove § 51.22(c)(17), ''Issuance of an amendment to a permit or license under 10 CFR part 30, 40, 50, 52, or 70, which removes any limiting condition of operation or monitoring requirement based on or applicable to any matter subject to the provisions of the Federal Water Pollution Control Act.'' The NRC has concluded its activity to amend applicable NRC licenses and permits to remove limiting conditions of operation or monitoring requirements pertaining to nonradiological discharge pollutants under the Federal Water Pollution Control Act and no longer includes such conditions in NRC permits and licenses (49 FR 9380; March 12, 1984). Therefore, the NRC has determined that this categorical exclusion is no longer necessary.

The NRC is also proposing to remove § 51.22(c)(18), ''Issuance of amendments or orders authorizing licensees of production or utilization facilities to resume operation, provided the basis for the authorization rests solely on a determination or redetermination by the Commission that applicable emergency planning requirements are met.'' This categorical exclusion was established in the NRC 1984 NEPA implementing regulations (49 FR 9352; March 12, 1984) to support the implementation of a 1980 emergency planning rule (45 FR 55402; August 19, 1980). That emergency planning rule has been fully implemented, therefore, the NRC has determined that this categorical exclusion is no longer applicable and should be removed.

## IV. Specific Requests for Comments

The NRC is seeking feedback from the public on the proposed rule. We are particularly interested in comments and supporting rationale from the public on the following:

- The categorical exclusions in proposed § 51.22(b) (related to confirmatory research and review and approval of transportation routes under 10 CFR 73.3) and (d) (addressing nine different types of actions) will require the application of threshold criteria to determine whether the actions listed in those sections may be categorically excluded. The threshold criteria used in current § 51.22 include ''no significant construction impact.'' The NRC is proposing to substitute the phrase ''any ground disturbance is limited to previously disturbed areas'' for ''no significant construction impact.'' The purpose of this change would be to prevent the categorical exclusion of actions that would disturb previously undisturbed land, which have the

potential to affect historic or cultural resources, and actions that would disturb areas that have been allowed to return to a natural state, which have the potential to affect functioning ecologies. The NRC is requesting input on the proposed phrase ''any ground disturbance is limited to previously disturbed areas.''

- The NRC is considering defining the phrase, ''previously disturbed areas'' to refer to ''areas that have been changed such that its functioning ecological processes have been and remain altered by human activity. The phrase encompasses areas that have been transformed from natural cover to non-native species or a managed state, including, but not limited to, utility and electric power transmission corridors and rights-of-way, and other areas where active utilities and currently used roads are readily available.'' The NRC is requesting input on the proposed definition.
- As discussed in Section III.F, of this document, the NRC is proposing to remove the ''no significant hazards consideration'' determination in § 51.22(c)(9), (25)(i) and (v), which is related to a process for issuance of license amendments for nuclear power reactor and testing facility licenses, but is not related to environmental impacts and not relevant to materials licenses. The ''no significant hazards consideration'' is a procedural standard that governs whether an opportunity for a hearing must be provided before an action is taken by the NRC. The NRC is requesting input on the removal of the ''no significant hazards consideration'' determination in § 51.22(c)(9), (25)(i) and (v).

## V. Section-by-Section Analysis

The following paragraphs describe the specific changes proposed by this rulemaking.

*Section 51.21 Criteria for and Identification of Licensing and Regulatory Actions Requiring Environmental Assessments*

This proposed rule would revise § 51.21 to update the references for those categorical exclusions and other actions identified as not requiring an environmental review.

*Section 51.22 Criterion for Categorical Exclusion; Identification of Licensing and Regulatory Actions Eligible for Categorical Exclusion or Otherwise Not Requiring Environmental Review*

This proposed rule would revise the section heading to more accurately reflect the section. The proposed rule also would add introductory text, redesignate paragraph (d) as paragraph (e), add a new paragraph (d), and revise paragraphs (a) through (c) to add, clarify, and eliminate categorical exclusions.

*Section 51.25 Determination To Prepare Environmental Impact Statement or Environmental Assessment; Eligibility for Categorical Exclusion*

This proposed rule would revise § 51.25 to update the reference for the location of categorical exclusions to § 51.22 (a) through (d).

*Appendix A to Subpart A of Part 51, Format for Presentation of Material in Environmental Impact Statements*

This proposed rule would revise footnote 4 to remove the reference to § 51.22(c)(17).

## VI. Regulatory Flexibility Certification

As required by the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities.

## VII. Regulatory Analysis

The NRC has prepared a regulatory analysis on this proposed regulation. The analysis examines the costs and benefits of the alternatives considered by the NRC. The conclusion from the analysis is that this proposed rule and associated guidance would result in a net benefit to the NRC of $71,000 using a 7-percent discount rate and $266,200 using a 3-percent discount rate. The NRC requests public comment on the draft regulatory analysis. The regulatory analysis is available under ADAMS Accession No. ML24165A234.

## VIII. Backfitting and Issue Finality

This proposed rule would eliminate the NRC's requirement to prepare environmental assessments or environmental impact statements for certain categories of actions. Although the proposed rule would not alter requirements for applicants or petitioners for rulemaking to provide environmental reports under §§ 51.40–51.68, it could reduce the information an applicant or petitioner for rulemaking would be obligated to provide in an environmental report. Reductions in the information required to be included in applications and petitions for rulemaking constitutes a voluntary reduction in requirements and therefore is not a backfit under the backfitting rules (§§ 50.109, 70.76, 72.62, or 76.76) nor a violation of any issue finality provisions in 10 CFR part 52.

Further, applicants and petitioners are not, with certain exceptions, within the scope of either the backfitting rules (§§ 50.109, 70.76, 72.62, or 76.76) or any issue finality provisions in 10 CFR part 52. The backfitting and issue finality regulations include language delineating when those provisions begin; in general, they begin after the issuance of a license, permit, or approval (*e.g.,* § 50.109(a)(1)(iii) and § 52.98(a)). Neither the backfitting provisions nor the issue finality provisions, with certain exceptions, are intended to apply to NRC actions that substantially change the expectations of current and future applicants. These applicants cannot reasonably expect that future requirements will not change.

Therefore, this proposed rule does not involve any provisions within the scope of the backfit rules (§§ 50.109, 70.76, 72.62, or 76.76) or the issue finality provisions in 10 CFR part 52. Accordingly, the NRC did not prepare a backfit or forward fit analysis for this proposed rule.

## IX. Cumulative Effects of Regulation

The NRC is following its Cumulative Effects of Regulation (CER) process by engaging with external stakeholders throughout this proposed rule and related regulatory activities. Opportunity for public comment is provided to the public at this proposed rule stage.

The staff published an ANPR in the **Federal Register** on May 7, 2021. The NRC held a public meeting on June 16, 2021, to help facilitate comments for the ANPR. The NRC will conduct another public meeting during the comment period for this proposed rule.

The NRC is requesting CER feedback on the following questions:

1. In light of any current or projected CER challenges, would a 30-day effective date from the publication of the final rule provide sufficient time to implement the new requirements as proposed?
2. If CER challenges currently exist or are expected, what should be done to address them? For example, if more time is required for implementation of the new requirements, what period of time is sufficient?
3. Do other (NRC or other agency) regulatory actions (*e.g.,* orders, generic communications, license amendment requests, inspection findings of a generic nature) influence the implementation of the proposed rule's requirements?
4. Are there unintended consequences? Does the proposed rule

create conditions that would be contrary to the proposed rule's purpose and objectives? If so, what are the unintended consequences, and how should they be addressed?

5. Please comment on the NRC's cost and benefit estimates in the regulatory analysis that supports the proposed rule.

## X. Plain Writing

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

## XI. Paperwork Reduction Act

This proposed rule does not contain a collection of information as defined in the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995.

## XII. Compatibility of Agreement State Regulations

Under the ''Agreement State Program Policy Statement'' approved by the Commission on October 2, 2017, and published in the **Federal Register** (82 FR 48535; October 18, 2017), this rule is classified as compatibility ''NRC.'' Category NRC consists of program elements over which the NRC cannot discontinue its regulatory authority pursuant to the Atomic Energy Act of 1954 (AEA), as amended, or provisions of title 10 of the *Code of Federal Regulations.* Under the Policy Statement, a program element means any component or function of a radiation control regulatory program, including regulations and other legally binding requirements imposed on regulated persons, which contributes to the implementation of that program. The NRC maintains regulatory authority over program elements classified as category NRC and the Agreement States must not adopt these NRC program elements. However, an Agreement State may inform its licensees of these NRC requirements through a mechanism under the State's administrative procedure laws, as long as the State adopts these provisions solely for the purposes of notification, and does not exercise any regulatory authority as a result.

## XIII. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. The NRC is proposing to amend § 51.22, the NRC's list of categories of actions that the NRC has determined to have no significant individual or cumulative effect on the human environment. This action does not constitute the establishment of a standard that contains generally applicable requirements.

## XIV. Availability of Guidance

There is no licensee or applicant implementation or compliance required by this rulemaking. The NRC staff plans to update guidance documents that currently contain references to § 51.22 (*e.g.,* standard review plans). The NRC will publish notice in the **Federal Register** announcing the availability of the revised guidance documents. The final guidance documents will be available on the NRC website and at *http://www.regulations.gov* by searching on Docket ID NRC–2018–0300.

## XV. Public Meeting

The NRC will conduct a public meeting during the comment period for this proposed rule for the purpose of facilitating the submittal of comments and answering questions from the public on this proposed rule.

The NRC will publish a notice of the location, time, and agenda of the meeting on the NRC's public meeting website at least 10 calendar days before the meeting. Stakeholders should monitor the NRC's public meeting website for information about the public meeting at: *https://www.nrc.gov/public-involve/public-meetings/index.cfm.*

## List of Subjects in 10 CFR Part 51

Administrative practice and procedure, Environmental impact statements, Hazardous waste, Nuclear energy, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is proposing to amend 10 CFR part 51 as follows:

## PART 51—ENVIRONMENTAL PROTECTION REGULATIONS FOR DOMESTIC LICENSING AND RELATED REGULATORY FUNCTIONS

■ 1. The authority citation for part 51 continues to read as follows:

**Authority:** Atomic Energy Act of 1954, secs. 161, 193 (42 U.S.C. 2201, 2243); Energy Reorganization Act of 1974, secs. 201, 202 (42 U.S.C. 5841, 5842); National Environmental Policy Act of 1969 (42 U.S.C. 4332, 4334, 4335); Nuclear Waste Policy Act of 1982, secs. 144(f), 121, 135, 141, 148 (42 U.S.C. 10134(f), 10141, 10155, 10161, 10168); 44 U.S.C. 3504 note.

■ 2. Revise and republish § 51.21 to read as follows:

### § 51.21 Criteria for and identification of licensing and regulatory actions requiring environmental assessments.

All licensing and regulatory actions subject to this subpart require an environmental assessment except those identified in § 51.20(b) as requiring an environmental impact statement, those covered by categorical exclusions identified in § 51.22(a) through (d), and those identified in § 51.22(e) as other actions not requiring environmental review. As provided in § 51.22, the Commission may, in special circumstances, prepare an environmental assessment on an action covered by a categorical exclusion.

■ 3. Revise and republish § 51.22 to read as follows:

### § 51.22 Categorical exclusions.

Licensing, regulatory, and administrative actions eligible for categorical exclusion must belong to a category of actions that the Commission, by rule or regulation, has declared to be a categorical exclusion, after first finding that the actions within the category do not individually or cumulatively have a significant effect on the human environment. Except in special circumstances, as determined by the Commission upon its own initiative or upon request of any interested person, an environmental assessment or an environmental impact statement is not required for any action within a category of actions included in the list of categorical exclusions set out in paragraphs (a) through (d) of this section. Special circumstances include the circumstance where the proposed action involves unresolved conflicts concerning alternative uses of available resources within the meaning of section 102(2)(E) of NEPA.

(a) The following categories of NRC actions are excluded from the requirement to prepare an environmental assessment or environmental impact statement:

(1) Actions that are administrative, procedural, or solely financial in nature, including, for example:

(i) Issuance of or changes to procedures for filing and reviewing applications;

(ii) Issuance of or changes to recordkeeping or reporting requirements;

(iii) Issuance of or changes to surety, insurance, or indemnity requirements;

(iv) Issuance of or changes to administrative procedures or requirements;

(v) Actions on petitions for rulemaking, but not including rulemakings in response to a petition for rulemaking;

(vi) Amendments to the regulations in this chapter that are corrective or of a minor or nonpolicy nature and do not substantially modify existing regulations;

(vii) Issuance of or changes to guidance for the implementation of regulations in this chapter and other informational and procedural documents that do not impose any legal requirements;

(viii) Changes to a person or organization's name, position, or title;

(ix) Revisions that are editorial, corrective, or otherwise minor, including the updating of NRC-approved references, or changes to formatting of a document;

(x) Changes to contact information;

(xi) Personnel or managerial actions;

(xii) Actions on or changes to requirements for decommissioning funding under parts 30, 40, 50, 70, or 72 of this chapter; or

(xiii) Termination of licenses that were issued but for which no construction activities have begun or where all decommissioning activities have been completed and approved and license termination is a final administrative step.

(2) Issuance of or changes to education, training, experience, qualification, or other employment suitability requirements.

(3) Amendments to parts 1, 2, 4, 5, 7, 8, 9, 10, 11, 12, 13, 15, 16, 19, 21, 25, 26, 55, 75, 95, 110, 140, 150, 160, 170, or 171 of this chapter.

(4) Procurement of general equipment and supplies, and procurement of technical assistance and personal services relating to the safe operation and protection of commercial reactors, other facilities, and materials subject to NRC licensing and regulation.

(5) Entrance into or amendment, suspension, or termination of all or part of an agreement with a State under section 274 of the Atomic Energy Act of 1954, as amended, providing for assumption by the State and discontinuance by the Commission of certain regulatory authority of the Commission.

(6) Approvals of direct or indirect transfers of any license issued by the NRC (any associated amendments of a license required to reflect the approval of a direct or indirect transfer of an NRC license are included in paragraph (a)(1) of this section).

(7) The import of nuclear facilities and materials under part 110 of this chapter, but not including the import of spent power reactor fuel.

(8) Approvals of or changes to operators' licenses under part 55 of this chapter.

(9) Approvals of package designs for packages to be used for the transportation of licensed materials.

(10) Actions under parts 30, 31, 32, 33, 34, 35, 36, 39, 40, or 70 of this chapter authorizing the following:

(i) Distribution of radioactive material and devices or products containing radioactive material to general licensees and to persons exempt from licensing;

(ii) Distribution of radiopharmaceuticals, generators, reagent kits and/or sealed sources to persons licensed under 10 CFR 35.18;

(iii) Nuclear pharmacies;

(iv) Use of radioactive materials for medical and veterinary purposes;

(v) Use of radioactive materials for research and development and for educational purposes;

(vi) Industrial radiography;

(vii) Irradiators;

(viii) Use of sealed sources and use of gauging devices, analytical instruments and other devices containing sealed sources;

(ix) Use of uranium as shielding material in containers or devices;

(x) Possession of radioactive material incident to performing services such as installation, maintenance, leak tests and calibration;

(xi) Use of sealed sources and/or radioactive tracers in well-logging procedures;

(xii) Acceptance of packaged radioactive wastes from others for transfer to licensed land burial facilities provided the interim storage period for any package does not exceed 180 days and the total possession limit for all packages held in interim storage at the same time does not exceed 50 curies;

(xiii) Manufacturing or processing of source, byproduct, or special nuclear materials for distribution to other licensees, except processing of source material for extraction of rare earth and other metals;

(xiv) Nuclear laundries;

(xv) Possession, manufacturing, processing, shipment, testing, or other use of depleted uranium military munitions; or

(xvi) Any use of source, byproduct, or special nuclear material not listed above which involves quantities and forms of source, byproduct, or special nuclear material similar to those listed in paragraphs (a)(10)(i) through (xv) of this section.

(11) Standard design approvals under part 52 of this chapter.

(12) Issuance of amendments to 10 CFR 72.214 for new, amended, revised, or renewed certificates of compliance for cask designs used for spent fuel storage.

(13) Issuance, amendment, modification, or renewal of a certificate of compliance of gaseous diffusion enrichment plants under part 76 of this chapter.

(14) The decommissioning of sites where licensed operations have been limited to the use of—

(i) Small quantities of short-lived radioactive materials;

(ii) Radioactive materials in sealed sources, provided there is no evidence of leakage of radioactive material from these sealed sources; or

(iii) Radioactive materials in such a manner that a decommissioning plan is not required by 10 CFR 30.36(g)(1), 10 CFR 40.42(g)(1), or 10 CFR 70.38(g)(1), and the NRC has determined that the facility meets the radiological criteria for unrestricted use in 10 CFR 20.1402 without further remediation or analysis.

(15) The Commission finding for a combined license under 10 CFR 52.103(g).

(16) Actions under 10 CFR 50.55a.

(b) The following categories of NRC actions are excluded from the requirement to prepare an environmental assessment or environmental impact statement, provided that any ground disturbance is limited to previously disturbed areas:

(1) Procurement of confirmatory research.

(2) Review and approval of transportation routes under 10 CFR 73.37.

(c) The following categories of NRC actions are excluded from the requirement to prepare an environmental assessment or environmental impact statement except to the extent they include activities directly affecting the environment, such as the construction of facilities; a major disturbance brought about by blasting, drilling, excavating or other means; field work, except that which only involves noninvasive or non-harmful techniques such as taking water or soil samples or collecting non-protected species of flora

and fauna; or the release of radioactive material:

(1) Grants to institutions of higher education in the United States, to fund scholarships, fellowships, and stipends for the study of science, engineering, or another field of study that the NRC determines is in a critical skill area related to its regulatory mission, to support faculty and curricular development in such fields, and to support other domestic educational, technical assistance, or training programs (including those of trade schools) in such fields.

(2) [Reserved]

(d) The following categories of NRC actions are excluded from the requirement to prepare an environmental assessment or environmental impact statement provided that any ground disturbance is limited to previously disturbed areas and there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite, no significant increase in individual or cumulative public or occupational radiation exposure, and no significant increase in the potential for or consequences from radiological accidents.

(1) Changes to inspection or surveillance requirements.

(2) Changes to equipment servicing or maintenance requirements.

(3) Changes to safeguard plans or materials control and accounting inventory requirements, including modifications to systems used for security and/or materials accountability.

(4) Changes to requirements for fire protection, emergency planning, physical security, cybersecurity, or quality assurance.

(5) Changes to scheduling requirements.

(6) Changes to extend implementation dates for activities previously found to not have a significant environmental impact.

(7) Actions that result in a change in process operations or equipment under licenses for fuel cycle facilities or radioactive waste disposal sites, or under the materials licenses identified in § 51.60(b)(1).

(8) Authorizations under, or changes to requirements in 10 CFR part 50 or 52 with respect to installation or use of a facility component.

(e) In accordance with section 121 of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10141), the promulgation of technical requirements and criteria that the Commission will apply in approving or disapproving applications under part 60 or 63 of this chapter shall not require an environmental impact statement, an environmental assessment, or any environmental review under subparagraph (E) or (F) of section 102(2) of NEPA.

■ 4. Revise and republish § 51.25 to read as follows:

**§ 51.25 Determination to prepare environmental impact statement or environmental assessment; eligibility for categorical exclusion.**

Before taking a proposed action subject to the provisions of this subpart, the appropriate NRC director will determine on the basis of the criteria and classifications of types of actions in §§ 51.20, 51.21 and 51.22, whether the proposed action is of the type listed in § 51.22(a) through (d) as a categorical exclusion or whether an environmental impact statement or an environmental assessment should be prepared. An environmental assessment is not necessary if it is determined that an environmental impact statement will be prepared.

■ 5. In appendix A to subpart A of part 51, revise footnote 4 to read as follows:

**Appendix A to Subpart A—Format for Presentation of Material in Environmental Impact Statements**

* * * * *

[4] With respect to limitations on NRC's NEPA authority and responsibility imposed by the Federal Water Pollution Control Act Amendments of 1972, see §§ 51.10(c) and 51.71(d).

Dated: June 25, 2024.

For the Nuclear Regulatory Commission.

**Carrie Safford,**

*Secretary of the Commission.*

[FR Doc. 2024–14367 Filed 7–1–24; 8:45 am]

**BILLING CODE 7590–01–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 39

**[Docket No. FAA–2024–1880; Project Identifier AD–2023–01149–T]**

**RIN 2120–AA64**

## Airworthiness Directives; The Boeing Company Airplanes

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for all The Boeing Company Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes. This proposed AD was prompted by a report of a frame web crack at fuselage station (STA) 328 between stringers S–20R and S–21R common to the frame web notch. This proposed AD would require repetitive detailed inspections of the forward and aft sides of the frames and high frequency eddy current (HFEC) inspections of the frames for cracks and repairing any crack found. The FAA is proposing this AD to address the unsafe condition on these products.

**DATES:** The FAA must receive comments on this proposed AD by August 16, 2024.

**ADDRESSES:** You may send comments, using the procedures found in 14 CFR 11.43 and 11.45, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *regulations.gov*. Follow the instructions for submitting comments.
- *Fax:* 202–493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* Deliver to Mail address above between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*AD Docket:* You may examine the AD docket at *regulations.gov* under Docket No. FAA–2024–1880; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this NPRM, any comments received, and other information. The street address for Docket Operations is listed above.

*Material Incorporated by Reference:*

- For service information, contact Boeing Commercial Airplanes, Attention: Contractual & Data Services (C&DS), 2600 Westminster Blvd., MC 110–SK57, Seal Beach, CA 90740–5600; telephone 562–797–1717; website *myboeingfleet.com*.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th Street, 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–2024–1880.

**FOR FURTHER INFORMATION CONTACT:** Bill Ashforth, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: 206–231–3520; email: *bill.ashforth@faa.gov.*

**SUPPLEMENTARY INFORMATION:**

### Comments Invited

The FAA invites you to send any written relevant data, views, or

arguments about this proposal. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2024–1880; Project Identifier AD–2023–01149–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this proposal because of those comments.

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

**Confidential Business Information**

CBI is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to this NPRM contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to this NPRM, it is important that you clearly designate the submitted comments as CBI. Please mark each page of your submission containing CBI as ''PROPIN.'' The FAA will treat such marked submissions as confidential under the FOIA, and they will not be placed in the public docket of this NPRM. Submissions containing CBI should be sent to Bill Ashforth, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: 206–231–3520; email: *bill.ashforth@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 that an operator of a Model 737–700 airplane found a frame web crack at fuselage STA 328 between stringers S–20R and S–21R while performing a visual inspection of the electrical and electronics compartment during scheduled maintenance. The crack was common to the frame web notch and was approximately 0.85 inch long. The crack originated at a notch radius of the lower frame web that is subject to a load transfer from the inner chord of the upper frame. Because the load transfer is similar in adjacent areas, the frames at STA 312, STA 328, and STA 344 from stringers S–20R to S–23R are also affected. Model 737–600, –700C, –800, –900, and –900ER series airplanes have similar structure in the affected area and are also subject to this unsafe condition. Undetected cracks in the frame could lead to the inability of the principal structural element to sustain limit loads, which could result in the subsequent loss of structural integrity of the airplane.

**FAA's Determination**

The FAA is issuing this NPRM after determining that the unsafe condition described previously is likely to exist or develop on other products of the same type design.

**Related Service Information Under 1 CFR Part 51**

The FAA reviewed Boeing Alert Requirements Bulletin 737–53A1410 RB, dated October 11, 2023. This service information specifies procedures for repetitive detailed inspections of the forward and aft sides of the frames, and surface and open hole HFEC inspections of the frames, at STA 312 from S–20R to S–23R, STA 328 from S–19R to S–22R, and STA 344 from S–20R to S–23R for cracks. This service information also specifies repairing any crack found.

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

**Proposed AD Requirements in This NPRM**

This proposed AD would require accomplishing the actions specified in the service information already described, except for any differences identified as exceptions in the regulatory text of this proposed AD. For information on the procedures and compliance times, see this service information at *regulations.gov* under Docket No. FAA–2024–1880.

**Costs of Compliance**

The FAA estimates that this AD, if adopted as proposed, would affect 1,583 airplanes of U.S. registry. The FAA estimates the following costs to comply with this proposed AD:

ESTIMATED COSTS

| Action | Labor cost | Parts cost | Cost per product | Cost on U.S. operators |
|---|---|---|---|---|
| Inspections | 9 work-hours × $85 per hour = $765 per inspection cycle. | $0 | $765 per inspection cycle | $1,210,995 per inspection cycle. |

**Estimated Costs of On-Condition Actions**

The extent of damage/cracking found during the proposed inspections could vary significantly from airplane to airplane. The FAA has no way of determining the type of repair or cost to repair any cracks on each airplane or the number of airplanes that may require repair.

**Authority for This Rulemaking**

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

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

**Regulatory Findings**

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

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

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

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

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

**List of Subjects in 14 CFR Part 39**

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

**The Proposed Amendment**

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

## PART 39—AIRWORTHINESS DIRECTIVES

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

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

**§ 39.13 [Amended]**

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

**The Boeing Company:** Docket No. FAA–2024–1880; Project Identifier AD–2023–01149–T.

**(a) Comments Due Date**

The FAA must receive comments on this airworthiness directive (AD) by August 16, 2024.

**(b) Affected ADs**

None.

**(c) Applicability**

This AD applies to all The Boeing Company (Boeing) Model 737–600, –700, –700C, –800, –900, and –900ER series airplanes, certificated in any category.

**(d) Subject**

Air Transport Association (ATA) of America Code 53, Fuselage.

**(e) Unsafe Condition**

This AD was prompted by a report of a frame web crack at fuselage station 328 between stringers S–20R and S–21R common to the frame web notch. The FAA is issuing this AD to address undetected cracks in the frame. The unsafe condition, if not addressed, could lead to the inability of the principal structural element to sustain limit loads, which could result in the subsequent loss of structural integrity of the airplane.

**(f) Compliance**

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

**(g) Required Actions**

Except as specified by paragraph (h) of this AD: At the applicable times specified in the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 737–53A1410 RB, dated October 11, 2023, do all applicable actions identified in, and in accordance with, the Accomplishment Instructions of Boeing Alert Requirements Bulletin 737–53A1410 RB, dated October 11, 2023.

**Note 1 to paragraph (g):** Guidance for accomplishing the actions required by this AD can be found in Boeing Alert Service Bulletin 737–53A1410, dated October 11, 2023, which is referred to in Boeing Alert Requirements Bulletin 737–53A1410 RB, dated October 11, 2023.

**(h) Exceptions to Service Information Specifications**

(1) Where the ''Boeing Recommended Compliance Time'' column in the table under the ''Compliance'' paragraph of Boeing Alert Requirements Bulletin 737–53A1410 RB, dated October 11, 2023, refers to ''the Original Issue date of Requirements Bulletin 737–53A1410 RB,'' this AD requires using the effective date of this AD.

(2) Where Boeing Alert Requirements Bulletin 737–53A1410 RB, dated October 11, 2023, specifies contacting Boeing for repair instructions, this AD requires doing the repair using a method approved in accordance with the procedures in paragraph (i) of this AD.

**(i) Alternative Methods of Compliance (AMOCs)**

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

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

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

**(j) Related Information**

(1) For more information about this AD, contact Bill Ashforth, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; phone: 206–231–3520; email: *bill.ashforth@faa.gov.*

(2) Service information identified in this AD that is not incorporated by reference is available at the address specified in paragraph (k)(3) this AD.

**(k) Material Incorporated by Reference**

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

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

(i) Boeing Alert Requirements Bulletin 737–53A1410 RB, dated October 11, 2023.

(ii) [Reserved]

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

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

(5) You may view this 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-locationsoremailfr.inspection@nara.gov.*

Issued on June 26, 2024.

**Suzanne Masterson,**

*Deputy Director, Integrated Certificate Management Division, Aircraft Certification Service.*

[FR Doc. 2024–14521 Filed 7–1–24; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

## Federal Aviation Administration

## 14 CFR Part 71

**[Docket No. FAA–2023–2166; Airspace Docket No. 23–ASO–45]**

**RIN 2120–AA66**

## Amendment of Class E Airspace; Lady Lake, FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes to amend Class E airspace extending upward from 700 feet above the surface for Lady Lake Hospital, Lady Lake, FL. This action would increase the existing radius to accommodate a new instrument approach procedure for UF Health The Villages Hospital Heliport, The Villages, FL.

**DATES:** Comments must be received on or before August 16, 2024.

**ADDRESSES:** Send comments identified by FAA Docket No. FAA–2023–2166

and Airspace Docket No. 23–ASO–45 using any of the following methods:

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

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

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

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

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

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

**FOR FURTHER INFORMATION CONTACT:** Scott Stuart, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–5926.

**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 airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would amend Class E airspace in Lady Lake, FL.

## Comments Invited

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

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

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

## Availability of Rulemaking Documents

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

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during regular business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA 30337.

## Incorporation by Reference

Class E airspace designations are published in Paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023. These updates will be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11H lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

## The Proposal

The FAA proposes an amendment to 14 CFR part 71 to amend Class E airspace extending upward from 700 feet above the surface for Lady Lake Hospital, Lady Lake, FL, by increasing the radius to 7 miles (previously 6 miles) to encompass UF Health The Villages Hospital Heliport, The Villages, FL. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

## Regulatory Notices and Analyses

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

## Environmental Review

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

**Lists of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

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

■ 1. The authority citation for 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 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth.*

* * * * *

**ASO FL E5 Lady Lake, FL [Amended]**

Lady Lake Hospital Point In Space Coordinates
(Lat 28°57′36″ N, long 81°57′50″ W)
UF Health The Villages Hospital Heliport, FL
(Lat 28°56′59″ N, long 81°57′36″ W)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the point in space (Lat. 28°57′36″ N, long. 81°57′50″ W) serving Lady Lake Hospital and UF Health The Villages Hospital Heliport.

* * * * *

Issued in College Park, Georgia, on July 25, 2024.

**Andreese C. Davis,**

*Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.*

[FR Doc. 2024–14272 Filed 7–1–24; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

### 14 CFR Part 71

**[Docket No. FAA–2023–2171; Airspace Docket No. 23–ASO–46]**

**RIN 2120–AA66**

## Amendment of Class E Airspace; Tallahassee, FL

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** This action proposes amending Class E airspace extending upward from 700 feet above the surface for Tallahassee, FL, as new instrument approach procedures have been designed for Tallahassee Memorial Hospital Heliport, Tallahassee, FL.

**DATES:** Comments must be received on or before August 16, 2024.

**ADDRESSES:** Send comments identified by FAA Docket No. FAA–2023–2171 and Airspace Docket No. 23–ASO–46 using any of the following methods:

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

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

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

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

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

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

**FOR FURTHER INFORMATION CONTACT:** Scott Stuart, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–5926.

**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 airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would amend Class E airspace in Tallahassee, FL.

**Comments Invited**

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

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

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

**Availability of Rulemaking Documents**

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

*air_traffic/publications/airspace_amendments/.*

You may review the public docket containing the proposal, any comments received, and any final disposition in person in the Dockets Operations office (see **ADDRESSES** section for address, phone number, and hours of operations). An informal docket may also be examined during regular business hours at the office of the Eastern Service Center, Federal Aviation Administration, Room 210, 1701 Columbia Ave., College Park, GA, 30337.

**Incorporation by Reference**

Class E airspace designations are published in Paragraph 6005 of FAA Order JO 7400.11, Airspace Designations and Reporting Points, which is incorporated by reference in 14 CFR 71.1 on an annual basis. This document proposes to amend the current version of that order, FAA Order JO 7400.11H, Airspace Designations and Reporting Points, dated August 11, 2023, and effective September 15, 2023. These updates will be published in the next update to FAA Order JO 7400.11. FAA Order JO 7400.11H is publicly available as listed in the **ADDRESSES** section of this document. FAA Order JO 7400.11H lists Class A, B, C, D, and E airspace areas, air traffic service routes, and reporting points.

**The Proposal**

The FAA proposes an amendment to 14 CFR part 71 to amend Class E airspace by adding airspace extending upward from 700 feet above the surface within a 6.1-mile radius of the point in space (lat 30°27′26″ N, long 84°15′40″ W) for Tallahassee Memorial Hospital Heliport, Tallahassee, FL. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

**Regulatory Notices and Analyses**

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

**Environmental Review**

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

**Lists of Subjects in 14 CFR Part 71**

Airspace, Incorporation by reference, Navigation (air).

**The Proposed Amendment**

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

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

■ 1. The authority citation for 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 6005. Class E Airspace Areas Extending Upward from 700 feet or More Above the Surface of the Earth.

* * * * *

**ASO FL E5 Tallahassee, FL [Amended]**

Tallahassee Regional Airport
(Lat 30°23′48″ N, long 84°21′02″ W)
Quincy Municipal Airport
(Lat 30°35′53″ N, long 84°33′27″ W)
Tallahassee Memorial Hospital Heliport
(Lat 30°27′26″ N, long 84°15′40″ W)

That airspace extending upward from 700 feet above the surface within a 10-mile radius of the Tallahassee Regional Airport within a 6.3-mile radius of Quincy Municipal Airport and within a 6-mile radius of Tallahassee Memorial Hospital Heliport.

* * * * *

Issued in College Park, Georgia, on June 25, 2024

**Andreese C. Davis,**

*Manager, Airspace & Procedures Team South, Eastern Service Center, Air Traffic Organization.*

[FR Doc. 2024–14271 Filed 7–1–24; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 31

**[REG–109032–23]**

**RIN 1545–BQ79**

## Recapture of Interest on Excess Credits Under the Families First Act, CARES Act, and ARP

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document sets forth proposed regulations providing that the IRS will assess as an underpayment of tax any overpayment interest paid to a taxpayer on an erroneous refund of the employment tax credits provided under the Families First Coronavirus Response Act, the Coronavirus Aid, Relief, and Economic Security Act, and the American Rescue Plan Act of 2021. These proposed regulations affect businesses, tax-exempt organizations, and certain governmental entities that claim the paid sick leave credit and the paid family leave credit under the Families First Coronavirus Response Act and the American Rescue Plan Act of 2021, and that claim the employee retention credit under the Coronavirus Aid, Relief, and Economic Security Act and the American Rescue Plan Act of 2021.

**DATES:** Written or electronic comments and requests for a public hearing must be received by August 16, 2024.

**ADDRESSES:** Commenters are strongly encouraged to submit public comments electronically via the Federal eRulemaking Portal at *http://www.regulations.gov* (indicate IRS and REG–109032–23) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comments submitted to the IRS's public docket. Send paper submissions to CC:PA:01:PR (REG–109032–23), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Concerning these proposed regulations, Andrew Holubeck at (202) 317–4774 (not a toll-free number); concerning

submissions of comments and/or requests for a public hearing, Vivian Hayes by email at *publichearings@irs.gov* (preferred) or by phone at (202) 317–6901 (not a toll-free number).

**SUPPLEMENTARY INFORMATION:**

## Background

### *I. Statutes Providing Employment Tax Credits for COVID–19 Relief*

The Families First Coronavirus Response Act (Families First Act), Public Law 116–127, 134 Stat. 178 (March 18, 2020), as amended and extended by the COVID-related Tax Relief Act of 2020 (Tax Relief Act), enacted as Subtitle B of Title II of Division N of the Consolidated Appropriations Act, 2021, Public Law 116–260, 134 Stat.1182 (December 27, 2020), provided COVID–19 related economic relief that included paid sick and family leave credits to eligible employers with respect to qualified leave wages paid for a period of leave taken beginning April 1, 2020, and ending March 31, 2021. The American Rescue Plan Act of 2021 (ARP), Public Law 117–2, 135 Stat. 4 (March 11, 2021), provided similar paid leave credits under sections 3131, 3132, and 3133 of the Code with respect to qualified leave wages paid for a period of leave taken beginning April 1, 2021, and ending September 30, 2021.

The Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Public Law 116–136, 134 Stat. 281 (March 27, 2020), as amended and extended by the Taxpayer Certainty and Disaster Tax Relief Act of 2020 (Relief Act), enacted as Division EE of the Consolidated Appropriations Act, 2021, provided an employee retention credit (ERC) with respect to qualified wages paid after March 12, 2020, and before July 1, 2021, respectively. The ARP provided a substantially similar ERC under section 3134 of the Code with respect to qualified wages paid after June 30, 2021, and before January 1, 2022.[1]

[1] Section 80604 of the Infrastructure Investment and Jobs Act (Infrastructure Act), Public Law 117–68, 135 Stat. 429 (November 15, 2021), amended section 3134(n) of the Code to provide that the ERC under section 3134 applies only to wages paid after June 30, 2021, and before October 1, 2021 (or, in the case of wages paid by an eligible employer which is a recovery startup business, January 1, 2022). Therefore, the only type of employer eligible for the ERC for wages paid after September 30, 2021, and before January 1, 2022, is an employer that meets the definition of a recovery startup business under section 3134(c)(5). *See* Notice 2021–65, 2021–51 IRB 880 (December 20, 2021) for guidance for employers that received an advance payment of the ERC or reduced tax deposits in anticipation of the credit for the fourth quarter of 2021 prior to the amendments made by the Infrastructure Act.

The paid sick and family leave credits under the Families First Act and sections 3131 through 3133 of the Code and the ERC under the CARES Act and section 3134 of the Code (collectively, COVID–19 credits) are refundable credits, meaning that if the amount of the credits exceeds the taxes against which the credits are taken, then this excess is treated as an overpayment that is refunded under sections 6402(a) and 6413(b). Any amount of the COVID–19 credits claimed by a taxpayer that is treated as an overpayment under section 6402(a) or section 6413(b), is refunded or credited to the taxpayer. Any such refund to which the taxpayer is not entitled, is an erroneous refund that the taxpayer must repay.

### *II. Assessment Authority*

Section 6201 authorizes and requires the Secretary to determine and assess tax liabilities, including interest, additional amounts, additions to the tax, and assessable penalties. The Code or other statutory authority described herein provides for the administrative recapture of certain erroneous refunds of the COVID–19 credits either by directly authorizing the assessment of the erroneous refunds or by authorizing the promulgation of regulations or other guidance to do so.

Specifically, regarding paid sick and family leave credits, sections 7001(f) and 7003(f) of the Families First Act and sections 3131(g) and 3132(g) of the Code provide, in relevant part, that the Secretary shall provide such regulations or other guidance as may be necessary to carry out the purposes of the credits, including regulations or other guidance to prevent the avoidance of the purposes of the limitations under those provisions and to recapture the benefit of the credit where there is a subsequent adjustment to the credit.

Regarding the ERC, section 2301(l) of the CARES Act, as amended by sections 206 and 207 of the Relief Act, provides that the Secretary shall issue such forms, instructions, regulations, and other guidance as are necessary to prevent the avoidance of the purposes of the limitations under section 2301 of the CARES Act. Correspondingly, section 3134(m)(3) of the Code provides, in relevant part, that the Secretary shall issue such forms, instructions, regulations, and other guidance as are necessary to prevent the avoidance of the purposes of the limitations under section 3134.

### *III. Regulations for the Recapture of Erroneous Refunds of COVID–19 Credits*

Under the authority provided by the Families First Act, the CARES Act, and the ARP, the Treasury Department and the IRS published regulations (TD 9978) in the **Federal Register** on July 26, 2023 (88 FR 48118) under sections 3111, 3131, 3132, 3134, and 3221 of the Code (collectively, Recapture Regulations) that provide for the administrative recapture of erroneously refunded COVID–19 credits. Under the Recapture Regulations, erroneous refunds of COVID–19 credits are treated as underpayments of the taxes imposed under section 3111(a) or (b), as applicable, and so much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(a) or (b), as applicable, and are, therefore, subject to assessment and administrative collection procedures. The Recapture Regulations allow the IRS to prevent the avoidance of the purposes of the limitations under the credit provisions and to recover the erroneous refund amounts efficiently while also preserving administrative protections afforded to taxpayers with respect to contesting their tax liabilities under the Code and avoiding unnecessary costs and burdens associated with litigation.

### *IV. Interest on Overpayments Under Section 6611*

Section 6611 provides that interest shall be allowed and paid on any overpayment in respect of any Internal Revenue tax at the overpayment rate established under section 6621. Section 6611(b)(2) provides that interest shall be allowed and paid in the case of a refund from the date of the overpayment to a date (determined by the Secretary) preceding the date of the refund check by not more than 30 days. When a taxpayer files an amended return, such as Form 941–X, *Adjusted Employer's Quarterly Federal Tax Return or Claim for Refund,* claiming COVID–19 credits that were not claimed on the originally filed return and resulting in an overpayment, interest is allowed under section 6611 on any overpayment refunded to the taxpayer.

While the Recapture Regulations provide for the assessment of erroneous refunds of COVID–19 credits as an underpayment of certain employment taxes, they do not address overpayment interest paid to a taxpayer on an erroneous refund. These proposed regulations provide for the assessment of this interest as an underpayment of tax.

The Families First Act, CARES Act, and the Code as amended by the ARP authorize and require the Secretary to issue regulations to prevent the avoidance of the limitations placed on the credits by these statutes. When a

taxpayer is issued an erroneous refund of COVID–19 credits for which the taxpayer is not eligible, the taxpayer incurs a liability to repay that refund. The taxpayer also incurs a liability to repay any overpayment interest paid on the erroneous refund. In pursuing collection of these liabilities, the IRS is enforcing the statutory limitations on the COVID–19 credits that made the taxpayer's refund, and any accompanying overpayment interest, erroneous. Regulations providing for the administrative recapture of overpayment interest paid on refunds subsequently determined to be erroneous assist in resolving taxpayers' repayment liabilities while also preserving administrative protections afforded to these taxpayers with respect to contesting their tax liabilities under the Code and avoiding unnecessary costs and burdens associated with litigation.

Accordingly, under the authority granted by the Families First Act, CARES Act, and the Code, these proposed regulations would amend the Employment Tax Regulations (26 CFR part 31) under sections 3111, 3131, 3132, 3134, and 3221 to provide that overpayment interest paid to taxpayers on erroneous refunds of COVID–19 credits is treated as an underpayment of the applicable employment taxes and may be assessed and collected by the IRS in the same manner as the taxes.

## Explanation of Provisions

These proposed regulations would provide that any overpayment interest paid under section 6611 to an employer for an erroneous refund of the COVID–19 credits will be treated as an underpayment of the taxes imposed under section 3111(a) or (b), as applicable, and so much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(a) or (b), as applicable, and may be assessed and collected by the Secretary in the same manner as the taxes. These proposed regulations would be applicable to all interest amounts paid under section 6611 on or after July 2, 2024 for any erroneous refund of the COVID–19 credits.

## Special Analyses

### *I. Regulatory Planning and Review—Economic Analysis*

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

### *II. Regulatory Flexibility Act*

Pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6), the Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities because these proposed regulations impose no compliance burden on any business entities, including small entities. Although these proposed regulations would apply to all taxpayers eligible for the employment tax credits under the Families First Act, the CARES Act, and sections 3131, 3132, and 3134 of the Code, including small businesses and tax-exempt organizations with fewer than 500 employees, and would therefore be likely to affect a substantial number of small entities, the economic impact would not be significant. These proposed regulations do not affect the taxpayer's employment tax reporting or the necessary information to substantiate entitlement to the credits. Rather, these proposed regulations merely implement the statutory authority granted under the Families First Act, the CARES Act, and the Code as amended by the ARP to issue regulations or other guidance to prevent the avoidance of the purposes of the limitations under these provisions by providing that overpayment interest paid to taxpayers on erroneous refunds of COVID–19 credits is treated as an underpayment of the applicable employment taxes and may be assessed and collected by the IRS in the same manner as the taxes.

### *III. Section 7805(f)*

Pursuant to section 7805(f) of the Code, these proposed regulations have been submitted to the Chief Counsel of the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

### *IV. Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. These proposed regulations do not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector, in excess of that threshold.

### *V. Executive Order 13132: Federalism*

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These proposed regulations do not have federalism implications, do not impose substantial direct compliance costs on State and local governments, and do not preempt State law within the meaning of the Executive order.

## Statement of Availability of IRS Documents

IRS notices and other guidance cited in this preamble are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at *https://www.irs.gov.*

## Comments and Requests for a Public Hearing

Before these proposed amendments to the final regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any comments submitted will be available at *https://www.regulations.gov* or upon request. A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

## Drafting Information

The principal author of these proposed regulations is NaLee Park, Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the Treasury Department and the IRS participated in the development of these proposed regulations.

## List of Subjects in 26 CFR 31

Employment taxes, Fishing vessels, Gambling, Income taxes, Penalties, Pensions, Railroad retirement, Reporting and recordkeeping requirements, Social security, Unemployment compensation.

**Proposed Amendments to the Regulations**

Accordingly, the Treasury Department and the IRS propose to amend 26 CFR part 31 as follows:

## PART 31—EMPLOYMENT TAXES AND COLLECTION OF INCOME TAX AT SOURCE

■ **Paragraph 1.**The authority citation for part 31 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805.

* * * * *

Section 31.3111–6 also issued under secs. 7001 and 7003, Public Law 116–127, 134 Stat. 178, and sec. 2301, Public Law 116–136, 134 Stat. 281.

* * * * *

Section 31.3131–1 also issued under 26 U.S.C. 3131(g).

Section 31.3132–1 also issued under 26 U.S.C. 3132(g).

Section 31.3134–1 also issued under 26 U.S.C. 3134(m)(3).

Section 31.3221–5 also issued under secs. 7001 and 7003, Public Law 116–127, 134 Stat. 178, and sec. 2301, Public Law 116–136, 134 Stat. 281.

* * * * *

■ **Par. 2.** Section 31.3111–6 is amended by:

■ a. Redesignating paragraph (e) as paragraph (f) and adding new paragraph (e); and

■ b. Revising newly redesignated paragraph (f).

The addition and revision read as follows:

### § 31.3111–6 Recapture of credits under the Families First Coronavirus Response Act and the Coronavirus Aid, Relief, and Economic Security Act.

* * * * *

(e) *Recapture of interest on erroneously refunded credits under the Families First Act and CARES Act.* For purposes of this section, any overpayment interest paid under section 6611 to an employer, or any third party payor as described in paragraph (d) of this section, with respect to an erroneous refund amount described in paragraph (a) or (b) of this section shall also be treated as an underpayment of the taxes imposed under section 3111(a) of the Code and may be assessed and collected by the Secretary in the same manner as the taxes.

(f) *Applicability date.* This section applies to all credit refunds under sections 7001 and 7003 of the Families First Act (including any increases in those credits under section 7005 of the Families First Act), as modified by section 3606 of the CARES Act, advanced or paid on or after July 24, 2020, and all credit refunds under section 2301 of the CARES Act advanced or paid on or after July 24, 2020, except that paragraph (e) of this section applies to all interest amounts paid under section 6611 on or after July 2, 2024 for any erroneous refund described in paragraph (a) or (b) of this section.

■ **Par. 3.** Section 31.3131–1 is amended by:

■ a. Redesignating paragraph (d) as paragraph (e) and adding new paragraph (d); and

■ b. Revising the newly redesignated paragraph (e).

The addition and revision read as follows:

### § 31.3131–1 Recapture of credits.

* * * * *

(d) *Recapture of interest on erroneously refunded credits.* For purposes of this section, any overpayment interest paid under section 6611 to an employer, or any third party payor as described in paragraph (c) of this section, with respect to an erroneous refund amount described in paragraph (a) of this section shall also be treated as an underpayment of the taxes imposed under section 3111(b) and so much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(b), as applicable, and may be assessed and collected by the Secretary in the same manner as the taxes.

(e) *Applicability date.* This section applies to all credit refunds under section 3131 (including any increases in those credits under section 3133), advanced or paid on or after September 8, 2021, except that paragraph (d) of this section applies to all interest amounts paid under section 6611 on or after July 2, 2024 for any erroneous refund described in paragraph (a) of this section.

■ **Par. 4.** Section 31.3132–1 is amended by:

■ a. Redesignating paragraph (d) as paragraph (e) and adding new paragraph (d); and

■ b. Revising the newly redesignated paragraph (e).

The addition and revision read as follows:

### § 31.3132–1 Recapture of credits.

* * * * *

(d) *Recapture of interest on erroneously refunded credits.* For purposes of this section, any overpayment interest paid under section 6611 to an employer, or any third party payor as described in paragraph (c) of this section, with respect to an erroneous refund amount described in paragraph (a) of this section shall also be treated as an underpayment of the taxes imposed under section 3111(b) and so much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(b), as applicable, and may be assessed and collected by the Secretary in the same manner as the taxes.

(e) *Applicability date.* This section applies to all credit refunds under section 3132 (including any increases in those credits under section 3133) advanced or paid on or after September 8, 2021, except that paragraph (d) of this section applies to all interest amounts paid under section 6611 on or after July 2, 2024 for any erroneous refund described in paragraph (a) of this section.

■ **Par. 5.** Section 31.3134–1 is amended by:

■ a. Redesignating paragraph (d) as paragraph (e) and adding new paragraph (d); and

■ b. Revising the newly redesignated paragraph (e).

The addition and revision read as follows:

### § 31.3134–1 Recapture of credits.

* * * * *

(d) *Recapture of interest on erroneously refunded credits.* For purposes of this section, any overpayment interest paid under section 6611 to an employer, or any third party payor as described in paragraph (c) of this section, with respect to an erroneous refund amount described in paragraph (a) of this section shall also be treated as an underpayment of the taxes imposed under section 3111(b) and so much of the taxes imposed under section 3221(a) as are attributable to the rate in effect under section 3111(b), as applicable, and may be assessed and collected by the Secretary in the same manner as the taxes.

(e) *Applicability date.* This section applies to all credit refunds under section 3134 advanced or paid on or after September 8, 2021, except that paragraph (d) of this section applies to all interest amounts paid under section 6611 on or after July 2, 2024 for any erroneous refund described in paragraph (a) of this section.

■ **Par. 6.** Section 31.3221–5 is amended by:

■ a. Redesignating paragraph (e) as paragraph (f) and adding new paragraph (e); and

■ b. Revising the newly redesignated paragraph (f).

The addition and revision read as follows:

**§ 31.3221–5 Recapture of credits under the Families First Coronavirus Response Act and the Coronavirus Aid, Relief, and Economic Security Act.**

* * * * *

(e) *Recapture of interest on erroneously refunded credits under the Families First Act and CARES Act.* For purposes of this section, any overpayment interest paid under section 6611 to an employer, or any third party payor as described in paragraph (d) of this section, with respect to an erroneous refund amount described in paragraph (a) or (b) of this section shall also be treated as an underpayment of the taxes imposed under section 3221(a) and may be assessed and collected by the Secretary in the same manner as the taxes.

(f) *Applicability date.* This section applies to all credit refunds under sections 7001 and 7003 of the Families First Act, as modified by section 3606 of the CARES Act, advanced or paid on or after July 24, 2020, and all credit refunds under section 2301 of the CARES Act advanced or paid on or after July 24, 2020, except paragraph (e) of this section applies to all interest amounts paid under section 6611 on or after July 2, 2024 for any erroneous refund described in paragraph (a) or (b) of this section.

**Douglas W. O'Donnell,**

*Deputy Commissioner.*

[FR Doc. 2024–14167 Filed 7–1–24; 8:45 am]

**BILLING CODE 4830–01–P**

## DEPARTMENT OF THE TREASURY

### Internal Revenue Service

### 26 CFR Part 301

**[REG–120137–19]**

**RIN 1545–BP66**

## Update of Regulations Regarding Payment of Tax by Commercially Acceptable Means

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** This document contains proposed amendments to regulations regarding the payment of tax by commercially acceptable means. The proposed amendments would reflect changes to the law made by the Taxpayer First Act that would allow the IRS to directly accept payments of tax by credit or debit card, without having to connect taxpayers to third-party payment processors.

**DATES:** Electronic or written comments and requests for a public hearing must be received by September 3, 2024.

**ADDRESSES:** Commenters are strongly encouraged to submit public comments electronically. Submit electronic submissions via the Federal eRulemaking Portal at *https://www.regulations.gov* (indicate IRS and REG–120137–19) by following the online instructions for submitting comments. Requests for a public hearing must be submitted as prescribed in the ''Comments and Requests for a Public Hearing'' section. Once submitted to the Federal eRulemaking Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for any comments submitted electronically or on paper to the public docket. Send paper submissions to: CC:PA:01:PR (REG–120137–19), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044.

**FOR FURTHER INFORMATION CONTACT:** Concerning the proposed regulations, Crystal Jackson-Kaloz of the Office of the Associate Chief Counsel (Procedure and Administration), (202) 317–5191 (not a toll-free number); concerning the submission of comments and requests for a public hearing, Publications and Regulations Section at (202) 317–6901 (not a toll-free number), or by sending an email at *publichearings@irs.gov* (preferred).

**SUPPLEMENTARY INFORMATION:**

### Background

This document contains proposed amendments to the Procedure and Administration Regulations (26 CFR part 301) under section 6311 of the Internal Revenue Code (Code). These proposed regulations would amend provisions of § 301.6311–2 of the existing regulations (existing § 301.6311–2) to implement the changes made to section 6311 of the Code by section 2303 of the Taxpayer First Act (TFA), Public Law 116–25, 133 Stat. 981, 1013 (2019).

Section 6311(a) provides that it is lawful for the Secretary of the Treasury or her delegate (Secretary) to receive payment for Internal Revenue taxes by any commercially acceptable means that the Secretary deems appropriate to the extent and under the conditions provided in regulations prescribed by the Secretary. Existing § 301.6311–2, which was adopted by the publication of TD 8969 in the **Federal Register** (66 FR 64740–01) on December 14, 2001, authorizes payment of Internal Revenue taxes by credit or debit card so long as such payments are made in the manner and in accordance with the forms, instructions, and procedures prescribed by the Commissioner of Internal Revenue (Commissioner).

Prior to passage of the TFA, section 6311(d)(2) authorized the Secretary to enter into contracts to obtain services related to receiving payment of taxes by credit card or debit card, or charge card, but prohibited the Secretary from paying any fee or other consideration under any such contract. Existing § 301.6311–2(f) implements this rule. Existing § 301.6311–2(e) prohibits the IRS from imposing any fee or charge on persons making payment of taxes by credit card or debit card. Currently, the IRS utilizes third-party processors to process payment of taxes by credit cards, which includes charge cards, and debit cards for which taxpayers pay a processing fee directly to the third-party processor. Third-party processors charge a variable percentage fee for payment by credit card and a flat fee for payment by debit card.

Section 2303 of the TFA amended section 6311(d)(2) by adding a discretionary exception whereby the Secretary is no longer prohibited from paying a fee under a contract related to receiving payment of taxes by credit or debit card to the extent that the Secretary ensures that any such fee is fully recouped from the persons paying taxes by credit or debit card pursuant to such contract. This provision enables the IRS to receive similar benefits as other entities that accept credit or debit cards, including guaranteed receipt of funds and reduction of paper check processing costs. This provision also enables taxpayers to make a payment more easily by credit or debit card directly to the IRS, such as over the telephone, without having to separately wait for the IRS to connect them to third-party processors. *See* H.R. Rep. 116–39(I), 116th Cong., 1st Sess. at 90 (2019).[1] Section 2303 of the TFA now gives the IRS flexibility to enter into a

[1] In 2019, different versions of the TFA were introduced in the House and Senate and both bills contained provisions to amend section 6311 of the Code. H.R. 1957 was introduced in the House on March 28, 2019, and passed the House on April 9, 2019, but did not pass the Senate. Section 2303 of H.R. 1957 contained proposed statutory language amending section 6311(d) that was identical to the statutory language that was enacted a short time later on July 1, 2019, in section 2303 of H.R. 3151. Due to the procedural way in which H.R. 3151 became a vehicle for enacting the TFA, there are no separate House, Senate, or Conference Reports regarding H.R. 3151, which became the TFA, Public Law 116–25. Therefore, it is appropriate for the Treasury Department and the IRS to look to the House Ways and Means Committee Report for H.R. 1957, the immediate predecessor to H.R. 3151, to understand the intended scope of section 2303 of the TFA.

contract that would allow taxpayers to pay taxes by credit or debit card directly to the IRS.

**Explanation of Provisions**

The proposed regulations would amend existing § 301.6311–2 to conform to the TFA's amendment to section 6311(d)(2). The proposed regulations would remove both the prohibition in existing § 301.6311–2(f) on the payment of any fee by the IRS under any contracts related to payment of taxes by credit, debit, or charge card, and the prohibition in existing § 301.6311–2(e) on the IRS imposing any fee or charge on persons making payment of taxes by credit or debit card. Under existing § 301.6311–2(e), when a taxpayer pays any Internal Revenue tax by credit or debit card under contracts with third-party processors, the IRS does not charge the taxpayer a fee, and the IRS does not receive any portion of the fee charged by the third-party processor. Because the exception added to section 6311(d)(2) by the TFA is discretionary, proposed § 301.6311–2(e)(1) would continue to authorize the IRS to enter into those contracts with third-party processors in which it does not pay a fee for services relating to receiving payments of tax by credit or debit card.

Proposed § 301.6311–2(e)(2) would also authorize the IRS to enter into contracts in which it pays a fee to a third party to process a payment made by a taxpayer. Under section 6311(d)(2), the IRS must seek to minimize any fee the IRS is required to pay under such a contract. If the IRS pays a fee under such a contract, under proposed § 301.6311–2(e)(2), the IRS would fully recoup the amount of the fee paid to the third-party from the persons paying taxes by credit or debit card pursuant to the contract as a reimbursement fee.

Proposed § 301.6311–2(e)(2) would require that the reimbursement fee be paid by the taxpayer at the time of the credit or debit card tax payment. Section 6402 of the Code allows the Secretary to credit or refund any overpayment ''in respect of an internal revenue tax.'' Because the reimbursement fee paid by the taxpayer is not a tax, the Code's credit and refund procedures would not apply. Insofar as a taxpayer is to receive a refund of taxes paid by credit or debit card under section 6402, the taxpayer cannot receive a refund of the reimbursement fee paid to the IRS at the time of the tax payment. If the IRS pays a fee to a third-party under a contract providing for the payment of taxes by credit or debit cards, section 6311(d)(2), as amended by the TFA, requires that the fee be fully recouped by the Secretary. The proper regime for adjusting credit or debit card payment errors, including reimbursement fee errors, is found in section 6311(d)(3) and existing § 301.6311–2(d)(1). The TFA does not change those procedures, although the proposed regulations amend existing § 301.6311–2(d)(1) to include payments of reimbursement fees under proposed § 301.6311–2(e)(2).

Finally, proposed § 301.6311–2(e) would authorize the IRS to enter into contracts with third parties, regardless of whether the IRS pays a fee, but only if the contract provides a cost benefit to the government. The cost benefit to the government is derived from a reduction of check processing costs. In addition, expanding taxpayers' payment options generally encourages tax compliance, so it is beneficial for both the government and taxpayers.

**Proposed Applicability Date**

The regulations are proposed to apply to payments of taxes and reimbursement fees made on or after the date the regulations are published as final regulations in the **Federal Register**.

**Special Analyses**

*I. Regulatory Planning and Review*

Pursuant to the Memorandum of Agreement, Review of Treasury Regulations under Executive Order 12866 (June 9, 2023), tax regulatory actions issued by the IRS are not subject to the requirements of section 6 of Executive Order 12866, as amended. Therefore, a regulatory impact assessment is not required.

*II. Regulatory Flexibility Act*

It is hereby certified that this proposed regulation will not have a significant economic impact on a substantial number of small entities pursuant to the Regulatory Flexibility Act (5 U.S.C. chapter 6). This certification is based on the fact that the regulation would apply only to the IRS's ability to (1) pay a fee under a contract related to receiving payment of taxes by credit or debit card, and (2) recoup processing fees from the person paying taxes by credit or debit card. Under current regulations, the IRS may not do either of those things. The regulation would also implement a requirement under the TFA that the IRS must seek to minimize any fee the IRS is required to pay under such a contract. Because persons choosing to pay taxes by credit or debit card are ordinarily required to pay processing fees to a third-party processor, the proposed regulation, if finalized, would not have a significant economic impact on such persons.

Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking has been submitted to the Chief Counsel for the Office of Advocacy of the Small Business Administration for comment on its impact on small business.

*III. Unfunded Mandates Reform Act*

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits and take certain other actions before issuing a final rule that includes any Federal mandate that may result in expenditures in any one year by a State, local, or Tribal government, in the aggregate, or by the private sector, of $100 million in 1995 dollars, updated annually for inflation. This rule does not include any Federal mandate that may result in expenditures by State, local, or Tribal governments, or by the private sector in excess of that threshold.

*IV. Executive Order 13132: Federalism*

Executive Order 13132 (Federalism) prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial, direct compliance costs on State and local governments, and is not required by statute, or preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive order. These proposed regulations do not have federalism implications and do not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive order.

**Comments and Requests for Public Hearing**

Before these proposed amendments to the final regulations are adopted as final regulations, consideration will be given to comments that are submitted timely to the Treasury Department and the IRS as prescribed in this preamble under the **ADDRESSES** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. Any electronic and paper comments submitted will be made available at *https://www.regulations.gov* or upon request.

A public hearing will be scheduled if requested in writing by any person who timely submits electronic or written comments. Requests for a public hearing are also encouraged to be made electronically. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Announcement 2023–16, 2023–20 I.R.B. 854 (May 15, 2023), provides that public hearings will be conducted in person, although the IRS will continue to provide a telephonic option for individuals who wish to attend or testify at a hearing by telephone. Any telephonic hearing will be made accessible to people with disabilities.

**Drafting Information**

The principal author of these regulations is Crystal Jackson-Kaloz of the Office of the Associate Chief Counsel (Procedure and Administration). However, other personnel from the Treasury Department and the IRS participated in their development.

**List of Subjects in 26 CFR Part 301**

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

**Proposed Amendments to the Regulations**

Accordingly, the Treasury Department and IRS propose to amend 26 CFR part 301 as follows:

## PART 301—PROCEDURE AND ADMINISTRATION

■ **Paragraph 1.** The authority citation for part 301 continues to read in part as follows:

**Authority:** 26 U.S.C. 7805 * * *

■ **Par. 2.** Section 301.6311–2 is amended by:
■ 1. Revising paragraph (d)(1).
■ 2. Removing paragraph (e).
■ 3. Redesignating paragraphs (f), (g), and (h) as paragraphs (e), (f), and (g).
■ 4. Revising newly redesignated paragraph (e).
■ 5. In new paragraph (f), removing the text ''Internal Revenue Service'' and adding the text ''IRS'' in its place.
■ 6. Revising newly redesignated paragraph (g).

The revisions read as follows:

**§ 301.6311–2 Payment by credit card and debit card.**

* * * * *

(d) * * * (1) *In general.* Payments of taxes by credit card or debit card, and payments of reimbursement fees referred to in paragraph (e)(2) of this section, are subject to the applicable error resolution procedures of section 161 of the Truth in Lending Act (15 U.S.C. 1666), section 908 of the Electronic Fund Transfer Act (15 U.S.C. 1693f), or any similar provisions of State or local law, for the purpose of resolving errors relating to the credit card or debit card account, but not for the purpose of resolving any errors, disputes or adjustments relating to the underlying tax liability.

* * * * *

(e) *Authority to enter into contracts.*

(1) *In general.* The Commissioner may enter into contracts related to receiving payments of tax by credit card or debit card if such contracts are cost beneficial to the government. The determination of whether the contract is cost beneficial will be based on an analysis appropriate for the contract at issue and at a level of detail appropriate to the size of the government's investment or interest.

(2) *Contracts under which fees are prohibited.* The Commissioner may enter into contracts that provide that the Internal Revenue Service (IRS) will not pay a fee, charge, or other monetary consideration under such contracts related to payments of tax by credit card or debit card. For payments of tax under such contracts, this section does not prohibit the imposition of fees or charges by issuers of credit cards or debit cards or by any other financial institutions or persons participating in the credit card or debit card transaction. The IRS may not receive any part of any such fees that may be charged.

(3) *Contracts under which fees are permitted and must be recouped.* The Commissioner may enter into contracts that provide that the IRS will pay a fee, charge, or other monetary consideration under such contracts related to payments of tax by credit card or debit card. If the IRS pays a fee under such contracts, it must recoup the full amount paid under such contracts as a reimbursement fee from the persons paying tax by credit card or debit card. The reimbursement fees will be limited to the amount of the fees that IRS pays under any such contract and will be paid at the time of, and in addition to, the tax payment. The reimbursement fee is not a tax imposed by the Code, and no portion of the reimbursement fee is eligible for refund or credit under section 6402 of the Code. The error resolution procedures described in paragraph (d)(1) of this section will apply to any errors concerning the reimbursement fee. In negotiating contracts under paragraph (e)(3) of this section, the Commissioner will seek to minimize the amount of the fees paid.

* * * * *

(g) *Applicability date.* The rules of this section apply to payments of taxes and reimbursement fees made on or after [date of publication of final regulations in the **Federal Register**].

**Douglas W. O'Donnell,**

*Deputy Commissioner.*

[FR Doc. 2024–14002 Filed 7–1–24; 8:45 am]

**BILLING CODE 4830–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

**[EPA–R09–OAR–2024–0197; FRL–11981–01–R9]**

### Air Plan Revisions; California; Sacramento Metropolitan Air Quality Management District; Reasonably Available Control Technology District

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve state implementation plan (SIP) revisions from the Sacramento Metropolitan Air Quality Management District (SMAQMD or ''District'') to address Clean Air Act (CAA or ''Act'') requirements related to the 2008 8-hour ozone national ambient air quality standards (NAAQS or ''standards''). These revisions concern emissions of oxides of nitrogen (NOX) from boilers, gas turbines, and miscellaneous (misc) combustion units and reasonably available control technology (RACT) requirements for major sources of NOX in the portion of the Sacramento Metro, CA, nonattainment area that is subject to SMAQMD jurisdiction. We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Comments must be received on or before August 1, 2024.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R09–OAR–2024–0197 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not

consider comments or comment contents located outside of the primary submission (*i.e.,* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with a disability who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Eugene Chen, EPA Region IX, 75 Hawthorne Street (AIR–3–3), San Francisco, CA 94105. By phone: (415) 947–4304 or by email at *chen.eugene@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, ''we,'' ''us,'' and ''our'' refer to the EPA.

## Table of Contents



## I. The State's Submittal

### *A. What documents did the State submit?*

Table 1 lists the documents addressed by this proposal with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1—SUBMITTED DOCUMENTS

| Local agency | Document/rule No. | Document title | Adopted | Submitted |
|---|---|---|---|---|
| SMAQMD | ..... | Reasonably Available Control Technology (RACT) Permits for Major Stationary Sources of Nitrogen Oxides. | 03/28/2024 | 04/11/2024 |

On March 28, 2024, SMAQMD adopted portions of several permits issued under the District's SIP-approved New Source Review (NSR) permit program for submittal into the SIP. These permits contain requirements that regulate emissions of $NO_X$, and the District adopted these permits for SIP submission to ensure that its major sources of $NO_X$ are subject to federally enforceable RACT requirements. A list of the permits (''District Permits'') contained in this SIP revision is included in Table 2 below. On April 11, 2024, CARB submitted this SIP revision to the EPA for approval as a revision to the California SIP. The EPA has reviewed this submittal and finds that it fulfills the completeness criteria of appendix V.[1]

TABLE 2—DISTRICT PERMITS INCLUDED IN APRIL 11, 2024 SUBMITTAL

| Source name | Permit No. | Unit name/ID | Unit size (MMBtu/hr) | Unit type |
|---|---|---|---|---|
| Mitsubishi Chemical Carbon Fiber and Composites. | 24611 | Oxidation Oven 1 | 2 | Misc Combustion Unit. |
| | 25925 | Oxidation Oven 2 | 2 | Misc Combustion Unit. |
| | 24613 | Oxidation Oven 3 | 2 | Misc Combustion Unit. |
| | 24614 | Oxidation Oven 4 | 2 | Misc Combustion Unit. |
| | 25397 | Oxidation Oven—Line 31 | 3 | Misc Combustion Unit. |
| | 25398 | Oxidation Oven—Line 31 | 3 | Misc Combustion Unit. |
| | 25399 | Cleaver Brooks Boiler | 6 | Boiler. |
| UC Davis Medical Center | 17549 | Combined Cycle Turbine | 260 | Gas Turbine. |
| | 20216 | Boiler 1 | 32 | Boiler. |
| | 20217 | Boiler 2 | 32 | Boiler. |
| | 20218 | Boiler 3 | 32 | Boiler. |
| | 20219 | Boiler 4 | 32 | Boiler. |
| Sacramento Metropolitan Utility District (SMUD) Procter & Gamble Power Plant. | 27410 | Babcock & Wilcox Boiler | 109 | Boiler. |
| | 27141 | Gas Turbine 1A | 583 | Gas Turbine. |
| | 27142 | Gas Turbine 1B | 583 | Gas Turbine. |
| | 27143 | Gas Turbine 1C | 500 | Gas Turbine. |
| | 27144 | Boiler 1B | 109 | Boiler. |
| SMUD Cosumnes Power Plant | 25801 | Turbine 2 | 2,200 | Gas Turbine. |
| | 25800 | Turbine 3 | 2,200 | Gas Turbine. |
| SMUD Campbell Power Plant | 27118 | Gas Turbine | 1,410 | Gas Turbine. |
| SMUD Carson Power Plant | 27151 | Turbine 27151 | 600 | Gas Turbine. |
| | 27154 | Cleaver Brooks Boiler | 100 | Boiler. |
| | 27156 | Turbine 27156 | 450 | Gas Turbine. |

[1] See Docket Item A–14, 40 CFR Appendix V to Part 51—Criteria for Determining the Completeness of Plan Submissions.

*B. Are there other versions of the submitted documents?*

We have not previously approved district permits into the SIP for any of the sources listed in Table 2. The District Permits were submitted to address our June 30, 2023 action that finalized a partial approval and partial disapproval of the District's ''Demonstration of Reasonably Available Control Technology for the 2008 Ozone NAAQS'' (''2017 RACT SIP''). The District's 2017 RACT SIP was submitted to demonstrate that its stationary sources are subject to RACT rules for the 2008 8-hour ozone NAAQS.[2] Our partial disapproval related solely to the RACT element for major sources of $NO_X$ that relied upon three district rules: Rule 411 ($NO_X$ from Boilers, Process Heaters and Steam Generators), Rule 413 (Stationary Gas Turbines), and Rule 419 ($NO_X$ from Miscellaneous Combustion Units). Rules 411 and 413 have previously been approved into the SIP, but Rule 419 was locally adopted and submitted to the EPA as part of the 2017 RACT SIP development process and has not been approved into the SIP. As part of our June 30, 2023 final action, we identified deficiencies with the submitted version of Rule 419 but did not act to approve or disapprove that rule. As discussed in greater detail below, the District elected to submit source-specific permits, rather than submitting rule revisions, to address the deficiencies we identified in our June 30, 2023 final action.

*C. What is the purpose of the submitted documents?*

Emissions of $NO_X$ contribute to the production of ground-level ozone, smog and particulate matter (PM), which harm human health and the environment. Section 110(a) of the CAA requires states to submit plans that provide for implementation, maintenance, and enforcement of the NAAQS. In addition, CAA sections 182(b)(2) and (f) require that SIPs for ozone nonattainment areas classified as ''Moderate'' or higher implement RACT for any category of sources covered by a control techniques guidelines (CTG) document and for any major stationary source of volatile organic compounds (VOCs) or $NO_X$. The SMAQMD regulates the Sacramento County portion of the Sacramento Metro, CA, ozone nonattainment area that is classified as ''Severe'' nonattainment for the 2008 ozone NAAQS.[3] Therefore, the SMAQMD must, at a minimum, ensure that all categories of sources covered by a CTG document and all major stationary sources of VOCs or $NO_X$ within the District implement RACT-level controls. In a Severe ozone nonattainment area, any stationary source that emits or has the potential to emit at least 25 tons per year (tpy) of VOCs or $NO_X$ is considered a major stationary source.

The SMAQMD relies upon several district rules to implement RACT for major sources of $NO_X$, including Rule 411 ($NO_X$ from Boilers, Process Heaters and Steam Generators), Rule 413 (Stationary Gas Turbines), and Rule 419 ($NO_X$ from Miscellaneous Combustion Units). As we explained in our June 30, 2023 final action on the 2017 RACT SIP, Rule 413 contains a provision that explicitly exempts affected units from complying with emission limitations during periods of startup and shutdown and does not provide for an alternative emission limitation during such periods. Rules 411 and 419 contain monitoring provisions that preclude the use of specified data for determining compliance with emission limitations during periods of startup and shutdown. These provisions are inconsistent with the EPA's Startup, Shutdown, and Malfunction (SSM) Policy as established in the EPA's 2015 SSM SIP Action.[4] The deficiencies with these three rules were the basis for our disapproval of the major source $NO_X$ element of the 2017 RACT SIP.

In *Environ. Comm. Fl. Elec. Power* v. *EPA,* 94 F.4th 77 (D.C. Cir. 2024), the D.C. Circuit held that the EPA impermissibly issued a SIP call, under CAA section 110(k)(5), in its 2015 SSM SIP Action [5] for certain SIP provisions applicable to emissions during SSM events, including certain automatic exemption type provisions that the EPA had previously approved.[6] While the D.C. Circuit vacated certain SIP calls in EPA's 2015 SSM SIP Action, that vacatur was premised on the view that the Agency did not make a predicate determination that the specific provisions at issue were emissions limitations or that it was ''necessary or appropriate'' under CAA 110(a)(2)(A) that the SIP provisions must be emission limitations. EPA continues to interpret its longstanding interpretation that, pursuant to CAA section 302(k), emission limitations must be continuous and apply at all times, consistent with the decision in *Environ. Comm. Fl. Elec. Power* v. *EPA.* The Court did not vacate EPA's longstanding guidance for developing alternative emission limitations (AELs), should a state or air jurisdiction choose to develop and submit AELs into their SIP as a means to ensuring they are meeting the applicable CAA requirement that emission limitations must be continuous.[7] States and/or air jurisdictions are not precluded from submitting a SIP revision that establishes AELs, as SMAQMD did so here.

Following our June 30, 2023 final action disapproving the major source $NO_X$ RACT element, SMAQMD examined the permits issued under the District's SIP-approved NSR permit program for each of the $NO_X$ major sources that rely upon Rule 411, 413, or 419 for RACT. The District identified conditions in each district permit that established $NO_X$ emission limits that apply at all times. SMAQMD also identified monitoring, recordkeeping, and reporting conditions from each district permit to determine compliance with the rule and permit requirements. These District Permits are intended to remedy the SSM deficiencies, in combination with Rule 411 and Rule 413 requirements, and are intended to implement RACT for major sources of $NO_X$ in the District. Our technical support document (TSD) has more detailed information about these District Permits.

In addition, we note that the locally-adopted NSR permits that served as the basis of the submitted District Permits contain emission limits and other requirements unrelated to $NO_X$ RACT that the District is not seeking to approve into the SIP. As a result, the District has redacted those portions of the submitted permits, such as conditions related to carbon monoxide (CO), particulate matter (PM), state toxics, and other requirements that are not necessary for implementing $NO_X$ RACT.

## II. The EPA's Evaluation and Proposed Action

*A. How is the EPA evaluating the submitted documents?*

Rules in the SIP must be enforceable (see CAA section 110(a)(2)) and must not interfere with applicable requirements concerning attainment and

[2] 88 FR 42248.

[3] 40 CFR 81.305.

[4] ''State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls To Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,'' 80 FR 33840 (June 12, 2015).

[5] *See* 80 FR 33840.

[6] *See Environ. Comm. Fl. Elec. Power* v. *EPA,* 94 F.4th 77 (D.C. Cir. 2024).

[7] *See* 80 FR 33912–33914 and *State Implementation Plans: Policy Regarding Excess Emissions During Malfunction, Startup, and Shutdown* (1999 SSM Guidance).

reasonable further progress or other CAA requirements (see CAA section 110(l)). Generally, SIP rules must require the implementation of RACT for each category of sources covered by a CTG, as well as each major source of $NO_X$ or VOC in ozone nonattainment areas classified as Moderate or higher (see CAA section 182(b)(2)). The SMAQMD regulates a portion of an ozone nonattainment area classified as Severe for the 2008 ozone NAAQS and is therefore responsible for ensuring that the applicable sources implement RACT-level controls for that ozone standard. The District Permits were submitted to be incorporated into the SIP to implement RACT-level controls and to fulfill the requirements associated with the major source $NO_X$ element for the 2008 ozone NAAQS.

Guidance and policy documents that we used to evaluate enforceability, revision/relaxation, and stringency requirements for the applicable criteria pollutants include the following:

1. ''State Implementation Plans; General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990,'' 57 FR 13498 (April 16, 1992); 57 FR 18070 (April 28, 1992).
2. ''Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations,'' EPA, May 25, 1988 (the Bluebook, revised January 11, 1990).
3. ''Guidance Document for Correcting Common VOC & Other Rule Deficiencies,'' EPA Region 9, August 21, 2001 (the Little Bluebook).
4. State Implementation Plans: Response to Petition for Rulemaking; Restatement and Update of EPA's SSM Policy Applicable to SIPs; Findings of Substantial Inadequacy; and SIP Calls to Amend Provisions Applying to Excess Emissions During Periods of Startup, Shutdown and Malfunction,'' 80 FR 33839, June 12, 2015.
5. ''Guidance Memorandum: Withdrawal of the October 9, 2020, Memorandum Addressing Startup, Shutdown, and Malfunctions in State Implementation Plans and Implementation of the Prior Policy,'' September 30, 2021.

*B. Do the submitted documents meet the evaluation criteria?*

We have grouped our evaluation of the submitted documents into three categories corresponding to the three types of units that comprise the major $NO_X$ sources listed in Table 2.

1. Boilers

The SMAQMD is relying upon requirements contained in the current SIP-approved version of Rule 411 and in the submitted District Permits to implement RACT for the boilers listed in Table 2. In our June 30, 2023 final action on the 2017 RACT SIP, we evaluated the stringency of applicable Rule 411 $NO_X$ limits, which vary from 9 parts per million (ppm) to 15 ppm, and do not apply during periods of startup and shutdown.[8] We determined that the emission limits in SIP-approved Rule 411 achieve RACT-level stringency, but we disapproved based on the Agency's SSM policy. We have not identified any information since our June 30, 2023 final action to alter our evaluation that the stringency of the $NO_X$ emission limits are RACT.

The District Permits contain source-specific pound per day (lb/day) $NO_X$ limits for each boiler listed in Table 2. These lb/day mass emission limits are continuous and apply at all times. They were developed by converting the allowable short-term pound per hour (lb/hr) emission limit applicable during normal operations for each source to a 24-hr average basis. The allowable lb/hr emission limit for each source was established pursuant to the control technology determinations made via the NSR permitting process and is based upon a concentration limit that varies by district permit between 5 to 9 ppm.[9] Submitting these lb/day limits into the SIP will ensure that mass emissions during startup and shutdown do not exceed the mass emissions allowed during periods of normal operation on a 24-hour average basis. As discussed above, we consider the Rule 411 $NO_X$ limits to achieve RACT-level stringency, and these lb/hr District Permit limits achieve or exceed this same level of stringency on a mass basis, and they are applicable at all times. As a result, when combined with Rule 411 limits, these District permit limits will ensure that the affected units are subject to limits with RACT-level stringency at all times. In addition, we determined that the emission limits contained in these District Permits are consistent with the criteria recommended in the EPA's SSM Policy as appropriate considerations for developing emission limitations in the SIP provisions applicable during startup and shutdown. Additional information regarding our evaluation of District Permit limits, including their consistency with SSM policy criteria, is included in our TSD for this action. Based on the existing SIP-approved $NO_X$ limits in Rule 411, combined with the $NO_X$ limits that apply at all times contained in the submitted District Permits, we propose to determine that the District has established requirements in the SIP that are consistent with the EPA's SSM policy and implement RACT for the boilers listed in Table 2.

2. Gas Turbines

For the gas turbines listed in Table 2, the SMAQMD is relying upon requirements contained in the current SIP-approved version of Rule 413 and in the submitted District Permits to implement RACT. In our June 30, 2023 final action on the 2017 RACT SIP, we evaluated the stringency of the 9 ppm $NO_X$ limit established by the SIP-approved version of Rule 413.[10] We determined that the emission limit in SIP-approved Rule 413 achieves RACT-level stringency but disapproved based on the Agency's SSM policy because the emission limits in the rule do not apply during periods of startup and shutdown. We have not identified any information since our June 30, 2023 final action to alter our evaluation that the stringency of the $NO_X$ emission limits comprise RACT.

The District Permits contain source-specific lb/day $NO_X$ limits for each gas turbine listed in Table 2. These lb/day mass emission limits are continuous and apply at all times. The source-specific lb/day $NO_X$ limits for the gas turbines were developed by examining the maximum number of hours of each mode of operation is allowed in a single day, the maximum lb/hr emission rate for each mode of operation (either startup or normal operation), and summing the 24 hourly mass emission values corresponding to each hour's mode of operation to develop a total lb/day emission limit. The maximum lb/hr emission limit during normal operations for each source was established pursuant to the control technology determinations made via the NSR permitting process and is based on a concentration limit that varies by district permit between 2.5 to 5 ppm.[11] As a result, the lb/day limits in each source's district permit, which apply at all times, will constrain mass emissions of $NO_X$ to a level consistent with maximum permitted frequency and duration of shutdown events and also to a level of normal operations that is more stringent than Rule 413 concentration

[8] 88 FR 42248. See TSD for that action, which is also included in the docket for this rulemaking.

[9] In no case is any source's short term lb/hr emission limit based on a concentration higher than 9 ppm, which is also the most stringent $NO_X$ emission standard established in Rule 411.

[10] 88 FR 42252. See also TSD for that action, which is available in the docket for this rulemaking.

[11] In all cases, each source's short term lb/hr emission limit during normal operations is based on a concentration limit that is more stringent than 9 ppm, which is the most stringent $NO_X$ emission standard established in Rule 413.

limits. In other words, we consider the Rule 413 $NO_X$ limits to achieve RACT-level stringency because these District Permit limits achieve or exceed the most stringent level of control in these limits on a mass basis and they are applicable at all times. Thus, when combined with Rule 413 emission limits, the District permit limits will ensure that the affected units are subject to RACT-level stringency at all times. We have determined that the lb/day emission limits contained in these District Permits are consistent with the criteria recommended in the EPA's SSM Policy as appropriate considerations for developing emission limitations in SIP provisions applicable during startup and shutdown. Further details regarding our evaluation of District Permit limits, including their consistency with SSM policy criteria, are included in our TSD for this action.

Based on the existing SIP-approved $NO_X$ limits in Rule 413, combined with the $NO_X$ limits that apply at all times contained in the submitted District Permits, we propose to determine that the District has established requirements in the SIP that are consistent with the EPA's SSM policy and implement RACT for the gas turbines listed in Table 2.

3. Miscellaneous Combustion Units

Unlike for boilers and gas turbines, the SMAQMD is not relying upon Rule 419 requirements to implement RACT for the miscellaneous combustion units (carbon fiber oxidation ovens) listed in Table 2. Instead, it is only relying upon the requirements contained in the submitted District Permits. As discussed in our June 30, 2023 final action on the 2017 RACT SIP, the ovens listed in Table 2 are subject to Rule 419, which was submitted to the EPA for incorporation into the SIP on January 31, 2019. We have not yet proposed action on Rule 419, and no version of it has been previously approved into the SIP.

The District Permits establish $NO_X$ concentration limits of 30 ppm for each oven. These limits are continuous and apply at all times. The EPA has not published a CTG document or Alternative Control Techniques (ACT) document that is relevant for the control of $NO_X$ emissions for units such as the carbon fiber oxidation ovens. As a result, we have evaluated the District Permit limits through comparison with $NO_X$ limits established in miscellaneous combustion unit rules from other California air districts. We have summarized these values in Table 3 below.

TABLE 3—COMPARISON OF MISCELLANEOUS COMBUSTION UNIT EMISSION LIMITS (GASEOUS FUEL ONLY)

| Equipment category | Sacramento metro AQMD district permits | San Joaquin Valley unified (SJVU) air pollution control district (APCD) rule 4309 | South coast AQMD rule 1147 | Imperial county APCD rule 400.4 | Ventura county APCD rule 74.34 |
|---|---|---|---|---|---|
| | $NO_X$ emission limit in parts per mission by volume (ppmv) | | | | |
| Asphalt Manufacturing | ..... | 40 | 40 | ..... | 40. |
| Incinerator/Crematory | ..... | ..... | 60. | | |
| Metal Heat Treating/Metal Melting Furnace | ..... | ..... | 60 | ..... | 60. |
| Oven, Dehydrator, Dryer, Heater, or Kiln | 30 | ..... | 30 or 60[a] | 30[c] | 80. |
| Other Miscellaneous combustion unit | ..... | 40 | 30 | ..... | 30 or 60.[a] |
| All miscellaneous combustion units when liquid fuel-fired | ..... | 40–110 | 40 or 60.[a] | | |
| Cooking Unit | ..... | ..... | ..... | 40 or 60.[b] | |

[a] 60 ppm if process temperature ≥1,200 deg F.
[b] 60 ppm if process temperature ≥500 deg F.
[c] Imperial County APCD Rule 400.4 applies to wallboard kilns only.

As seen in Table 3 above, the 30 ppm limit established in the District Permits is equal to or exceeds the $NO_X$ emission limit established for ovens in other examined ozone nonattainment areas. In particular, the limit established in the District Permits could be considered the most stringent limit among all of those evaluated, since it does not provide a separate limit when a unit is operating above specific process temperatures.

The District Permits also contain source-specific lb/day $NO_X$ limits for each oven. These lb/day mass emission limits are continuous and apply at all times. They were developed by converting the allowable short-term lb/hr emission limit applicable during normal operations for each source to a 24-hr average basis. The allowable lb/hr emission limit for each source was established pursuant to the control technology determinations made via the NSR permitting process and corresponds to the 30 ppm $NO_X$ concentration limit. Submitting these lb/day limits into the SIP will provide an additional constraint to ensure that mass emissions during startup and shutdown do not exceed the mass emissions allowed during periods of normal operation on a 24-hour average basis. As a result, we propose to determine that the District has established requirements in the SIP that implement RACT for the miscellaneous combustion units listed in Table 2.

Finally, for each of the boilers, gas turbines, and miscellaneous combustion units listed in Table 2, we are proposing to determine that our approval of the District Permits for each of the sources would comply with CAA section 110(l), because the proposed SIP revision would strengthen the SIP by adding new requirements and would not interfere with any applicable CAA requirements, including requirements for RFP and attainment of the NAAQS. CAA section 193 does not apply to this action because the District Permit conditions have not previously been approved into the SIP and were therefore not in effect before November 15, 1990.

*C. Public Comment and Proposed Action*

As authorized in section 110(k)(3) of the Act, the EPA proposes to approve the District Permits, as adopted on March 28, 2024, into the California SIP. Based on our discussion in Section II.B of this document, we propose to determine that the District Permits will comply with the EPA's SSM policy and other applicable CAA requirements and will, in conjunction with the SIP-approved $NO_X$ limits already established in Rule 411 and 413,

implement RACT for each major $NO_X$ source in the District.

In addition, as discussed in our June 30, 2023 final action, the absence of emission limits that apply at all times was the basis for our disapproval of the major source $NO_X$ element of the 2017 RACT SIP. Since we are proposing to determine that the District Permits, in conjunction with the SIP-approved $NO_X$ limits already established in Rule 411 and 413, implement RACT for each major $NO_X$ source in the District, we are also proposing to approve the major source $NO_X$ element of the District's 2017 RACT SIP.

We will accept comments from the public on this proposal until August 1, 2024. If we take final action to approve the District Permits as proposed, our final action will incorporate these District Permits into the federally enforceable SIP. In addition, it will permanently stop the sanctions and Federal implementation plan (FIP) clocks started by our June 30, 2023 final action, and it will address the EPA's obligation to promulgate a FIP arising from our February 3, 2017 finding of failure to submit.[12]

## III. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the District Permits listed in Table 2, as adopted on March 28, 2024, which regulate $NO_X$ emissions from boilers, gas turbines, and miscellaneous combustion units. The EPA has made, and will continue to make, these materials available through *https://www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

## IV. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provision of the Act and applicable federal regulations. 42 U.S.C. 740(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to review state choices, and approve those choices if they meet the minimum criteria of the Act. Accordingly, this proposed action merely proposes to approve state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

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

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

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) directs Federal agencies to identify and address ''disproportionately high and adverse human health or environmental effects'' of their actions on minority populations and low-income populations to the greatest extent practicable and permitted by law. 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.''

The State did not evaluate EJ 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. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving EJ for people of color, low-income populations, and Indigenous peoples.

### List of Subjects in 40 CFR Part 52

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

Dated: June 25, 2024.

**Martha Guzman Aceves,**

*Regional Administrator, Region IX.*

[FR Doc. 2024–14336 Filed 7–1–24; 8:45 am]

**BILLING CODE 6560–50–P**

[12] 82 FR 9158. The sanctions clock triggered by this finding of failure to submit was permanently stopped by a finding of completeness made by the EPA on August 23, 2018 for the District's 2017 RACT SIP submittal.

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## ENVIRONMENTAL PROTECTION AGENCY

## 40 CFR Part 52

**[EPA–R09–OAR–2024–0237; FRL–11999–01–R9]**

## Air Plan Revisions; California; Motor Vehicle Inspection and Maintenance Program

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** Under the Clean Air Act (CAA or ''Act''), the Environmental Protection Agency (EPA) is proposing to approve a revision to the California State Implementation Plan (SIP). This revision addresses the CAA requirements for the motor vehicle inspection and maintenance (I/M) programs (also referred to as ''Smog Check'' programs) for the 2015 8-hour ozone National Ambient Air Quality Standards (''2015 ozone NAAQS''). We are taking comments on this proposal and plan to follow with a final action.

**DATES:** Comments must be received on or before August 1, 2024.

**ADDRESSES:** Submit your comments, identified by Docket ID No. EPA–R09–OAR–2024–0237 at *https://www.regulations.gov.* For comments submitted at *Regulations.gov*, follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from *Regulations.gov*. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (*i.e.* on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit *https://www.epa.gov/dockets/commenting-epa-dockets.* If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

**FOR FURTHER INFORMATION CONTACT:** Jeffrey Buss, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105. By phone: (415) 947–4152 or by email at *Buss.Jeffrey@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Throughout this document, ''we,'' ''us'' and ''our'' refer to the EPA.

## Table of Contents



## I. The State's Submittal

### *A. What did the State submit?*

On April 26, 2023, the California Air Resources Board (CARB) submitted the ''California Smog Check Performance Standard Modeling and Program Certification for the 70 Parts Per Billion (ppb) 8-Hour Ozone Standard'' (''Smog Check Certification SIP'') as a revision to the California SIP.[1] The Smog Check Certification SIP includes CARB's evaluation of the California Smog Check program for compliance with the applicable Smog Check program requirements for SIPs under CAA sections 182(a)(2)(B), 182(b)(4), and 182(c)(3) and the EPA's regulations in 40 CFR part 51, subpart S for certain nonattainment areas for the 2015 ozone NAAQS.[2] More specifically, the Smog Check Certification SIP addresses the applicable Smog Check SIP requirements for all California air quality planning areas classified as ''Moderate'' and above for the 2015 ozone NAAQS that are subject to State jurisdiction. These areas (and their respective classifications for the 2015 ozone NAAQS) include Coachella Valley (Severe–15), Eastern Kern (Serious), Mariposa County (Moderate), Sacramento Metro (Serious), San Diego County (Severe–15), San Joaquin Valley (Extreme), Los Angeles-South Coast Air Basin (Extreme), Ventura (Serious), West Mojave Desert (Severe–15) and Western Nevada County (Serious).[3] While Coachella Valley and Sacramento Metro are currently classified as Severe–15 and Serious, respectively, CARB has submitted voluntary reclassification requests for the areas to Extreme and Severe–15, respectively, and the performance standard modeling presented and documented by CARB in the Smog Check Certification SIP assumes the EPA's grant of the reclassification requests for those areas.[4]

CARB's SIP submittal package for the Smog Check Certification SIP includes CARB Resolution 23–9 (through which CARB adopted the Smog Check Certification as part of the California SIP[5]), public notice of CARB's hearing on the proposed SIP revision, public comments and responses, and the EPA's Motor Vehicle Emission Simulator model (MOVES)[6] input and output data sheets. Earlier this year, the EPA took final action to approve the San Diego County area portion of the Smog Check Certification SIP as part of the EPA's action on the San Diego ozone attainment plan.[7] In this document, we are proposing action on the Smog Check Certification SIP as it relates to all the other nonattainment areas that are addressed in the SIP submission.

On October 26, 2023, the Smog Check Certification SIP submission was deemed complete by operation of law under CAA section 110(k)(1)(B).

### *B. Are there other versions of this plan element?*

In 2010, we approved the California Smog Check program as meeting all applicable SIP requirements for California nonattainment areas for the 1997 ozone NAAQS.[8] Since then, we have taken actions to approve area-specific SIP submissions addressing the Smog Check SIP requirements for California nonattainment areas for the 2008 ozone NAAQS.[9] The Smog Check Certification SIP submission that is the subject of this document relates to California nonattainment areas for the 2015 ozone NAAQS.

### *C. What is the purpose of the submitted plan element?*

Emissions of volatile organic compounds (VOCs) and oxides of nitrogen ($NO_X$) contribute to the production of ground-level ozone, or ''smog,'' which harm human health and the environment. The EPA has established NAAQS to protect public

[1] Letter (with enclosures) dated April 26, 2023, from Steven S. Cliff, Ph.D., Executive Officer, CARB, to Martha Guzman, Regional Administrator, EPA Region IX (submitted electronically April 26, 2023). The letter and enclosures, which include the Smog Check Certification SIP, among other materials, are included in the docket for this rulemaking. The ''70 Parts Per Billion (ppb) 8-Hour Ozone Standard'' refers to the ozone NAAQS the EPA established in 2015.

[2] We previously found that the Eastern Kern ozone nonattainment area was not subject to the Basic or Enhanced Smog Check SIP requirement for the 2008 ozone NAAQS. See 85 FR 68268, 68280 (October 28, 2020) (proposed rule for Eastern Kern) and 86 FR 33528 (June 25, 2021) (final rule for Eastern Kern). Also, we previously found that the West Mojave Desert ozone nonattainment area was not subject to the Enhanced Smog Check SIP requirement for the 2008 ozone NAAQS—see 86 FR 53223, at 53225 (September 27, 2021) (final rule for West Mojave Desert). For the San Diego County area, we recently approved the Smog Check Certification SIP as it relates to San Diego County for both the 2008 and 2015 ozone NAAQS. 89 FR 15035 (March 1, 2024).

[3] 40 CFR 81.305.

[4] See letters from Steven S. Cliff, Ph.D., Executive Officer, CARB, to Martha Guzman, Regional Administrator, EPA Region IX, dated February 22, 2023 (Reclassification request to Extreme for Coachella Valley); CARB Resolution 23–19, October 26, 2023 (Adopting Severe area ozone plan for the 2015 ozone NAAQS for the Sacramento Metro area).

[5] CARB Board Resolution 23–9, March 23, 2023.

[6] MOVES is the acronym for the EPA's Motor Vehicle Emission Simulator model.

[7] 89 FR 15035 (March 1, 2024).

[8] 75 FR 38023 (July 1, 2010).

[9] See, *e.g.,* 84 FR 3302, 3304 (February 12, 2019) (San Joaquin Valley); 84 FR 52005, 52013 (October 1, 2019) (South Coast Air Basin); and 85 FR 11814, 11816 (February 27, 2020) (Ventura County).

health and welfare for certain pervasive air pollutants, including ozone. Section 110(a)(1) of the CAA requires States to adopt and submit plans (''State Implementation Plans,'' or ''SIPs'') that provide for implementation, maintenance, and enforcement of the NAAQS within each State. Section 110(a)(2) of the CAA requires SIPs to include enforceable emission limitations and other control measures, means, or techniques to meet CAA SIP requirements, such as regulations that control VOC, $NO_X$, and PM emissions.

States with areas designated as nonattainment for a NAAQS are required to submit SIP revisions to address additional requirements that apply to such areas. For certain ozone nonattainment areas, States must submit SIP revisions that address CAA and EPA requirements for Smog Check programs. More specifically, section 182(b)(4) of the CAA requires States with ozone nonattainment areas classified under subpart 2 as Moderate to submit SIP revisions that provide for the implementation of a ''Basic'' I/M program in those areas. Section 182(c)(3) of the CAA requires States with ozone nonattainment areas classified under subpart 2 as Serious or above to submit SIP revisions that provide for the implementation of an ''Enhanced'' I/M program in certain urbanized portions of those areas.[10]

As a general matter, Basic and Enhanced I/M programs both achieve their objective by identifying vehicles that have high emissions due to one or more malfunctions and requiring them to be repaired. An Enhanced I/M program covers more of the vehicles in operation, employs inspection methods that are better at finding high-emitting vehicles, and has additional features to better assure that all vehicles are tested properly and effectively repaired. The EPA has established specific requirements for Basic and Enhanced I/M programs in 40 CFR part 51, subpart S (''The EPA's I/M regulation''). The EPA's I/M regulation establishes minimum performance standards for Basic and Enhanced I/M programs as well as requirements for certain elements of the programs, including (among other elements) test frequency, vehicle coverage, test procedures and standards, stations and inspectors, and data collection, analysis, and reporting.[11]

An I/M performance standard is a collection of program design elements that defines a benchmark program to which a State's Smog Check program is compared in terms of its potential to reduce emissions of the ozone precursors, VOC and $NO_X$. The performance standard is expressed as emission levels in area-wide average grams per mile (gpm), achieved from on-road motor vehicles based on a specified model I/M program design. The emission levels achieved by the State's program design must be calculated using the most current version of the EPA mobile source emission factor model and must meet or exceed the emission reductions achieved by the model performance standard program both in operation and for SIP approval.

The EPA most recently approved a comprehensive update to California's Smog Check program into its SIP in 2010, and in that action, the EPA approved the program as meeting the applicable I/M requirements for the various nonattainment areas in the State for the 1997 ozone NAAQS.[12] The California Bureau of Automotive Repair (BAR) implements the SIP-approved Smog Check program in California, including oversight of the automotive repair industry and administration of the State's vehicle emissions reduction and safety programs. The California Department of Motor Vehicles (DMV) administers motor vehicle registration and licensing and supports BAR in administering the Smog Check program.[13]

Currently, BAR implements an Enhanced I/M program in the urbanized areas within the Coachella Valley, Sacramento Metro, San Diego County, San Joaquin Valley, South Coast, Ventura County and West Mojave Desert ozone nonattainment areas and a Basic I/M program outside the urbanized areas within these nonattainment areas. BAR implements a Basic I/M program in Western Nevada County and Eastern Kern. Owners of motor vehicles registered in Mariposa County are subject to certain Smog Check requirements only upon change of ownership.

Since the EPA's most recent approval of a comprehensive update to the California I/M program in 2010, the State has taken steps to improve the effectiveness of the Smog Check program by requiring BAR to direct older vehicles to high-performing auto technicians and test stations for inspection and certification.[14] Further changes to State law have required BAR to implement an updated protocol for testing 2000 and newer model-year vehicles that collects more complete On-Board Diagnostic (OBD) information than had been collected under the existing protocol.[15] The State publishes an annual report summarizing the performance of the California Smog Check program.[16]

CARB submitted the Smog Check Certification SIP to address the I/M SIP requirements for California ozone nonattainment areas classified as Moderate or above for the 2015 ozone NAAQS, including the Enhanced I/M performance standard evaluations required under 40 CFR 51.351(i). The provisions of 40 CFR 51.351(i) define the elements of the model Enhanced I/M program for areas required to implement an Enhanced I/M program as a result of designation and classification under the 8-hour ozone standard. As noted previously, a State's Enhanced I/M program can differ from the model program, but it must meet or exceed the VOC and $NO_X$ emission reductions achieved by the model program.

As part of CARB's certification of the existing California Smog Check program for compliance with the applicable I/M SIP requirements for the 2015 ozone NAAQS, the Smog Check Certification SIP includes Enhanced I/M performance standard evaluations for the urbanized areas within the ozone nonattainment areas for 2015 ozone NAAQS: Coachella Valley, Eastern Kern, Sacramento Metro, San Diego County,[17] San Joaquin Valley, South Coast, Ventura County and West Mojave Desert. For the I/M performance standard evaluations, CARB relied upon the EPA's MOVES3 emissions model and the EPA's most recent guidance for I/M performance standard modeling.[18] CARB did not provide I/M performance standard evaluations for the Western Nevada County and Mariposa County because the I/M SIP requirements apply only to areas that exceed certain population thresholds, and neither area

[10] The CAA I/M SIP requirements apply to Moderate and above nonattainment areas for the 2015 ozone NAAQS pursuant to 40 CFR 51.1302.

[11] 40 CFR part 51, subpart S, §§ 350 through 373.

[12] 75 FR 38023 (July 1, 2010).

[13] ''Fiscal Year 2021–22 Annual Report,'' Department of Consumer Affairs, at pages 40–44.

[14] CARB, Progress Report on Implementation of $PM_{2.5}$ State Implementation Plans (SIP) for the South Coast and San Joaquin Valley Air Basins and Proposed SIP Revisions (Release Date: March 29, 2011), Table 1.

[15] CARB, Revised Proposed 2016 State Strategy for the State Implementation Plan (March 7, 2017), pp. 52–53.

[16] The most recent performance report is BAR's Smog Check Performance Report 2023, July 1, 2023.

[17] As noted previously, the EPA has already taken final action on the San Diego County area portion of the Smog Check Certification SIP, including the related Enhanced I/M performance evaluation. 89 FR 15035 (March 1, 2024).

[18] EPA, Performance Standard Modeling for New and Existing Vehicle Inspection and Maintenance (I/M) Programs Using the MOVES Mobile Source Emissions Model, EPA–420–B–22–034, October 2022.

exceeds those thresholds.[19] The EPA's Technical Support Document (TSD) includes additional information regarding CARB's Smog Check Certification SIP submission.

## II. The EPA's Evaluation and Action

### *A. How is the EPA evaluating the plan element?*

The EPA has evaluated the Smog Check Certification SIP against the applicable procedural and substantive requirements of the CAA for SIPs and SIP revisions and is proposing to conclude that the Smog Check Certification SIP meets all applicable requirements. A SIP must include enforceable emission limitations and other control measures, means, or techniques, as well as schedules and timetables for compliance, that may be necessary to meet the requirements of the Act (see CAA section 110(a)(2)(A)); provide necessary assurances that the State will have adequate personnel, funding, and authority under State law to carry out such SIP (and is not prohibited by any provision of Federal or State law from carrying out such SIP) (see CAA section 110(a)(2)(E)); be adopted by a State after reasonable notice and public hearing (see CAA section 110(l)); and not interfere with any applicable requirement concerning attainment and reasonable further progress or any other applicable requirement of the Act (see CAA section 110(l)). We are also evaluating whether the Smog Check Certification SIP meets the statutory and regulatory requirements for I/M programs in the applicable California ozone nonattainment areas for the 2015 ozone NAAQS.

### *B. Does the plan element meet the evaluation criteria?*

1. Did the State provide for reasonable public notice and hearing prior to adoption?

Under CAA sections 110(a)(1), 110(a)(2), and 110(l), States must provide for reasonable notice and opportunity for a public hearing prior to adoption and submittal of SIPs and SIP revisions. In 40 CFR 51.102(d), the EPA specifies that reasonable public notice in this context is at least 30 days.

On February 10, 2023, CARB released for public review the draft Smog Check Certification SIP and published a notice of public meeting to be held on March 23, 2023, to consider adoption of the Smog Check Certification as a revision to the California SIP.[20] On March 23, 2023, CARB held the hearing and adopted the Smog Check Certification as a revision to the California SIP and directed the Executive Officer to submit the Smog Check Certification SIP to the EPA for approval into the California SIP.[21] On April 26, 2023, the Executive Officer of CARB submitted the Smog Check Certification SIP to the EPA.

Based on the materials provided in the April 26, 2023 SIP submission and summarized above, we are now proposing to find that CARB has met the procedural requirements for adoption and submission of SIPs and SIP revisions under CAA sections 110(a)(1), 110(a)(2) and 110(l) and 40 CFR 51.102 with respect to the Smog Check Certification SIP.

2. Does the State have adequate legal authority to implement the plan element?

CAA section 110(a)(2)(E)(i) requires States to provide with their SIPs necessary assurances that the State or relevant local or regional agency will have adequate legal authority to carry out the SIP (and is not prohibited by any provision of Federal or State law from carrying out such SIP). In addition, the EPA's I/M regulation requires Smog Check SIPs to include the legal authority requiring or allowing implementation of the I/M program and providing either broad or specific authority to perform all required elements of the program.[22]

The statutory and regulatory foundation for the approved California I/M program is set forth in California Health & Safety Code (CH&SC), Division 26, Part 5, Chapter 5 (Motor Vehicle Inspection Program), Articles 1 through 9, and in title 16 of the California Code of Regulations (16 CCR), Division 33, Chapter 1, Article 5.5 (Motor Vehicle Inspection Program).[23] Additional I/M-related statutory and regulatory provisions in the California SIP include CH&SC section 39032.5; California Business and Professions Code sections 9886 and 9886.1–9886.4; California Vehicle Code sections 4000.1, 4000.2, 4000.3 and 4000.6; and 16 CCR sections 3303.1, 3303.2, 3392.1–3392.6 and 3394.1–3394.6.[24] Based on CARB's statutory and regulatory authority for the Smog Check program that we approved in 2010 as part of our approval of CARB's comprehensive update to the California Smog Check SIP, the EPA is proposing to find that CARB has provided adequate necessary assurances for purposes of CAA section 110(a)(2)(E)(i) for the Smog Check Certification SIP and that the California Smog Check program continues to meet the SIP requirements for legal authority in 40 CFR 51.372(a)(5).

3. Will the State have adequate personnel and funding for the plan element?

CAA section 110(a)(2)(E)(i) requires States to provide with their SIPs necessary assurances that the State or relevant local or regional agency will have adequate personnel and funding to carry out the SIP. The California Smog Check program is a mature program that has been in existence for several decades. The State publishes periodic reports to the Legislature on the resources allocated to Smog Check program administration and enforcement.[25] The most recent periodic report identifies no substantial underfunding or lack of personnel for the administration of the Smog Check program.[26] Moreover, the Smog Check Certification SIP does not modify or expand the program and thus does not require any additional resources for implementation purposes. Therefore, we propose to find that the State has adequate personnel and funding to continue to implement the California Smog Check program.

4. Does the plan element meet the substantive requirements for I/M programs under the CAA and the EPA's I/M regulation?

For this proposed action, we reviewed the Smog Check Certification SIP and confirmed that the State continues to implement and enforce an Enhanced I/M program in the urbanized areas within the ozone nonattainment areas for which the Enhanced I/M program is required. These areas include the urbanized areas within nonattainment areas in Coachella Valley, Sacramento Metro, San Joaquin Valley, South Coast Air Basin, and Ventura County.[27]

[19] CARB, Smog Check Certification SIP, page 4.

[20] Notice of Public Meeting to Consider the Proposed California Smog Check Performance Standard Modeling and Program Certification for the 70 parts per billion 8-hour Ozone Standard, signed by Steven S. Cliff, Ph.D., Executive Officer, CARB, February 10, 2023.

[21] CARB Resolution 23–9, page 6.

[22] 40 CFR 51.372(a)(5).

[23] 75 FR 38023, 38025–38026 (July 1, 2010).

[24] Id.

[25] The most recent periodic report is BAR's Sunset Review Report 2022: presented to the Senate Committee on Business, Professions and Economic Development and the Assembly Committee on Business and Professions.

[26] Id.

[27] As noted previously in this proposed rule, the Enhanced I/M SIP requirement also applies in the urbanized area with San Diego County. We have already approved the Smog Check Certification SIP as it relates to San Diego County. 89 FR 15035 (March 1, 2024).

We agree with CARB that an Enhanced I/M program is not required in the Western Nevada County Serious ozone nonattainment area because it is not part of an area having a 1980 Bureau of Census-defined (Census-defined) urbanized area population of 200,000 or more.[28] We also note that the Western Nevada County area is not subject to the Basic I/M program requirement because it is not part of any 1990 Census-defined urbanized area with a population of 200,000 or more,[29] although the State has decided to implement a Basic I/M program in Western Nevada County as part of the ozone control strategy for the area.

For the same reasons, the West Mojave Desert Severe–15 and Eastern Kern Serious ozone nonattainment areas are not subject to the Basic or Enhanced I/M program requirement, although the State has decided to implement an Enhanced or Basic I/M program in portions of West Mojave Desert and a Basic I/M program in Eastern Kern as part of the ozone control strategies for the areas.

With respect to the Mariposa County Moderate ozone nonattainment area, we agree with CARB that a Basic I/M program is not required there because it is not part of a 1990 Census-defined urbanized area with a population of 200,000 or more.

In addition to certifying that the California Smog Check program meets the applicable I/M requirements for the 2015 ozone NAAQS, CARB's April 2023 submission includes CARB's Enhanced I/M performance standard modeling evaluation for the California ozone nonattainment areas that are subject to the Enhanced I/M requirement. For that evaluation, the Smog Check Certification SIP presents a comparison of July weekday emissions rates (in gpm) for VOC and $NO_X$ based on the existing California Smog Check program and the Enhanced I/M model program benchmark. For an Enhanced I/M program, if the proposed/existing program obtains the same or lower emissions levels for VOC and $NO_X$ as the performance standard benchmark program to within 0.02 gpm, then it is considered to have met the Enhanced performance standard. The analysis was performed for various years depending upon the relevant attainment years under the different nonattainment area classifications for the 2015 ozone NAAQS. Our TSD provides tables summarizing the results of CARB's performance standard modeling for the nonattainment areas within Coachella Valley, Sacramento Metro, San Joaquin Valley, South Coast Air Basin, and Ventura County. We did not review CARB's performance standard modeling for Eastern Kern or West Mojave Desert areas because the areas are not subject to either the Enhanced or Basic I/M requirement.

For both VOC and $NO_X$ in all analysis years, CARB's MOVES3 modeling results indicate that the California Enhanced I/M program meets or exceeds the Federal Enhanced I/M performance standard benchmark program to within 0.02 gpm in all the subject areas. Based on our review of CARB's documentation included in the Smog Check Certification SIP, we find that CARB used appropriate methods and input data to perform the I/M performance standard evaluations for the subject areas, analyzed appropriate years consistent with 40 CFR 51.351(i)(13),[30] and included sufficient documentation to support the results.

In light of CARB's performance standard evaluation results and the improvements in the California Smog Check program, as described previously, since the EPA last approved the California Smog Check program as meeting all the applicable I/M requirements, we propose to find that the California Smog Check program meets the applicable I/M program SIP requirements under CAA sections 182(b)(4) and 182(c)(3) and 40 CFR 51.1302 for the 2015 ozone NAAQS in the Coachella Valley, Eastern Kern, Mariposa County, Sacramento Metro, San Joaquin Valley, South Coast Air Basin, Ventura County, West Mojave Desert and Western Nevada County areas.

5. Would approval of the plan element interfere with attainment and reasonable further progress or any other applicable requirement of the CAA?

The emissions reductions from implementation of the California Smog Check program are reflected in the baseline emissions projections that are relied upon to demonstrate reasonable further progress and attainment in the regional air quality plans developed for the nonattainment areas for the 2015 ozone NAAQS. The Smog Check Certification SIP would not relax any requirements of the program. Therefore, we propose to find that the approval of the Smog Check Certification SIP would not interfere with attainment and reasonable further progress or any other applicable requirement of the CAA, consistent with the requirements for SIP revisions under CAA section 110(l).

*C. Did the State consider environmental justice in developing this plan element?*

Environmental justice (EJ) is 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. As explained in the EJ Legal Tools to Advance Environmental Justice 2022 document,[31] the CAA provides states with the discretion to consider environmental justice in developing rules, measures and plan elements related to nonattainment area SIP requirements.

In this instance, CARB exercised this discretion and did not evaluate EJ considerations as part of its SIP submission. There is no information in the record inconsistent with the stated goals of E.O. 12898 of achieving EJ for people of color, low-income populations, and indigenous peoples.

*D. Proposed Action and Public Comments*

Pursuant to section 110(k)(3) of the Act, and for the reasons given above, the EPA is proposing to approve the Smog Check Certification SIP based on our finding that it meets the applicable procedural and substantive SIP requirements under the CAA and the EPA's I/M regulation for the applicable California nonattainment areas for the 2015 ozone NAAQS. These areas include Coachella Valley, Eastern Kern, Mariposa County, Sacramento Metro, San Joaquin Valley, South Coast Air Basin, Ventura, West Mojave Desert and Western Nevada County. If finalized as proposed, this action would add the Smog Check Certification SIP to the federally-enforceable California SIP.

We will accept comments from the public on this proposal until August 1, 2024.

## III. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the relevant provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP

[28] See CAA section 182(c)(3)(A) and 40 CFR 51.350(a)(2).

[29] See 40 CFR 51.350(a)(4).

[30] The analysis years for I/M performance standard evaluations for Coachella Valley and Sacramento Metro assume that the EPA will grant CARB's voluntary reclassification requests for Coachella Valley to Extreme and for Sacramento Metro to Severe. This assumption is appropriate given that the EPA is required to grant such requests under CAA section 181(b)(3).

[31] EPA, EPA Legal Tools to Advance Environmental Justice, May 2022.

submissions, the EPA's role is to approve State choices, provided that they meet the criteria of the CAA. Accordingly, this proposed action merely proposes to approve a State plan element 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), 13563 (76 FR 3821, January 21, 2011) and 14094 (88 FR 21879, April 11, 2023);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA.

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed 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. 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.''

The State did not evaluate EJ 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 proposed action. Due to the nature of this proposed action, if finalized, this action is expected to have a neutral to positive impact on the air quality of the various ozone nonattainment areas covered by this proposed action. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of Executive Order 12898, to achieve EJ 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, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: June 25, 2024.

**Martha Guzman Aceves,**

*Regional Administrator, Region IX.*

[FR Doc. 2024–14349 Filed 7–1–24; 8:45 am]

**BILLING CODE 6560–50–P**

## DEPARTMENT OF THE INTERIOR

### Fish and Wildlife Service

### 50 CFR Part 17

**[Docket No. FWS–R8–ES–2023–0088; FF09E22000 FXES1113090FEDR 245]**

**RIN 1018–BG50**

## Endangered and Threatened Wildlife and Plants; Removal of White Sedge (Carex albida) From the List of Endangered and Threatened Plants

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Proposed rule.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), propose to remove the white sedge (*Carex albida*) from the Federal List of Endangered and Threatened Plants (*i.e.,* ''delist'' the species). Our review of the best available scientific and commercial data indicate that the white sedge is not a discrete taxonomic entity and does not meet the definition of a species as defined by the Endangered Species Act of 1973, as amended (Act). White sedge has been synonymized with Lemmon's sedge (*Carex lemmonii*). This taxonomic revision means that the white sedge is no longer a scientifically accepted species. If we finalize this rule as proposed, the prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, would no longer apply to the white sedge.

**DATES:** We will accept comments received or postmarked on or before September 3, 2024. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. eastern time on the closing date. We must receive requests for public hearings, in writing, at the address shown in **FOR FURTHER INFORMATION CONTACT** by August 16, 2024.

**ADDRESSES:** You may submit comments by one of the following methods:

(1) *Electronically:* Go to the Federal eRulemaking Portal: *https://www.regulations.gov.* In the Search box, enter FWS–R8–ES–2023–0088, which is the docket number for this rulemaking. Then, click on the Search button. On the resulting page, in the Search panel on the left side of the screen, under the Document Type heading, click on the Proposed Rule box to locate this document. You may submit a comment by clicking on ''Comment.''

(2) *By hard copy:* Submit by U.S. mail to: Public Comments Processing, Attn: FWS–R8–ES–2023–0088, U.S. Fish and Wildlife Service, MS: PRB/3W, 5275 Leesburg Pike, Falls Church, VA 22041–3803.

We request that you send comments only by the methods described above. We will post all comments on *https://www.regulations.gov.* This generally means that we will post any personal information you provide us (see Information Requested, below, for more information).

*Availability of supporting materials:* This proposed rule and supporting documents, including a copy of the 5-year review referenced throughout this

document, are available at *https://www.regulations.gov* under Docket No. FWS–R8–ES–2023–0088.

**FOR FURTHER INFORMATION CONTACT:** Michael Fris, Field Supervisor, U.S. Fish and Wildlife Service, Sacramento Fish and Wildlife Office, 2800 Cottage Way, Sacramento, CA 95825; telephone 916–414–6700. 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. Please see Docket No. FWS–R8–ES–2023–0088 on *https://www.regulations.gov* for a document that summarizes this proposed rule.

**SUPPLEMENTARY INFORMATION:**

## Information Requested

We intend that any final action resulting from this proposed rule will be based on the best scientific and commercial data available and be as accurate and as effective as possible. Therefore, we request comments or information from other concerned governmental agencies, Native American Tribes, the scientific community, industry, or any other interested parties concerning this proposed rule.

We particularly seek comments concerning:

(1) Reasons we should or should not remove the white sedge from the List of Endangered and Threatened Plants; and

(2) Additional taxonomic or other relevant data concerning the white sedge.

Please include sufficient information with your submission (such as scientific journal articles or other publications) to allow us to verify any scientific or commercial information you include.

Please note that submissions merely stating support for, or opposition to, the action under consideration without providing supporting information, although noted, do not provide substantial information necessary to support a determination. Section 4(b)(1)(A) of the Act directs that determinations as to whether any species is an endangered species or a threatened species must be made solely on the basis of the best scientific and commercial data available.

You may submit your comments and materials concerning this proposed rule by one of the methods listed in **ADDRESSES**. We request that you send comments only by the methods described in **ADDRESSES**.

If you submit information via *https://www.regulations.gov,* your entire submission—including any personal identifying information—will be posted on the website. If your submission is made via a hardcopy that includes personal identifying information, you may request at the top of your document that we withhold this information from public review. However, we cannot guarantee that we will be able to do so. We will post all hardcopy submissions on *https://www.regulations.gov.*

Comments and materials we receive, as well as supporting documentation we used in preparing this proposed rule, will be available for public inspection on *https://www.regulations.gov.*

Our final determination may differ from this proposal because we will consider all comments we receive during the comment period as well as any information that may become available after this proposal. For example, based on the new information we receive (and, if relevant, any comments on that new information), we may conclude that the white sedge should remain listed as endangered. We will clearly explain our rationale and the basis for our final decision, including why we made changes, if any, that differ from this proposal.

### *Public Hearing*

Section 4(b)(5) of the Act provides for a public hearing on this proposal, if requested. Requests must be received by the date specified in **DATES**. Such requests must be sent to the address shown in **FOR FURTHER INFORMATION CONTACT**. We will schedule a public hearing on this proposal, if requested, and announce the date, time, and place of the hearing, as well as how to obtain reasonable accommodations, in the **Federal Register** and local newspapers at least 15 days before the hearing. We may hold the public hearing in person or virtually via webinar. We will announce any public hearing on our website, in addition to the **Federal Register**. The use of these virtual public hearings is consistent with our regulation at 50 CFR 424.16(c)(3).

### *Peer Review*

In accordance with our joint policy on peer review published in the **Federal Register** on July 1, 1994 (59 FR 34270), and our August 22, 2016, memorandum updating and clarifying the role of peer review of listing and recovery actions under the Act, we will seek independent scientific reviews from at least three appropriate and independent specialists regarding scientific data and interpretations contained in this proposed rule. We will send copies of this proposed rule to the peer reviewers immediately following publication in the **Federal Register**. We will ensure that the opinions of peer reviewers are objective and unbiased by following the guidelines set forth in the Director's Memo, which updates and clarifies Service policy on peer review (U.S. Fish and Wildlife Service 2016). The purpose of such review is to ensure that our decisions are based on scientifically sound data, assumptions, and analysis. Accordingly, our final decision may differ from this proposal. Comments from peer reviewers will be posted at *https://www.regulations.gov* and included in the decision file for the final rule.

## Previous Federal Action

Federal Government actions on white sedge began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975, and included white sedge as an endangered species (Ripley 1975, p. 56). We published a notice on July 1, 1975 (40 FR 27823), of our acceptance of the report of the Smithsonian Institution as a petition within the context of section 4(c)(2) of the Act (petition provisions are now found in section 4(b)(3) of the Act) and our intention thereby to review the status of the plant taxa named therein. White sedge was included in the July 1, 1975, notice (40 FR 27823 at 27833). On June 16, 1976, we published a proposal (41 FR 24523) to determine approximately 1,700 vascular plant species, including white sedge, to be endangered species pursuant to section 4 of the Act. The list of 1,700 plant taxa was assembled based on comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and our July 1, 1975, notice (40 FR 27823 at 27833). General comments received related to the 1976 proposal were summarized in an April 26, 1978, rule (43 FR 17909).

We published a proposed rule to list the white sedge as endangered on August 2, 1995 (60 FR 39314), and invited public comment. Processing of the proposed rule was delayed by a congressional moratorium on activities associated with final listings from April 10, 1995, through April 26, 1996 (Pub. L. 104–6, 109 Stat. 73, 86 (1995)). After the moratorium was lifted, we reopened the comment period on September 11,

1996, and scheduled a public hearing on October 3, 1996 (61 FR 47856). We published the final rule to list white sedge as an endangered species on October 22, 1997 (62 FR 55791).

We published a 5-year status review for the species on May 2, 2019, and recommended white sedge be removed from the List of Endangered and Threatened Plants based on taxonomic error (Service 2019, pp. 3–4). White sedge has been synonymized with (*i.e.,* considered to be the same species as) Lemmon's sedge (*Carex lemmonii*), a wide-ranging and abundant taxon endemic to California that is distributed throughout the Northern Coast and Sierra-Cascade mountain ranges (Calflora 2022, entire; Zika et al. 2015, entire). Therefore, white sedge is no longer considered a valid species that is distinct from the more widely abundant and distributed Lemmon's sedge.

**Background**

White sedge, as previously identified, is an herbaceous perennial in the sedge family (Cyperaceae). The first white sedge specimen was collected in 1854 by Dr. Jacob M. Bigelow during an exploratory expedition to find a railway route from the Mississippi River to the Pacific Ocean (Torrey and Gray 1857, p. 98). This specimen was collected from Santa Rosa Creek in the Laguna de Santa Rosa wetland complex in Sonoma County (Howell 1957, pp. 178–179; Best et al. 1996, p. 252). No additional locations were recorded until the 1900s (Howell 1957, p. 178). The immaturity of the specimen when collected and lack of additional collections in the following decades resulted in doubt regarding its taxonomic validity (Zika and Wilson 2012, p. 171).

Several early taxonomic studies questioned the validity of white sedge as a distinct species, resulting in numerous taxonomic revisions. In 1922, white sedge was combined with woodrush sedge (*C. luzulina*) (Mackenzie 1922, p. 64). In 1935, white sedge was grouped with Lemmon's sedge (Mackenzie 1935, p. 314; 1940, pp. 198–199). In 1937, white sedge was described as the distinct species *C. sonomensis (*Stacey 1937, pp. 63–64), and in 1957, white sedge and *C. sonomensis* were grouped together and the grouped entity was described as distinct from Lemmon's sedge (Howell 1957, pp. 178–180; 1965, pp. 1454–1455). This nomenclature was followed for The Jepson Manual (Mastrogiuseppe, 1993, p. 1111), which was the most current information considered for the listing of white sedge as an endangered species in 1997. This nomenclature continued to be followed for Flora of North America (Ball and Mastrogiuseppe, 2002, pp. 479–480). The 2nd edition of The Jepson Manual (Zika et al. 2012, p. 1328), based on analysis of the characteristics of white sedge and Lemmon's sedge (Zika and Wilson, 2012, pp. 176–177), treats white sedge as a synonym for Lemmon's sedge.

Taxonomic studies used morphological characters of foliage, perigynia (scale-like leaf enclosing a pistil (female flower)), achenes (small, dry seed or fruit), and inflorescences (group of flowers) to distinguish white sedge from other species of *Carex* (Zika and Wilson 2012, p. 171). White sedge has inflorescences with staminate (male) flowers above the pistillate (female) flowers (especially on the terminal inflorescence), lateral spikelets, and leaves that are shorter than the stems, measuring 3 to 5 mm (0.1 to 0.2 in) wide (62 FR 55791 at 55793, October 22, 1997). The final rule to designate white sedge as an endangered species notes that some individuals may resemble Lemmon's sedge but differ in perigynium and achene size, or in other respects (62 FR 55791 at 55793, October 22, 1997). Taxonomists often use the shape of perigynia to separate closely related *Carex* species (Zika and Wilson 2012, p. 173).

To clarify previous taxonomic classifications of white sedge and to explain the revised classification in Zika et al. (2012, p. 1328), 18 morphological characters that have been used to differentiate white sedge and Lemmon's sedge were compared and evaluated (Zika and Wilson 2012, p. 173). In a preliminary study, the range of variation of 13 characters was determined for 39 herbarium specimens of white sedge and 270 specimens of Lemmon's sedge (Zika and Wilson 2012, p. 172). Analysis of variance (ANOVA), non-metric multidimensional scaling (NMS), and principal components analysis (PCA) were applied on a subset of 6 specimens of white sedge and 57 specimens of Lemmon's sedge across 18 morphological characters (Zika and Wilson 2012, p. 172).

In those analyses, Lemmon's sedge could be distinguished from similar sedges, including *C. luzulina, C. luzufolia,* and *C. fissuricola,* through perigynia differences (Zika and Wilson 2012, p. 173). However, Lemmon's sedge plants from Sonoma County (*i.e.,* populations previously referred to as white sedge) are not distinguishable from specimens in Mariposa County (Zika and Wilson 2012, p. 173). Similarly, variations in perigynia of *C. sonomensis* are consistent with variations in perigynia of Lemmon's sedge. Analyses of other characters resulted in similar conclusions; there were no characters that reliably distinguished between white sedge and Lemmon's sedge (Zika and Wilson 2012, p. 173). Additionally, Lemmon's sedge individuals from Butte, Mariposa, and San Bernardino Counties exhibited a wide variation in many characters, resulting in some individuals that closely resembled herbarium specimens and cultivated plants of white sedge (Zika and Wilson 2012, p. 174).

ANOVA results for all quantitative characters indicate that white sedge is not morphologically distinct from Lemmon's sedge (Zika and Wilson 2012, p. 175). Except for leaf width, all white sedge morphological traits are within the range of variation found among the 57 Lemmon's sedge specimens (Zika and Wilson 2012, p. 175). When considered alone, the variation of leaf width between the two taxa is statistically significant (Zika and Wilson 2012, p. 176). However, there is considerable overlap in leaf width variation, and Zika and Wilson (2012, pp. 174–175) do not consider this character to have practical taxonomic significance. PCA and NMS yield similar results (Zika and Wilson 2012, p. 176). Therefore, statistical results fail to distinguish white sedge and Lemmon's sedge as distinct entities based on morphological characters. Because Lemmon's sedge was described before white sedge, it is appropriate to synonymize both entities under the same scientific name of *Carex lemmonii.*

Following the findings of Zika and Wilson (2012, pp. 176–177), white sedge was removed from the California Native Plant Society's Rare Plant Inventory and from Global Rank G1 (critically imperiled) and State Rank S1 (critically imperiled) of the California Natural Diversity Database (Sims and Lazar 2013, p. 2). Further, the California Natural Diversity Database (2023, p. 4) no longer tracks white sedge, as they consider white sedge a synonym of Lemmon's sedge.

**Regulatory Framework**

Section 4 of the Act (16 U.S.C. 1533) and the implementing regulations in title 50 of the Code of Federal Regulations set forth the procedures for determining whether a species is an endangered species or a threatened species, issuing protective regulations for threatened species, and designating critical habitat for endangered and threatened species. On April 5, 2024, jointly with the National Marine Fisheries Service, the Service issued a final rule that revised the regulations in 50 CFR part 424 regarding how we add,

remove, and reclassify endangered and threatened species and what criteria we apply when designating listed species' critical habitat (89 FR 24300). This final rule is now in effect and is incorporated into the current regulations. ''Species'' is defined by the Act as including any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife that interbreeds when mature (16 U.S.C. 1532(16)).

Our regulations at 50 CFR 424.11(e) identify four reasons why, after conducting a status review based on the best scientific and commercial data available, we shall delist a species: (1) The species is extinct; (2) the species has recovered to the point at which it no longer meets the definition of an endangered species or a threatened species; (3) new information that has become available since the original listing decision shows the listed entity does not meet the definition of an endangered species or a threatened species; or (4) new information that has become available since the original listing decision shows the listed entity does not meet the definition of a species.

**Determination of White Sedge Status**

In accordance with our regulations at 50 CFR 424.11(e)(4) currently in effect, our review of the best scientific and commercial data available indicates that the white sedge does not meet the statutory definition of a species. Therefore, we propose to remove the white sedge from the Federal List of Endangered and Threatened Plants. The white sedge does not require a post-delisting monitoring (PDM) plan because the requirements for a PDM do not apply to delisting species due to the listed entity no longer meeting the statutory definition of a species.

**Effects of This Proposed Rule**

This proposed rule, if made final, would revise 50 CFR 17.12(h) by removing the white sedge from the Federal List of Endangered and Threatened Plants. The prohibitions and conservation measures provided by the Act, particularly through sections 7 and 9, would no longer apply to this species. Federal agencies would no longer be required to consult with the Service under section 7 of the Act in the event that activities they authorize, fund, or carry out may affect the white sedge. There is no critical habitat designated for this species, so there would be no effect to 50 CFR 17.96.

**Required Determinations**

*Clarity of the Rule*

We are required by Executive Orders 12866 and 12988 and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

(1) Be logically organized;

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

(3) Use clear language rather than jargon;

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

(5) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in **ADDRESSES**. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that are unclearly written, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

**References Cited**

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

**Authors**

The primary authors of this proposed rule are staff members of the Service's Sacramento Fish and Wildlife Office (see **FOR FURTHER INFORMATION CONTACT**).

**List of Subjects in 50 CFR Part 17**

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

**Proposed Regulation Promulgation**

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

## PART 17—ENDANGERED AND THREATENED WILDLIFE AND PLANTS

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

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

■ 2. In § 17.12, amend paragraph (h) by removing the entry for ''*Carex albida* (White sedge)'' under Flowering Plants from the List of Endangered and Threatened Plants.

**Martha Williams,**

*Director, U.S. Fish and Wildlife Service.*

[FR Doc. 2024–14402 Filed 7–1–24; 8:45 am]

**BILLING CODE 4333–15–P**

# Notices

Federal Register
Vol. 89, No. 127
Tuesday, July 2, 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.

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2024–0002]**

**RIN 0579–AE81**

### Exploring Pathways to Commercialization for Modified Microbes

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Notice; request for information.

**SUMMARY:** We are notifying the public that the Animal and Plant Health Inspection Service (APHIS) is soliciting the public to respond to this Request for Information (RFI) as part of our stakeholder engagement to explore pathways to commercialization for modified microbes subject to APHIS jurisdiction, consistent with the APHIS regulations for the movement of organisms modified or produced through genetic engineering. In response to the Office of Science and Technology Policy's (OSTP's) RFI ''Identifying Ambiguities, Gaps, Inefficiencies, and Uncertainties in the Coordinated Framework for the Regulation of Biotechnology'' issued in December 2022 pursuant to Executive Order 14081, multiple commenters expressed a need for clear regulatory pathways to commercialization for modified microbes. Therefore, we are requesting comments from the public regarding pathways to commercialization, including needs, ideas, and concerns, regarding possible APHIS risk-based deregulation of modified microbes and other potential regulatory and non-regulatory pathways to commercialization. The information provided will help to identify potential criteria and mechanisms for risk-based deregulation, develop a regulatory framework that could inform future rulemaking, and identify potential non-regulatory solutions.

**DATES:** We will consider all comments that we receive on or before September 3, 2024.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2024–0002 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2024–0002, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *Regulations.gov* or in our reading room, which is located in room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

Response to this RFI is voluntary. Each individual or institution is requested to submit only one response. Responses should include the name of the person(s) or organization(s) filing the response. Please identify your answers by referring to a specific question number within the response.

Comments submitted in response to this notice are subject to the Freedom of Information Act (FOIA). Responses to this RFI may be posted without change online. No proprietary information, copyrighted information, or personally identifiable information should be submitted in response to this RFI.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Chessa Huff-Woodard, Esq., Branch Chief, Policy, Program, and International Collaborations, Biotechnology Regulatory Services, APHIS, 4700 River Road, Unit 146, Riverdale, MD 20737; (301) 851–3943; *chessa.d.huff-woodard@usda.gov.*

**SUPPLEMENTARY INFORMATION:**

## Background

### Coordinated Framework

Along with the Environmental Protection Agency (EPA) and the Food and Drug Administration (FDA), the United States Department of Agriculture's (USDA's) Animal and Plant Health Inspection Service (APHIS) and the Food Safety and Inspection Service (FSIS) are responsible for the oversight and review of organisms modified or developed using genetic engineering and the foods derived from them. In 1986, the Coordinated Framework for the Regulation of Biotechnology (Coordinated Framework) was published by the Office of Science and Technology Policy (OSTP). The Coordinated Framework explains the regulatory roles for EPA, FDA, and the USDA (APHIS and FSIS), and how Federal agencies use existing Federal statutes to ensure public health and environmental safety while maintaining regulatory flexibility to avoid impeding innovation. The Coordinated Framework was subsequently updated in 1992 (see 57 FR 6753) and 2017 (see *2017_coordinated_framework_update.pdf*) taking into account advances that had occurred in the field of biotechnology.

### APHIS Biotechnology Regulations

The regulations in 7 CFR part 340 govern the movement (importation, interstate movement, and release into the environment) of certain organisms, to include plants, plant pests, and biocontrol organisms, modified or produced through genetic engineering. APHIS first issued these regulations in 1987 under the authority of the Federal Plant Pest Act of 1957 and the Plant Quarantine Act of 1912, two acts that were subsumed into the Plant Protection Act (PPA, 7 U.S.C. 7701 *et seq.*) in 2000, along with other provisions. Since 1987, APHIS has amended the regulations seven times, in 1988, 1990, 1993, 1994, 1997, 2005, and 2020.

The most recent update was on May 18, 2020, when we published in the **Federal Register** (85 FR 29790–29838, Docket No. APHIS–2018–0034) a final rule that marked the first comprehensive revision of the regulations since they were established in 1987. The May 2020 final rule provided clear, predictable, and efficient regulatory pathways for innovators, facilitating the development of plants developed using genetic engineering that are unlikely to pose plant pest risks.

The May 2020 final rule included regulatory exemptions for certain categories of modified plants. Plants are exempt from regulation in accordance with paragraphs (b), (c), and (d) of § 340.1. Additionally, § 340.4 of the 2020 final rule included a regulatory status review (RSR) process for APHIS to determine if a plant developed or modified using genetic engineering is unlikely to pose an increased plant pest risk relative to the plant pest risk posed by the respective non-modified or other appropriate comparator(s) and therefore is not subject to the regulations. Because most microbes [1] are not ''plants,'' they do not qualify for an exemption under § 340.1 and are not eligible for an RSR under § 340.4.

Under the May 2020 final rule, modified [2] microbes that are plant pests (as the term is defined in § 340.3); or have received deoxyribonucleic acid (DNA) from a plant pest and the DNA from the donor organism either is capable of producing an infectious agent that causes plant disease or encodes a compound that is capable of causing plant disease; or are used to control plant pests and could pose a plant pest risk, are subject to the regulations.[3]

The May 2020 final rule included permitting exemptions for some microorganisms. A permit for interstate movement is not required for disarmed *Agrobacterium tumefaciens,* provided that it is moved as a secure shipment, the cloned genetic material is stably integrated into the genome, and the cloned material does not include the complete infectious genome of a plant pest. In response to comments on the proposed rule about interagency coordination, in the May 2020 final rule, we also added paragraph (f) to § 340.5, which contains an exemption from permitting requirements for any modified microorganism that is currently registered with the EPA as a microbial pesticide, so long as the microorganism is not a *plant pest* as the term is defined in § 340.3.

However, the May 2020 rule did not include up-front regulatory exemptions or a regulatory review process for modified microorganisms. While several commenters on the proposed rule requested that APHIS develop a process to evaluate the regulatory status of non-plant modified organisms, based on the subject organism's potential plant pest risk, the commenters did not provide specifics on what factors APHIS should consider in such a process. At the time, APHIS stated that further discussion and outreach with impacted developers and other stakeholders would be required before pursuing rulemaking.

**Executive Order 14081 and Subsequent RFI**

On September 12, 2022, President Biden issued Executive Order (E.O.) 14081,[4] ''Advancing Biotechnology and Biomanufacturing Innovation for a Sustainable, Safe, and Secure American Bioeconomy,'' with the goal of accelerating biotechnology innovation and growing America's bioeconomy across multiple sectors, including health, agriculture, and energy. Among other objectives, E.O. 14081 aims to support the safe use of biotechnology by clarifying and streamlining regulations in service of a science- and risk-based, predictable, efficient, and transparent regulatory system to support the safe use of products of biotechnology. Among other things, E.O. 14081 directs the EPA, the FDA, and USDA to identify any regulatory ambiguities, gaps, or uncertainties in the January 2017 update to the Coordinated Framework for the Regulation of Biotechnology or subsequent policy changes made by the agencies, through engaging with developers and stakeholders and horizon scanning for novel biotechnology products, and to provide a plan with processes and timelines to implement regulatory reform.

On December 20, 2022, in connection with E.O. 14081, the White House Office of Science and Technology Policy (OSTP)—on behalf of the primary agencies that regulate the products of biotechnology (EPA, FDA, and USDA), issued a request for information,[5] or RFI. The RFI requested relevant data and information, including case studies, that may assist in identifying any regulatory ambiguities, gaps, inefficiencies, or uncertainties in the Coordinated Framework for the Regulation of Biotechnology, particularly regarding new and emerging biotechnology products. The RFI indicated that the information provided would inform regulatory agency efforts to improve the clarity and efficiency of the regulatory processes for biotechnology products.

There has been significant investment and growth over the last few years in the development of modified microbes for agricultural and industrial uses, including for use as biopesticides, fertilizers, biofuel production, and the manufacture of chemicals and other materials. A number of comments were received that discussed APHIS' regulation of modified microbes. Commenters expressed various concerns including the lack of clarity regarding the regulation of modified microbes generally, a lack of a clear and predictable pathway to commercialization, and what were perceived as onerous regulatory requirements. Commenters suggested APHIS develop regulatory pathways for commercialization for modified microbes, including exemptions and a process similar to the RSR process described in § 340.4 for modified plants. Suggestions for exemptions included exemptions based on the modification similar to exemptions provided for modified plants listed in § 340.1, exemptions based on the species of microbe, and exemptions based on the trait (*e.g.,* barcoding traits). Suggestions were also made to improve the efficiency of the permitting system for modified microbes by reducing information requirements for certain movement permits (approved under OMB control number 0579–0471) and to set permit conditions that are risk-based and in alignment with agricultural practices.

**Draft Microbial Permits Guide**

On March 23, 2023, APHIS made available for review a draft *Guide for Submitting Permit Applications for Microorganisms Developed using Genetic Engineering Under 7 CFR part 340* on its website at *https://www.aphis.usda.gov/aphis/newsroom/stakeholder-info/sa_by_date/sa-2023/microorganism-guide.* We indicated that comments should be submitted to *Regulations.gov* and received by May 22, 2023. Comments received within that 60-day comment period were similar to those received to the RFI related to potential pathways to commercialization for modified microbes. For example, commenters expressed concern that there were no processes for modified microbes similar to the up-front exemptions at § 340.1 and the Regulatory Status Review process at § 340.4 for modified plants.

Based on this background information, we are soliciting public comments regarding the following questions:

[1] The terms ''microbes'' and ''microorganisms'' are used interchangeably throughout the document because they are synonymous term; a microbe is a common shortform and colloquial reference.

[2] When we use the term ''modified'' in this notice, we are referring to genetic engineering (GE) as defined in the regulations.

[3] 7 CFR part 340.2(b)–(d).

[4] *https://www.federalregister.gov/documents/2022/09/15/2022-20167/advancing-biotechnology-and-biomanufacturing-innovation-for-a-sustainable-safe-and-secure-american.*

[5] *https://www.federalregister.gov/documents/2023/04/27/2023-08841/executive-order-14081-advancing-biotechnology-and-biomanufacturing-innovation-for-a-sustainable-safe.*

*RFI Questions*

1. Describe new or emerging categories of biotechnology products that are relevant to the development and use of modified microorganisms. To assess new and emerging technologies with modified microbes, what expertise and resources are needed in the government to evaluate the overall plant pest risk of modified microbes?

2. Describe areas where the clarity and/or efficiency of regulations governing modified microorganisms could be improved (*e.g.,* definitions that need to be provided or revised, barriers to obtaining the data necessary to achieve commercialization).

3. Describe key elements of a regulatory framework that would enable a scientifically sound assessment of a modified microorganism's plant pest risk, in order to inform regulatory decision-making by APHIS.

a. Describe any biological features of microorganisms that APHIS should consider when determining whether a modification changes the plant pest risk, and thus the regulatory status of a modified microorganism (*e.g.,* the potential for horizontal gene transfer, the production of airborne spores, its ecological role, or the ability to remain dormant for long periods of time).

b. What criteria, data, and information should be considered when assessing a modified microorganism's plant pest risk?

c. What should APHIS consider when determining whether modification of a biocontrol organism could result in it posing a plant pest risk? Provide scientific evidence to support which types of biocontrol organisms and methods could or could not pose a plant pest risk.

4. How should modified microorganisms with multiple uses (*e.g.,* developed for both biomedical or pharmaceutical purposes and agricultural purposes) be regulated and evaluated by APHIS? What steps should APHIS take to ensure efficient and appropriate oversight and evaluation when a product is subject to regulation and review by both USDA and another Federal agency?

5. Should APHIS consider risk-based exemptions for certain types of microorganisms, or for certain modifications in microorganisms? If so, please provide examples of the types of modified microorganisms that should be exempt from regulation and provide scientific evidence to support which modifications and types of microorganisms should or should not be exempt.

6. Are there any other specific issues or topics APHIS should consider in developing a regulatory framework for assessing the plant pest risk of modified microorganisms, or possible pathways to commercialization for modified microorganisms?

We welcome all comments on the issues outlined above.

*Authority:* 7 U.S.C. 7701–7772 and 7781–7786; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.3.

Done in Washington, DC, this 26th day of June 2024.

**Katherine Zenk,**

*Deputy Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 2024–14498 Filed 7–1–24; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Animal and Plant Health Inspection Service

**[Docket No. APHIS–2024–0020]**

### Notice of Request for Extension of Approval of an Information Collection; On-Farm Monitoring of Antimicrobial Use and Resistance in U.S. Broiler Production Study

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Extension of approval of an information collection; comment request.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection for continuing the On-Farm Monitoring of Antimicrobial Use and Resistance in U.S. Broiler Production Study.

**DATES:** We will consider all comments that we receive on or before September 3, 2024.

**ADDRESSES:** You may submit comments by either of the following methods:

- *Federal eRulemaking Portal:* Go to *www.regulations.gov.* Enter APHIS–2024–0020 in the Search field. Select the Documents tab, then select the Comment button in the list of documents.
- *Postal Mail/Commercial Delivery:* Send your comment to Docket No. APHIS–2024–0020, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Supporting documents and any comments we receive on this docket may be viewed at *regulations.gov* or in our reading room, which is located in Room 1620 of the USDA South Building, 14th Street and Independence Avenue SW, Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 799–7039 before coming.

**FOR FURTHER INFORMATION CONTACT:** For information on the On-Farm Monitoring of Antimicrobial Use and Resistance in U.S. Broiler Production Study, contact Ms. Nia Washington-Plaskett, Program Analyst, Center for Epidemiology and Animal Health, VS, APHIS, 2150 Centre Ave., Bldg. B, Fort Collins, CO 80524; (866) 907–8190; email: *nia.washington-plaskett@usda.gov* or *vs.sp.ceah.pci@usda.gov.* For more detailed information on the information collection process, contact Mr. Joseph Moxey, APHIS' Paperwork Reduction Act Coordinator, at (301) 851–2533, or email: *joseph.moxey@usda.gov.*

**SUPPLEMENTARY INFORMATION:**

*Title:* On-Farm Monitoring of Antimicrobial Use and Resistance in U.S. Broiler Production Study.

*OMB Control Number:* 0579–0481.

*Type of Request:* Extension of approval of an information collection.

*Abstract:* Under the Animal Health Protection Act (7 U.S.C. 8301 *et seq.*), the Secretary of the U.S. Department of Agriculture (USDA) is authorized to protect the health of the livestock, equine, poultry, and aquaculture populations in the United States by preventing the introduction and interstate spread of serious diseases and pests of livestock, equine, poultry, and aquaculture, and for eradicating such diseases and pests from the United States, when feasible. Within the USDA, this authority and mission is delegated to the Animal and Plant Health Inspection Service (APHIS).

In connection with this mission, APHIS operates the National Animal Health Monitoring System (NAHMS), which collects on a national basis, statistically valid and scientifically sound data on the prevalence and economic importance of livestock, equine, poultry, and aquaculture disease risk factors. APHIS is the only agency responsible for collecting data on livestock, equine, poultry, and aquaculture health. NAHMS' studies have evolved into a collaborative industry and Government initiative to help determine the most effective means of preventing and controlling diseases of livestock, equine, poultry, and aquaculture. Participation in any NAHMS study is voluntary, and all data are confidential.

APHIS currently conducts the On-Farm Monitoring of Antimicrobial Use

and Resistance in U.S. Broiler Production Study as part of an ongoing series of NAHMS studies on the U.S. livestock, equine, poultry, and aquaculture populations. This study supports the following objectives: (1) Measure and track trends in antimicrobial use (AMU) and antimicrobial resistance (AMR) in broiler complexes within participating companies over time; (2) Evaluate the relationship between AMU patterns and AMR measured in select bacterial species collected; and (3) Quantify antimicrobial resistance genes in the litter of sampled broiler farms and examine the relationship between these quantities and antimicrobial use patterns.

This study is an information collection being conducted by APHIS through a cooperative agreement with the University of Minnesota that monitors U.S. broiler operations for AMU, AMR, animal health and production practices, the relationship between AMU, AMR, animal health, production practices, and changes over time. We will continue collecting quarterly survey data and litter samples from the same poultry complexes and examine AMR in bacteria such as *Salmonella* and *Campylobacter.* This study meets objectives for both the U.S. National Action Plan for Combating Antibiotic-Resistant Bacteria (2015 and 2020) and the USDA AMR National Action Plan (2014). Additionally, this information is an essential component in accomplishing one of APHIS' strategic goals, which is to safeguard American agriculture.

APHIS and the University of Minnesota will continue analyzing and organizing the information into one or more descriptive reports and scientific manuscripts, and for important or special topics, APHIS will continue developing and disseminating targeted information sheets to producers, stakeholders, academicians, veterinarians, and any other interested parties. This information benefits the poultry industry by supplying scientific estimates of AMU and stewardship by poultry producers and evaluation of the influence of these and other management practices on AMR.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities, as described, for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; *e.g.,* permitting electronic submission of responses.

*Estimate of burden:* The public burden for this collection of information is estimated to average 1.5 hours per response.

*Respondents:* Broiler producers.

*Estimated annual number of respondents:* 30.

*Estimated annual number of responses per respondent:* 20.

*Estimated annual number of responses:* 588.

*Estimated total annual burden on respondents:* 866 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 25th day of June, 2024.

**Donna Lalli,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 2024–14580 Filed 7–1–24; 8:45 am]

**BILLING CODE 3410–34–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Big Bar Ranger District; California; Burnt Ranch Fire Resilient Community Project

**AGENCY:** Forest Service, Agriculture (USDA).

**ACTION:** Notice; withdrawal.

**SUMMARY:** The Shasta-Trinity National Forest is withdrawing the notice of intent to prepare an environmental impact statement. The Burnt Ranch Fire Resilient Community Project Notice of Intent was published in the **Federal Register** on Wednesday, December 24, 2014 (79 FR 77449). The Shasta-Trinity National Forest decision to withdraw the NOI is because the project has been redesigned to address impacts from a devastating wildfire.

**FOR FURTHER INFORMATION CONTACT:** Tara Jones, District Ranger, Trinity River Management Unit, by email to *tara.jones@usda.gov.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 800–877–8339, 24 hours a day, every day of the year, including holidays.

**Keith Lannom,**

*Associate Deputy Chief, National Forest System.*

[FR Doc. 2024–14483 Filed 7–1–24; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF AGRICULTURE

### Forest Service

### Black Hills National Forest Advisory Board

**AGENCY:** Forest Service, Agriculture (USDA).

**ACTION:** Notice of meeting.

**SUMMARY:** The Black Hills National Forest Advisory Board will hold a public meeting according to the details shown below. The board is authorized under the Forest and Rangeland Renewable Resources Planning Act of 1974, the National Forest Management Act of 1976, the Federal Lands Recreation Enhancement Act, and operates in compliance with the Federal Advisory Committee Act (FACA). The purpose of the board is to provide advice and recommendations on a broad range of forest issues such as forest plan revisions or amendments, forest health including fire and insects and disease, travel management, forest monitoring and evaluation, recreation fees, and site-specific projects having forest-wide implications.

**DATES:** An in-person meeting will be held on July 17, 2024, 1 p.m. to 4:30 p.m. Mountain Daylight Time (MDT).

*Written and Oral Comments:* Anyone wishing to provide in-person oral comments must pre-register by 11:59 p.m. MDT on July 12, 2024. Written public comments will be accepted by 11:59 p.m. MDT on July 12, 2024. Comments submitted after this date will be provided by the Forest Service to the board, but the board may not have adequate time to consider those comments prior to the meeting.

All board meetings are subject to cancellation. For status of the meeting prior to attendance, please contact the

person listed under **FOR FURTHER INFORMATION CONTACT**.

**ADDRESSES:** This meeting will be held in person at the U.S. Forest Service, Mystic Ranger District Office, 8221 Mount Rushmore Road, Rapid City, South Dakota 57702. Board information and meeting details can be found at the following website: *https://www.fs.usda.gov/main/blackhills/workingtogether/advisorycommittees* or by contacting the person listed under **FOR FURTHER INFORMATION CONTACT**.

*Written Comments:* Written comments must be sent by email to *scott.j.jacobson@usda.gov* or via mail (postmarked) to Scott Jacobson, 8221 Mount Rushmore Road, Rapid City, South Dakota 57702. The Forest Service strongly prefers comments be submitted electronically.

*Oral Comments:* Persons or organizations wishing to make oral comments must pre-register by 11:59 p.m. MDT, July 12, 2024, and speakers can only register for one speaking slot. Oral comments must be sent by email to *scott.j.jacobson@usda.gov* or via mail (postmarked) to Scott Jacobson, 8221 Mount Rushmore Road, Rapid City, South Dakota 57702.

**FOR FURTHER INFORMATION CONTACT:** Shawn Cochran, Designated Federal Officer, by phone at 605–673–9201 or email at *shawn.cochran@usda.gov;* or Scott Jacobson, Committee Coordinator, by phone at 605–440–1409 or email at *scott.j.jacobson@usda.gov.*

**SUPPLEMENTARY INFORMATION:** The meeting agenda will include:

1. Recreation and tourism economics;
2. Forest recreation fee proposal process; and
3. Forest plan revision update.

The agenda will include time for individuals to make oral statements of three minutes or less. Individuals wishing to make an oral statement should make a request in writing at least three days prior to the meeting date to be scheduled on the agenda. Written comments may be submitted to the Forest Service up to 7 days after the meeting date listed under **DATES**.

Please contact the person listed under **FOR FURTHER INFORMATION CONTACT**, by or before the deadline, for all questions related to the meeting. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying. The public may inspect comments received upon request.

*Meeting Accommodations:* The meeting location is compliant with the Americans with Disabilities Act, and the USDA provides reasonable accommodation to individuals with disabilities where appropriate. If you are a person requiring reasonable accommodation, please make requests in advance for sign language interpretation, assistive listening devices, or other reasonable accommodation to the person listed under the **FOR FURTHER INFORMATION CONTACT** section or contact USDA's TARGET Center at 202–720–2600 (voice and TTY) or USDA through the Federal Relay Service at 800–877–8339. Additionally, program information may be made available in languages other than English.

USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Equal opportunity practices in accordance with USDA's policies will be followed in all appointments to the board. To ensure that the recommendations of the Committee have taken into account the needs of the diverse groups served by the Department, membership shall include, to the extent practicable, individuals with demonstrated ability to represent the many communities, identities, races, ethnicities, backgrounds, abilities, cultures, and beliefs of the American people, including underserved communities. USDA is an equal opportunity provider, employer, and lender.

Dated: June 14, 2024.

**Cikena Reid,**

*USDA Committee Management Officer.*

[FR Doc. 2024–13473 Filed 7–1–24; 8:45 am]

**BILLING CODE 3411–15–P**

## DEPARTMENT OF COMMERCE

### Census Bureau

### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Spatial, Address, and Imagery Data Program

**AGENCY:** Census Bureau, Commerce.

**ACTION:** Notice of information collection, request for comment.

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

**DATES:** To ensure consideration, comments regarding this proposed information collection must be received on or before September 3, 2024.

**ADDRESSES:** Interested persons are invited to submit written comments by email to *dcmd.pra@census.gov.* Please reference Spatial, Address, and Imagery Data Program in the subject line of your comments. You may also submit comments, identified by Docket Number USBC–2024–0017, to the Federal e-Rulemaking Portal: *https://www.regulations.gov.* All comments received are part of the public record. No comments will be posted to *https://www.regulations.gov* for public viewing until after the comment period has closed. Comments will generally be posted without change. All Personally Identifiable Information (for example, name and address) voluntarily submitted by the commenter may be publicly accessible. Do not submit Confidential Business Information or otherwise sensitive or protected information. You may submit attachments to electronic comments in Microsoft Word, Excel, or Adobe PDF file formats.

**FOR FURTHER INFORMATION CONTACT:** Requests for additional information or specific questions related to collection activities should be directed to Michael S. Snow, Program Manager, Decennial Census Management Division, by phone at 301–763–9912 or by email to *dcmd.pra@census.gov.*

**SUPPLEMENTARY INFORMATION:**

#### I. Abstract

The SAID Program is one of many voluntary geographic partnership programs that collects data to update the U.S. Census Bureau's geographic database, known as the Master Address File/Topologically Integrated Geographic Encoding and Referencing (MAF/TIGER) System. The Census Bureau uses the MAF/TIGER System to link statistical data from censuses and surveys to locations and areas, such as

American Indian reservations, states, counties, incorporated places, and census tracts. To tabulate census and survey response data properly, the Census Bureau must have current and accurate addresses, street centerlines, and imagery.

The SAID Program provides the Census Bureau with a continuous method to obtain current, accurate, and complete addresses, street centerlines, and imagery data from tribal, state, and local governments as well as other federal agencies and authoritative data source organizations. The purpose of the SAID Program is to help maintain the Census Bureau's geographic framework for data collection, tabulation, and dissemination between decennial censuses and to support ongoing programs such as the American Community Survey and the Population Estimates Program. The SAID Program will continue to focus on acquiring addresses, street centerlines, and imagery in areas targeted with housing unit growth or change.

The Census Bureau is requesting clearance to continue the SAID Program. As the current OMB Control Number 0607–1008 clearance will expire in January 2025, the new clearance will allow the Census Bureau to continue data acquisition to support MAF/TIGER System updates, quality control, and change detection.

## II. Method of Collection

The SAID Program participant universe is determined annually using several evaluation factors. These factors include address growth, address change, or address coverage needs where there is no online address, parcel, or GIS data, and imagery coverage needs. The Census Bureau will contact potential participants by telephone and email to request data, and supporting metadata, for addresses, street centerlines, and/or imagery that are no more than two years old. The Census Bureau will attempt to contact each potential participant three times before rescheduling them for another year.

The Census Bureau may request entire datasets or partial datasets that include only the changes since a previous submission. For participants that agree to provide their data, the Census Bureau will provide guidance for using a secure online data sharing portal. The portal guides participants through the process for securely uploading their data to the Census Bureau and provides the Census Bureau with submission tracking for records management. If a participant's data lacks metadata or if the metadata is insufficient, the Census Bureau will contact the participant to request the additional metadata information. The Census Bureau will only process the data with appropriate metadata.

The data collected in the SAID Program may be used to maintain the Census Bureau's geographic framework for data collection, tabulation, and dissemination to support ongoing programs such as the American Community Survey, population estimates programs, other current surveys, and the decennial census. The SAID Program follows the process below:

- The Census Bureau invites participants, including tribal, state, and local governments; federal agencies; and other authoritative data source organizations each fiscal year.
- Participants are asked to provide a current address list with latitude/longitude coordinates and attributes, street centerline, and/or imagery data, and the associated metadata, for their jurisdiction that is no more than two years old.
- Participants submit the requested data per Census Bureau procedures.
- The Census Bureau validates then updates the MAF/TIGER System with the address and street centerline data provided by participants and uses the imagery for quality control and change detection.
- The Census Bureau uses the updated addresses and street centerlines in the MAF/TIGER System to support Census Bureau data collection, processing, and tabulation.

The Census Bureau is adding a feedback component to its geographic partnership programs to allow for the solicitation of feedback to improve the administration of the respective program and potentially reduce the future burden. Participants may be asked to provide their feedback on materials, method(s) of data collection, manner of communications, and the usability of the program applications and tools.

## III. Data

*OMB Control Number:* 0607–1008.

*Form Number(s):* None.

*Type of Review:* Regular submission, request for a revision of a currently approved collection.

*Affected Public:* Tribal, state, local governments, federal agencies and other authoritative data source organizations.

*Estimated Number of Respondents:*

- *Census Bureau Contact with Respondents:* 500.
- *Census Bureau Acquisition of Respondent Geographic Data and Content Clarification:* 250.
- *Feedback:* 25

*Estimated Time per Response:*

- *Census Bureau Contact with Respondents:* 1 hour.
- *Census Bureau Acquisition of Respondent Geographic Data and Content Clarification:* 1.5 hours.
- *Feedback:* 1 hour.

*Estimated Total Annual Burden Hours:* 900.

- *Census Bureau Contact with Respondents:* 500.
- *Census Bureau Acquisition of Respondent Geographic Data and Content Clarification:* 375.
- *Feedback:* 25.

*Estimated Total Annual Cost to Public:* $0. (This is not the cost of respondents' time, but the indirect costs respondents may incur for such things as purchases of specialized software or hardware needed to report, or expenditures for accounting or records maintenance services required specifically by the collection.)

*Respondent's Obligation:* Voluntary.

*Legal Authority:* Title 13 U.S.C. 16, 141, and 193.

## IV. Request for Comments

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

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

**Mary Lenaiyasa,**

*PRA Program Manager, Policy Coordination Office, U.S. Census Bureau.*

[FR Doc. 2024–14528 Filed 7–1–24; 8:45 am]

BILLING CODE 3510–07–P

## DEPARTMENT OF COMMERCE

### Census Bureau

### Agency Information Collection Activities; Submission to the Office of Management and Budget (OMB) for Review and Approval; Comment Request; Generic Clearance for Census Bureau Field Tests and Evaluations

The Department of Commerce will submit the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995, on or after the date of publication of this notice. We invite the general public and other Federal agencies to comment on proposed, and continuing information collections, which helps us assess the impact of our information collection requirements and minimize the public's reporting burden. Public comments were previously requested via the **Federal Register** on 7/26/2022 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

*Agency:* U.S. Census Bureau.

*Title:* Burden Increase for the Generic Clearance for Census Bureau Field Tests and Evaluations.

*OMB Control Number:* 0607–0971.

*Form Number(s):* Not yet determined.

*Type of Request:* Request for a burden increase.

*Number of Respondents:* 113,791 per year.

*Average Hours per Response:* 26.58 minutes.

*Burden Hours:* 50,424.33 hours annually.

*Needs and Uses:* The U.S. Census Bureau is committed to conducting research to identify possible cost and burden reductions in future census and survey, while maintaining high quality results. The Census Bureau requests an increase of 60,500 hours to the existing burden estimates for this Generic Clearance. The Census Bureau is making no other changes to this Clearance. This increase will bring the total burden hours for this Clearance to 211,773 hours over the three-year period. Studies to research and evaluate how to improve data collection activities for data collection programs at the Census Bureau have outpaced the original burden estimates. Larger sample sizes will allow us to continue to explore how the Census Bureau can improve efficiency, data quality, and response rates and reduce respondent burden in future census and survey operations, evaluations and experiments. This research program is for respondent communication, questionnaire and procedure development, and evaluation purposes. We will use data tabulations to evaluate the results of testing.

*Affected Public:* Individuals or households, businesses or other for profit, farms.

*Frequency:* Once.

*Respondent's Obligation:* Voluntary or Mandatory, depending on cited authority.

*Legal Authority:* Data collection for this project is authorized under the authorizing legislation for the questionnaire being tested. This may be 13 U.S.C. 131, 141, 161, 181, 182, 193, and 301 for Census Bureau sponsored surveys, and title 13 and 15 for surveys sponsored by other Federal agencies. We do not now know what other titles will be referenced, since we do not know what survey questionnaires will be pretested during the course of the clearance.

Written comments and recommendations for the proposed change should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the collection or the OMB Control Number 0607–0971.

**Mary Lenaiyasa,**

*PRA Program Manager, Policy Coordination Office, U.S. Census Bureau.*

[FR Doc. 2024–14529 Filed 7–1–24; 8:45 am]

**BILLING CODE 3510–07–P**

## DEPARTMENT OF COMMERCE

### International Trade Administration

**[A–570–028]**

### Antidumping Duty Order on Hydrofluorocarbon Blends From the People's Republic of China: Preliminary Negative Determination of Circumvention With Respect to R–410B From Mexico

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

**SUMMARY:** The U.S. Department of Commerce (Commerce) preliminarily determines that imports of R–410B from Mexico, which are allegedly completed in Mexico using components originating in the People's Republic of China (China), and further processed in the United States, as specified below, are not circumventing the antidumping duty (AD) order on hydrofluorocarbon (HFC) blends from China.

**DATES:** Applicable July 2, 2024.

**FOR FURTHER INFORMATION CONTACT:** Melissa Porpotage, 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) 482–1413.

**SUPPLEMENTARY INFORMATION:**

#### Background

On August 19, 2016, Commerce published the *Order* in the **Federal Register**.[1] On October 30, 2023, Commerce initiated a country-wide circumvention inquiry to determine whether imports of R–410B from Mexico, completed in Mexico using HFC components R–32 (difluoromethane) and R–125 (pentafluoroethane) (collectively, China-origin HFC components) manufactured in China, and further processed in the United States are circumventing the *Order* and, accordingly, should be covered by the scope of the *Order.*[2] In December 2023, Commerce selected the following two mandatory respondents in this circumvention inquiry: iGas LLC (iGas) and Quimica Marcat, S.A. DE C.V. (Quimica Marcat).[3] For a complete description of the events that followed the initiation of this circumvention inquiry, *see* the Preliminary Decision Memorandum.[4]

#### Scope of the Order

The merchandise covered by the *Order* is certain HFC blends from China. For a complete description of the scope of the *Order, see* the Preliminary Decision Memorandum.[5]

#### Merchandise Subject to the Circumvention Inquiry

This circumvention inquiry covers imports of R–410B from Mexico, which are completed in Mexico using China-origin HFC components and further

[1] *See Hydrofluorocarbon Blends from the People's Republic of China: Antidumping Duty Order,* 81 FR 55436 (August 19, 2016) (*Order*).

[2] *See Hydrofluorocarbon Blends from the People's Republic of China: Initiation of Circumvention Inquiry on the Antidumping Duty Order,* 88 FR 74150 (October 30, 2023).

[3] *See* Memorandum, ''Respondent Selection,'' dated December 19, 2023; *see also* Commerce's Letter, ''R–410B from Mexico Initial Questionnaire,'' dated December 27, 2023.

[4] *See* Memorandum, ''Antidumping Duty Order on Hydrofluorocarbon Blends from the People's Republic of China: Preliminary Decision Memorandum for the Circumvention Inquiry with Respect to R–410B from Mexico,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[5] *Id.* at 1–3.

processed in the United States (inquiry merchandise).

**Methodology**

Commerce is conducting this circumvention inquiry in accordance with section 781(a) of the Tariff Act of 1930, as amended (the Act), and 19 CFR 351.226. For a complete description of the methodology underlying this circumvention inquiry, *see* the Preliminary Decision Memorandum. A list of topics discussed in the Preliminary Decision Memorandum is included in the appendix to this notice. The Preliminary 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 Preliminary Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx.*

**Preliminary Circumvention Determination**

As detailed in the Preliminary Decision Memorandum, Commerce preliminarily determines that R–410B from Mexico, allegedly completed in Mexico using HFC components from China, that is further processed in the United States, is not circumventing the *Order.* As a result, in accordance with section 781(a) of the Act, we preliminarily determine that the inquiry merchandise should not be included within the scope of the *Order.*

**Verification**

As provided in 19 CFR 351.307, Commerce may verify information relied upon in making its final determination.

**Public Comment**

Case briefs or other written comments should be submitted to the Assistant Secretary for Enforcement and Compliance no later than seven days after the date on which any verification report is issued. Rebuttal briefs, limited to issues raised in the case briefs, may be filed no later than five days after the date for filing case briefs.[6] Interested parties who submit case briefs or rebuttal briefs in these proceedings must submit: (1) a statement of the issue; and (2) a table of authorities.[7] Case and rebuttal briefs should be filed using ACCESS.

As provided under 19 CFR 351.309(c)(2) and (d)(2), in prior proceedings we have encouraged interested parties to provide an executive summary of their brief that should be limited to five pages total, including footnotes. In this circumvention inquiry, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[8] Further, we request that interested parties limit their executive summary of each issue to no more than 450 words, not including citations. We intend to use the executive summaries as the basis of the comment summaries included in the issues and decision memorandum that will accompany the final determination of this circumvention inquiry. We request that interested parties include footnotes for relevant citations in the executive summary of each issue. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[9]

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing, limited to issues raised in the case and rebuttal briefs, must submit a written request to the Assistant Secretary for Enforcement and Compliance, U.S. Department of Commerce, within 30 days after the date of publication of this notice in the **Federal Register**, filed electronically via ACCESS. Requests should contain: (1) the requesting party's name, address, and telephone number; (2) the number of individuals from the requesting party that will attend the hearing; and (3) a list of the issues that the party intends to discuss at the hearing. Oral presentations at the hearing will be limited to issues raised in the briefs. If a request for a hearing is made, parties will be notified of the time and date for the hearing.

**Notification to Interested Parties**

Commerce is issuing and publishing this determination in accordance with section 781(b) of the Act and 19 CFR 351.226(g)(1).

Dated: June 26, 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**

**Topics Discussed in the Preliminary Decision Memorandum**



[FR Doc. 2024–14571 Filed 7–1–24; 8:45 am]

BILLING CODE 3510–DS–P

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

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

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

[9] *See Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule,* 88 FR 67069 (September 29, 2023).

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XE032]**

### Takes of Marine Mammals Incidental to Specified Activities; Taking Marine Mammals Incidental to a Marine Geophysical Survey of the Reykjanes Ridge in the North Atlantic Ocean

**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 the Lamont-Doherty Earth Observatory of Columbia University (L–DEO) to incidentally harass marine mammals during survey activities associated with a marine geophysical survey at the Reykjanes Ridge in the North Atlantic Ocean.

**DATES:** This authorization is effective from June 27, 2024 through June 26, 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/national/marine-mammal-protection/incidental-take-authorizations-research-and-other-*

*activities.* In case of problems accessing these documents, please call the contact listed below.

**FOR FURTHER INFORMATION CONTACT:** Rachel Wachtendonk, 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 December 27, 2023, NMFS received a request from L–DEO for an IHA to take marine mammals incidental to conducting a marine geophysical survey of the Reykjanes Ridge in the North Atlantic Ocean. NMFS received a final, revised version of L–DEO's application on February 26, 2024, which was deemed adequate and complete on February 27, 2024. L–DEO's request is for take of 25 marine mammal species by Level B harassment and, for a subset of 5 of these species, by Level A harassment. Neither L–DEO 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 the Specified Activity

### *Overview*

Researchers from the University of Birmingham, University of Southampton and University of Cambridge, with funding from the Natural Environmental Research Council (NERC), plan to conduct a high-energy seismic survey using airguns as the acoustic source from the research vessel (R/V) *Marcus G. Langseth* (Langseth), which is owned and operated by L–DEO. The planned survey will occur at the Reykjanes Ridge, off southern Iceland, in the northwestern Atlantic Ocean during summer 2024. The survey will occur within Iceland's Exclusive Economic Zone (EEZ) and high seas. The survey will occur in water depths ranging from approximately 600 to 3,000 meters (m), with most of the survey effort (~78 percent) occurring in deep water (considered here to be depths greater than 1000 m). To complete this survey, the R/V Langseth will tow a 36-airgun array with a total discharge volume of ~6,600 cubic inches ($in^3$) at a depth of 10 to 12 m. The airgun array receiving systems for the different survey segments will consist of a 15 kilometer (km) long solid-state hydrophone streamer and approximately 150 deployments using a total of 50 Ocean Bottom Seismometers (OBS). The airguns will fire at a shot interval of 50 m (~24 seconds (s)) during 2-dimensional (2–D) multi-channel seismic (MCS) reflection surveys with the hydrophone streamer and at a 154.4 m (~60 s) interval during OBS seismic refraction surveys. Approximately 2,754 km of total survey trackline are planned, including 1,662 km of MCS seismic reflection data and 1,092 km of OBS refraction data.

The purpose of the survey is to collect data in support of a research proposal entitled 'IMPULSE: Taking the Pulse of the Icelandic Mantle Plume'. IMPULSE will make the first definite test of the Thermal Plume Pulsing (TPP) model, the shortest predicted time period of transient mantle convections, which has been suggested as a primary driver of some of the most remarkable perturbations to global climate, ecosystems, and the carbon cycle in Earth's history. The North Atlantic V-shaped Ridges (VSR) are the basis for the TPP model, and the planned survey will acquire the first ever full crustal seismic profiles across multiple complete VSR cycles.

Additional data will be collected using a multibeam echosounder (MBES), a sub-bottom profiler (SBP), and an Acoustic Doppler Current Profiler (ADCP), which will be operated from R/V Langseth continuously during the seismic surveys, including during transit. No take of marine mammals is expected to result from use of this equipment.

### *Dates and Duration*

The planned survey is expected to last for approximately 38 days, with 9 days of MCS seismic operations, 5 days of OBS seismic operations, 17 days of OBS deployment and retrieval, 3 days of streamer deployment and retrieval, and 4 days of transit. R/V Langseth will likely leave from and return to port in Reykjavik, Iceland during summer 2024.

### *Specific Geographic Region*

The planned survey will occur within approximately 56–63° N, 24–34° W, within Iceland's EEZ and on the high seas, in water depths ranging from approximately 600 to 3,000 m. The closest approach of the planned survey lines to land off the south coast of Iceland is ~130 km from Eldey and ~145 km from mainland Iceland. The region where the survey is planned to occur is depicted in figure 1; the tracklines could occur anywhere within the polygon shown in figure 1. Representative survey tracklines are shown; however, some deviation in actual tracklines, including the order of survey operations, could be necessary for reasons such as science drivers, poor data quality, inclement weather, or mechanical issues with the research vessel and/or equipment.

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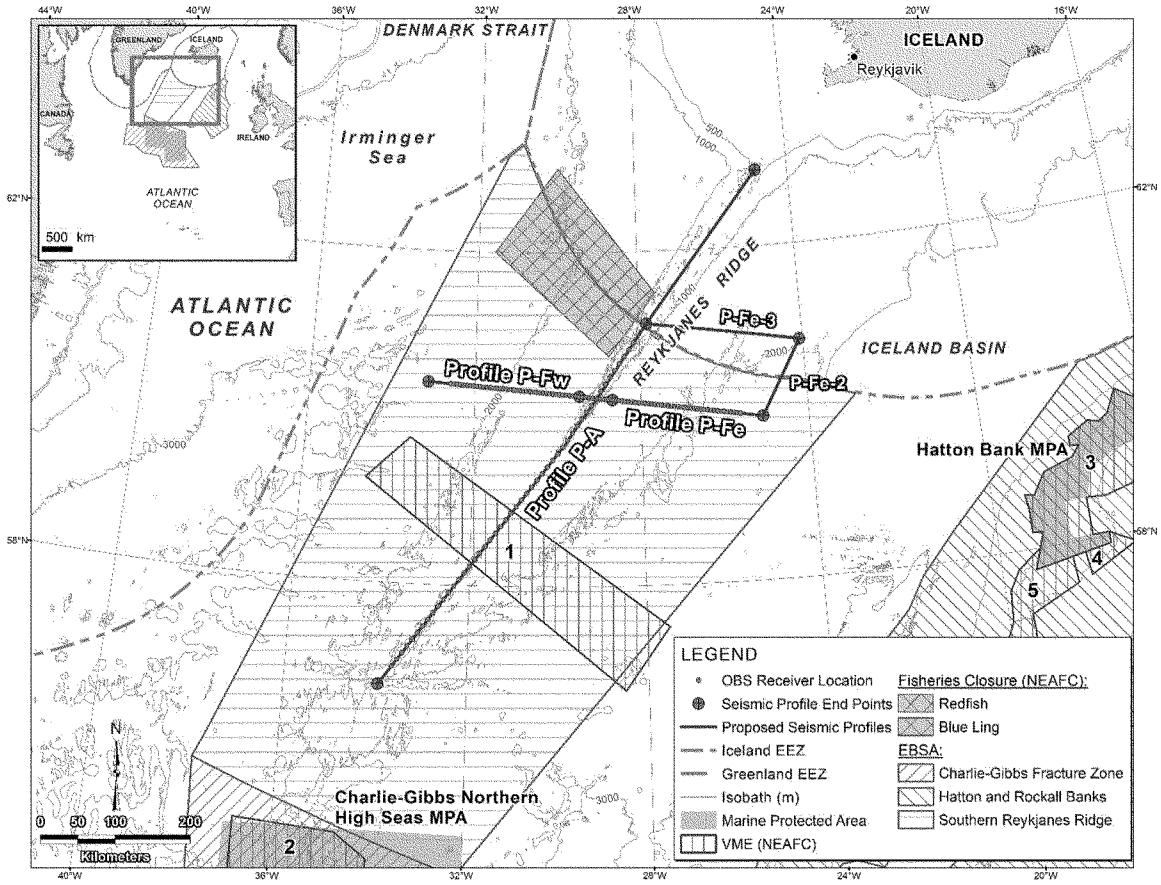


**Figure 1. Location of the Reykjanes Ridge Seismic Surveys in the Northwest Atlantic Ocean**

Representative survey tracklines are included in the figure; however, the tracklines could occur anywhere within the survey area. Numbered sites correspond to the following Vulnerable Marine Ecosystems (VMEs): (1) Northern Mid-Atlantic Ridge, (2) Mid Mid-Atlantic Ridge, (3) Hatton Bank, (4) Hatton Bank Area 1, and (5) Hatton Bank Area 2. EBSA; Ecologically or Biologically Significant Marine Areas. MPA; Marine Protected Area. NEAFC; North East Atlantic Fisheries.

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A detailed description of the planned geophysical survey was provided in the **Federal Register** notice of the proposed IHA (89 FR 41850, March 13, 2024). Since that time, no changes have been made to the planned survey activities. Therefore, a detailed description is not provided here. Please refer to that **Federal Register** notice for the description of the specified activity.

### Comments and Responses

A notice of NMFS' proposal to issue an IHA to L–DEO was published in the **Federal Register** on March 13, 2024 (89 FR 41850). That notice described, in detail, L–DEO's activity, the marine mammal species that may be affected by the activity, and the anticipated effects on marine mammals. In that notice, we requested public input on the request for authorization described therein, our analyses, the proposed authorization, and any other aspect of the notice of proposed IHA, and requested that interested persons submit relevant information, suggestions, and comments. The proposed notice was available for a 30-day public comment period. NMFS received no public comments.

### Changes From the Proposed IHA to Final IHA

In the notice of the proposed IHA (89 FR 41850, March 13, 2024), NMFS stated an intention to adopt the National Science Foundation's (NSF) Environmental Assessment (EA) to comply with the National Environmental Policy Act of 1969 (NEPA). However, NMFS subsequently determined that 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 NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

### 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 about these species (*e.g.,* physical and behavioral descriptions) may be found on NMFS' website (*https://www.fisheries.noaa.gov/find-species*). NMFS refers the reader to the aforementioned source for general information regarding the species listed in table 1.

The populations of marine mammals found in the survey area do not occur within the U.S. EEZ and therefore, are not assessed in NMFS' Stock Assessment Reports (SARs). For most species, there are no stocks defined for management purposes in the survey area, and NMFS is evaluating impacts at the species level and ranges for most species evaluated here are considered to be the North Atlantic. As such, information on potential biological removal level (PBR; 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) and annual levels of serious injury and mortality from anthropogenic sources are not available for these marine mammal populations. Abundance estimates for marine mammals in the survey location are lacking; therefore, the modeled abundances presented here are based on a variety of proxy sources, including the U.S Navy Atlantic Fleet Training and Testing Area Marine Mammal Density (AFTT) model (Roberts *et al.,* 2023) and the North Atlantic Marine Mammal Commission (NAMMCO; NAMMCO, 2023). The modeled abundance is considered the best scientific information available on the abundance of marine mammal populations in the area.

Table 1 lists all species that occur in the survey area that may be taken as a result of the planned survey and summarizes information related to the population, including regulatory status under the MMPA and Endangered Species Act (ESA).

TABLE 1—SPECIES LIKELY IMPACTED BY THE SPECIFIED ACTIVITIES

| Common name | Scientific name | Stock | ESA/ MMPA status; strategic (Y/N) [1] | Modeled abundance [2] |
|---|---|---|---|---|
| **Order Artiodactyla—Cetacea—Mysticeti (baleen whales)** | | | | |
| *Family Balaenopteridae (rorquals):* | | | | |
| Blue Whale | *Balaenoptera musculus* | NA | E, D, Y | 191 |
| Fin Whale | *Balaenoptera physalus* | NA | E, D, Y | 11,672 |
| Humpback Whale | *Megaptera novaeangliae* | NA | -, -, N [3] | 4,990 |
| Minke Whale | *Balaenoptera acutorostrata* | NA | -, -, N | 13,784 |
| Sei Whale | *Balaenoptera borealis* | NA | E, D, Y | 19,530 |
| **Odontoceti (toothed whales, dolphins, and porpoises)** | | | | |
| *Family Physeteridae:* | | | | |
| Sperm Whale | *Physeter macrocephalus* | NA | E, D, Y | 64,015 |
| *Family Ziphiidae (beaked whales):* | | | | |
| Blainville's Beaked Whale | *Mesoplodon densirostris* | NA | -, -, N | [4] 65,069 |
| Cuvier's Beaked Whale | *Ziphius cavirostris* | NA | -, -, N | [4] 65,069 |
| Northern Bottlenose Whale | *Hyperoodon ampullatus* | NA | -, -, N | 1,056 |
| Sowerby's Beaked Whale | *Mesoplodon bidens* | NA | -, -, N | [5] 65,069 |
| *Family Delphinidae:* | | | | |
| Killer Whale | *Orcinus orca* | NA | -, -, N | 972 |
| Long-Finned Pilot Whale | *Globicephala melas* | NA | -, -, N | [6] 264,907 |
| Atlantic White-Sided Dolphin | *Lagenorhynchus acutus* | NA | -, -, N | 175,299 |
| Bottlenose Dolphin | *Tursiops truncatus* | NA | -, -, N | 418,151 |
| Risso's Dolphin | *Grampus griseus* | NA | -, -, N | 78,205 |
| Common Dolphin | *Delphinus delphis* | NA | -, -, N | 473,260 |
| Striped Dolphin | *Stenella coeruleoalba* | NA | -, -, N | 412,729 |
| White-Beaked Dolphin | *Lagenorhynchus albirostris* | NA | -, -, N | 2,627 |
| *Family Phocoenidae (porpoises):* | | | | |
| Harbor Porpoise | *Phocoena phocoena* | NA | -, -, N | 94,583 |
| **Order Carnivora—Pinnipedia** | | | | |
| *Family Phocidae (earless seals):* | | | | |
| Bearded Seal | *Erignathus barbatus barbatus* | NA | -, -, N [7] | NA |
| Gray Seal | *Halichoerus grypus* | NA | -, -, N | NA |
| Harbor Seal | *Phoca vitulina* | NA | -, -, N | NA |
| Harp Seal | *Pagophilus groenlandicus* | NA | -, -, N | NA |
| Hooded Seal | *Cystophora cristata* | NA | -, -, N | NA |

[1] ESA status: Endangered (E), Threatened (T)/MMPA status: Depleted (D). A dash (-) indicates that the species is not listed under the ESA or designated as depleted under the MMPA. Under the MMPA, a strategic stock is one for which the level of direct human-caused mortality exceeds PBR or which is determined to be declining and likely to be listed under the ESA within the foreseeable future. Any species or stock listed under the ESA is automatically designated under the MMPA as depleted and as a strategic stock.

[2] Modeled abundance value from U.S Navy AFTT Marine Mammal Density (Roberts *et al.,* 2023).

[3] Two humpback whale distinct population segments (DPSs) could occur in the survey area: the West Indies DPS, which is not listed under the ESA; and the Cape Verde Islands/Northwest Africa DPS, which is listed as endangered under the ESA.

[4] Beaked whale guild.

[5] 2017 estimate for the U.K., Iceland, and Faroe Islands (NAMMCO 2023).

[6] Pilot whale guild.
[7] There are two concurrently recognized subspecies of the bearded seal. Only the Pacific subspecies is listed under the ESA and MMPA.

All 25 species in table 1 temporally and spatially co-occur with the activity to the degree that take is reasonably likely to occur. All species that could potentially occur in the survey area are listed in section 3 of the application; however, 3 species (North Atlantic right whale (*Eubalaena glacialis*), bowhead whale (*Balaena mysticetus*), and ringed seal (*Phoca hispida hispida*)) are omitted from further analysis as they have been infrequently sighted in the survey area or their temporal and/or spatial occurrence is such that take is not expected to occur. They are not discussed further beyond the explanation provided in the **Federal Register** notice for the proposed IHA (89 FR 41850, March 13, 2024).

A detailed description of the of the species likely to be affected by the geophysical survey, including brief introductions to the species and relevant stocks as well as available information regarding population trends and threats, and information regarding local occurrence, were provided in the **Federal Register** notice for the proposed IHA (89 FR 41850, March 13, 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 that **Federal Register** notice for these descriptions. Please also refer to NMFS' website (*https://www.fisheries.noaa.gov/find-species*) for generalized species accounts.

*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).

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 L–DEO's survey activities have the potential to result in behavioral harassment of marine mammals in the vicinity of the survey area. The notice of proposed IHA (89 FR 41850, March 13, 2024) included a discussion of the effects of anthropogenic noise on marine mammals and the potential effects of underwater noise from L–DEO on marine mammals and their habitat. That information and analysis is incorporated by reference into this final IHA determination and is not repeated here; please refer to the notice of proposed IHA (89 FR 41850, March 13, 2024).

**Estimated Take of Marine Mammals**

This section provides an estimate of the number of incidental takes authorized through the IHA, which will inform both NMFS' consideration of ''small numbers,'' and the negligible impact determinations.

Harassment is the only type of take expected to result from these activities. Except with respect to certain activities not pertinent here, section 3(18) of the MMPA defines ''harassment'' as any act of pursuit, torment, or annoyance, which (i) has the potential to injure a marine mammal or marine mammal stock in the wild (Level A harassment); or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering (Level B harassment).

Authorized takes are primarily by Level B harassment, as use of the airgun array 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 for species of certain hearing groups due to the size of the predicted auditory injury zones for those groups. Auditory injury is less likely to occur for mid-frequency species due to their relative lack of sensitivity to the frequencies at which the primary energy of an airgun signal is found as well as such species' general lower sensitivity to auditory injury as compared to high-frequency cetaceans. As discussed in further detail below, we

do not expect auditory injury for mid-frequency cetaceans. No mortality is anticipated as a result of these activities. Below we describe how the authorized 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 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 permanent threshold shift (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 temporary threshold shift (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.

L–DEO's survey includes the use of impulsive seismic sources (*i.e.,* airguns), and therefore the 160 dB re 1 µPa is applicable for analysis of Level B harassment.

*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). L–DEO's survey includes the use of impulsive seismic sources (*i.e.,* airguns).

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.

When the Technical Guidance was published (NMFS, 2016), in recognition of the fact that ensonified area/volume could be more technically challenging to predict because of the duration component in the new thresholds, we

developed a user spreadsheet that includes tools to help predict a simple isopleth that can be used in conjunction with marine mammal density or occurrence to help predict takes. We note that because of some of the assumptions included in the methods used for these tools, we anticipate that isopleths produced are typically going to be overestimates of some degree, which may result in some degree of overestimate of Level A harassment take. However, these tools offer the best way to predict appropriate isopleths when more sophisticated 3D modeling methods are not available, and NMFS continues to develop ways to quantitatively refine these tools and will qualitatively address the output where appropriate.

The planned survey will entail the use of a 36-airgun array with a total discharge volume of 6,600 $in^3$ at a tow depth of 10 m to 12 m. L–DEO's model results are used to determine the 160 $dB_{rms}$ radius for the airgun source down to a maximum depth of 2,000 m. Received sound levels have been predicted by L–DEO's model (Diebold *et al.,* 2010) as a function of distance from the 36-airgun array. This modeling approach uses ray tracing for the direct wave traveling from the array to the receiver and its associated source ghost (reflection at the air-water interface in the vicinity of the array), in a constant-velocity half-space (infinite homogeneous ocean layer, unbounded by a seafloor). In addition, propagation measurements of pulses from the 36-airgun array at a tow depth of 6 m have been reported in deep water (~1,600 m), intermediate water depth on the slope (~600–1,100 m), and shallow water (~50 m) in the Gulf of Mexico (Tolstoy *et al.,* 2009; Diebold *et al.,* 2010).

For deep and intermediate water cases, the field measurements cannot be used readily to derive the harassment isopleths, as at those sites the calibration hydrophone was located at a roughly constant depth of 350–550 m, which may not intersect all the SPL isopleths at their widest point from the sea surface down to the assumed maximum relevant water depth (~2000 m) for marine mammals. At short ranges, where the direct arrivals dominate and the effects of seafloor interactions are minimal, the data at the deep sites are suitable for comparison with modeled levels at the depth of the calibration hydrophone. At longer ranges, the comparison with the model—constructed from the maximum SPL through the entire water column at varying distances from the airgun array—is the most relevant.

In deep and intermediate water depths at short ranges, sound levels for direct arrivals recorded by the calibration hydrophone and L–DEO model results for the same array tow depth are in good alignment (see figures 12 and 14 in Diebold *et al.* 2010). Consequently, isopleths falling within this domain can be predicted reliably by the L–DEO model, although they may be imperfectly sampled by measurements recorded at a single depth. At greater distances, the calibration data show that seafloor-reflected and sub-seafloor-refracted arrivals dominate, whereas the direct arrivals become weak and/or incoherent (see figures 11, 12, and 16 in Diebold *et al.* 2010). Aside from local topography effects, the region around the critical distance is where the observed levels rise closest to the model curve. However, the observed sound levels are found to fall almost entirely below the model curve. Thus, analysis of the Gulf of Mexico calibration measurements demonstrates that although simple, the L–DEO model is a robust tool for conservatively estimating isopleths.

The planned high-energy survey will acquire data with the 36-airgun array at a tow depth of 10 to 12 m. For deep water (>1,000 m), we use the deep-water radii obtained from L–DEO model results down to a maximum water depth of 2,000 m for the 36-airgun array. The radii for intermediate water depths (100–1,000 m) are derived from the deep-water ones by applying a correction factor (multiplication) of 1.5, such that observed levels at very near offsets fall below the corrected mitigation curve (see figure 16 in Diebold *et al.* 2010).

L–DEO's modeling methodology is described in greater detail in L–DEO's application. The estimated distances to the Level B harassment isopleth for the planned airgun configuration are shown in table 4.

TABLE 4—PREDICTED RADIAL DISTANCES FROM THE R/V LANGSETH SEISMIC SOURCE TO ISOPLETH CORRESPONDING TO LEVEL B HARASSMENT THRESHOLD

| Airgun configuration | Tow depth (m) [1] | Water depth (m) | Predicted distances (in m) to the Level B harassment threshold |
|---|---|---|---|
| 4 strings, 36 airguns, 6,600 $in^3$ | 12 | >1,000 | [2] 6,733 |
| | | 100–1,000 | [3] 10,100 |

[1] Maximum tow depth was used for conservative distances.
[2] Distance is based on L–DEO model results.
[3] Distance is based on L–DEO model results with a 1.5 × correction factor between deep and intermediate water depths.

TABLE 5—MODELED RADIAL DISTANCE TO ISOPLETHS CORRESPONDING TO LEVEL A HARASSMENT THRESHOLDS

| | Low frequency cetaceans | Mid frequency cetaceans | High frequency cetaceans | Phocid pinnipeds |
|---|---|---|---|---|
| **MCS Surveys** | | | | |
| PTS $SEL_{cum}$ | **320.2** | 0 | 1 | 10.4 |
| PTS Peak | 38.9 | **13.6** | **268.3** | **43.7** |
| **OBS Surveys** | | | | |
| PTS $SEL_{cum}$ | **103.6** | 0 | 0.3 | 3.4 |

TABLE 5—MODELED RADIAL DISTANCE TO ISOPLETHS CORRESPONDING TO LEVEL A HARASSMENT THRESHOLDS—Continued

| | Low frequency cetaceans | Mid frequency cetaceans | High frequency cetaceans | Phocid pinnipeds |
|---|---|---|---|---|
| PTS Peak | 38.9 | **13.6** | **268.3** | **43.7** |

The largest distance (in bold) of the dual criteria (SEL cum or Peak) was used to estimate threshold distances and potential takes by Level A harassment.

Table 5 presents the modeled PTS isopleths for each cetacean hearing group based on L–DEO modeling incorporated in the companion user spreadsheet, for the high-energy surveys with the shortest shot interval (*i.e.* greatest potential to cause PTS based on accumulated sound energy) (NMFS 2018).

Predicted distances to Level A harassment isopleths, which vary based on marine mammal hearing groups, were calculated based on modeling performed by L–DEO using the Nucleus software program and the NMFS user spreadsheet, described below. The acoustic thresholds for impulsive sounds contained in the NMFS Technical Guidance were presented as dual metric acoustic thresholds using both $SEL_{cum}$ and peak sound pressure metrics (NMFS, 2016). As dual metrics, NMFS considers onset of PTS (Level A harassment) to have occurred when either one of the two metrics is exceeded (*i.e.,* metric resulting in the largest isopleth). The $SEL_{cum}$ metric considers both level and duration of exposure, as well as auditory weighting functions by marine mammal hearing group.

The $SEL_{cum}$ for the 36-airgun array is derived from calculating the modified farfield signature. The farfield signature is often used as a theoretical representation of the source level. To compute the farfield signature, the source level is estimated at a large distance (right) below the array (*e.g.,* 9 km), and this level is back projected mathematically to a notional distance of 1 m from the array's geometrical center. However, it has been recognized that the source level from the theoretical farfield signature is never physically achieved at the source when the source is an array of multiple airguns separated in space (Tolstoy *et al.,* 2009). Near the source (at short ranges, distances <1 km), the pulses of sound pressure from each individual airgun in the source array do not stack constructively as they do for the theoretical farfield signature. The pulses from the different airguns spread out in time such that the source levels observed or modeled are the result of the summation of pulses from a few airguns, not the full array (Tolstoy *et al.,* 2009). At larger distances, away from the source array center, sound pressure of all the airguns in the array stack coherently, but not within one time sample, resulting in smaller source levels (a few dB) than the source level derived from the far-field signature. Because the far-field signature does not take into account the large array effect near the source and is calculated as a point source, the far-field signature is not an appropriate measure of the sound source level for large arrays. See L–DEO's application for further detail on acoustic modeling.

Auditory injury is unlikely to occur for mid-frequency cetaceans, given the very small modeled zones of injury for those species (all estimated zones are less than 15 m for mid-frequency cetaceans), in context of distributed source dynamics.

In consideration of the received sound levels in the near-field as described above, we expect the potential for Level A harassment of mid-frequency cetaceans to be de minimis, even before the likely moderating effects of aversion and/or other compensatory behaviors (*e.g.,* Nachtigall *et al.,* 2018) are considered. We do not anticipate that Level A harassment is a likely outcome for any mid-frequency cetacean and do not authorize any take by Level A harassment for these species.

The Level A and Level B harassment estimates are based on a consideration of the number of marine mammals that could be within the area around the operating airgun array where received levels of sound ≥160 dB re 1 µPa rms are predicted to occur. The estimated numbers are based on the densities (numbers per unit area) of marine mammals expected to occur in the area in the absence of seismic surveys. To the extent that marine mammals tend to move away from seismic sources before the sound level reaches the criterion level and tend not to approach an operating airgun array, these estimates likely overestimate the numbers actually exposed to the specified level of sound.

*Marine Mammal Occurrence*

In this section, we provide information about the occurrence of marine mammals, including density or other relevant information which will inform the take calculations.

Habitat-based stratified marine mammal densities for the North Atlantic are taken from the US Navy Atlantic Fleet Training and Testing Area Marine Mammal Density (Roberts *et al.,* 2023; Mannocci *et al.,* 2017), which represent the best available information regarding marine mammal densities in the region. This density information incorporates visual line-transect surveys of marine mammals for over 35 years, resulting in various studies that estimated the abundance, density, and distributions of marine mammal populations. The habitat-based density models consisted of 5 km x 5 km grid cells. The AFTT model does not overlap the survey area but provides density data for marine mammals at the same latitudes and water depths as the planned survey area. The model covers an area of approximately 15–65° N, and from the east coast of the U.S. and Canada to 45° W. More information is available online at *https://seamap.env.duke.edu/models/Duke/AFTT/.* The range of most populations extends past the coverage of the model.

For most species, only annual densities were available. For some baleen whale species, seasonal densities were available; thus, densities that overlapped the timing of the planned survey (*i.e.,* summer) were used.

*Take Estimation*

Here, we describe how the information provided above is synthesized to produce a quantitative estimate of the take that is reasonably likely to occur and authorized. In order to estimate the number of marine mammals predicted to be exposed to sound levels that would result in Level A or Level B harassment, radial distances from the airgun array to the predicted isopleth corresponding to the Level A harassment and Level B harassment thresholds are calculated, as described above. Those radial distances were then used to calculate the area(s) around the airgun array predicted to be ensonified to sound levels that exceed the harassment thresholds. The distance for the 160-dB Level B harassment threshold and PTS (Level A harassment)

thresholds (based on L–DEO model results) was used to draw a buffer around the area expected to be ensonified (*i.e.,* the survey area). The ensonified areas were then increased by 25 percent to account for potential delays, which is equivalent to adding 25 percent to the planned line km to be surveyed. The density for each species was then multiplied by the daily ensonified areas (increased as described above) and then multiplied by the number of survey days (14) to estimate potential takes (see appendix B of L–DEO's application for more information).

L–DEO assumed that their estimates of marine mammal exposures above harassment thresholds equate to take and requested authorization of those takes. Those estimates in turn form the basis for our take authorization numbers. For the species for which NMFS does not expect there to be a reasonable potential for take by Level A harassment to occur (*i.e.,* mid-frequency cetaceans and phocid seals), we have added L–DEO's estimated exposures above Level A harassment thresholds to their estimated exposures above the Level B harassment threshold to produce a total number of incidents of take by Level B harassment that are authorized. Estimated exposures and authorized take numbers for authorization are shown in table 6.

TABLE 6—ESTIMATED TAKE AUTHORIZED

| Species | Estimated take | | Authorized take | | Modeled abundance [1] | Percent of modeled abundance [2] |
|---|---|---|---|---|---|---|
| | Level B | Level A | Level B | Level A | | |
| Humpback whale [3] | 80 | 3 | 80 | 3 | 4,990 | 1.66 |
| Minke whale | 84 | 3 | 84 | 3 | 13,784 | 0.63 |
| Fin whale | 82 | 3 | 82 | 3 | 11,672 | 0.73 |
| Sei whale | 113 | 4 | 113 | 4 | 19,530 | 0.60 |
| Blue whale | 1 | 0 | 1 | 0 | 191 | 0.53 |
| Sperm whale | 214 | 0 | 214 | 0 | 64,015 | 0.33 |
| Northern bottlenose whale | 2 | 0 | 2 | 0 | 1,056 | 0.23 |
| Beaked whales [4] | 255 | 0 | 255 | 0 | 65,069 | 0.39 |
| Risso's dolphin | 914 | 2 | 916 | 0 | 78,205 | 1.17 |
| Atlantic white-sided dolphin | 4,052 | 8 | 4,060 | 0 | 175,299 | 2.23 |
| Bottlenose dolphin | 974 | 2 | 976 | 0 | 418,151 | 0.23 |
| Striped dolphin | 148 | 0 | 148 | 0 | 412,729 | 0.04 |
| White-beaked dolphin | 46 | 0 | 46 | 0 | 2,627 | 1.76 |
| Common dolphin | 13,443 | 25 | 13,468 | 0 | 418,151 | 2.85 |
| Long-finned pilot whale [5] | 1,020 | 2 | 1,022 | 0 | 264,907 | 0.39 |
| Killer whale | 24 | 0 | 24 | 0 | 972 | 2.48 |
| Harbor porpoise | 1,181 | 45 | 1,181 | 45 | 94,583 | 1.30 |
| Phocid Seals [6] | 5,844 | 35 | 5,879 | 0 | 150,075 | 3.92 |

[1] Modeled abundance (Roberts *et al.,* 2023) or North Atlantic abundance (NAMMCO, 2023), where applicable.
[2] Requested take authorization is expressed as percent of population for the AFTT Area (Roberts *et al.,* 2023).
[3] Based on the best population estimates of 10,752 individuals for the West Indies breeding population (Stevick *et al.,* 2003), and 260 individuals for the Cape Verde breeding population (Ryan *et al.,* 2014); the ratio for these 2 populations was applied to estimate 2 takes for the Cape Verde/Northwest Africa DPS and 81 takes for the West Indies DPS.
[4] Beaked whale guild. Includes Cuvier's beaked whale, Blainville's beaked whale, and Sowerby's beaked whale. Most takes are assumed to be for Cuvier's beaked whale, as they are most likely to be encountered in the survey area.
[5] Takes based on density for *Globicephala sp.* All takes are assumed to be for long-finned pilot whales as short-finned pilot whales are only found in tropical, sub-tropical, and warm temperate waters (Olson, 2018) and are not expected to be found at this latitude.
[6] Seal guild. Includes hooded seal, harp seal, bearded seal, gray seal and harbor seal. Most takes are assumed to be for hooded seal and harp seal, as they are the most likely to be encountered in the survey area.

## 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.

### *Vessel-Based Visual Mitigation Monitoring*

Visual monitoring requires the use of trained observers (herein referred to as visual protected species observers (PSOs)) to scan the ocean surface for the presence of marine mammals. The area to be scanned visually includes primarily the shutdown zone (SZ), within which observation of certain marine mammals requires shutdown of the acoustic source, a buffer zone, and to the extent possible depending on conditions, the surrounding waters. The buffer zone means an area beyond the SZ to be monitored for the presence of marine mammals that may enter the SZ. During pre-start clearance monitoring (*i.e.,* before ramp-up begins), the buffer zone also acts as an extension of the SZ in that observations of marine mammals within the buffer zone would also prevent airgun operations from beginning (*i.e.,* ramp-up). The buffer zone encompasses the area at and below the sea surface from the edge of the 0–

500 m SZ, out to a radius of 1,000 m from the edges of the airgun array (500–1,000 m). This 1,000-m zone (SZ plus buffer) represents the pre-start clearance zone. Visual monitoring of the SZ and adjacent waters (buffer plus surrounding waters) is intended to establish and, when visual conditions allow, maintain zones around the sound source that are clear of marine mammals, thereby reducing or eliminating the potential for injury and minimizing the potential for more severe behavioral reactions for animals occurring closer to the vessel. Visual monitoring of the buffer zone is intended to (1) provide additional protection to marine mammals that may be in the vicinity of the vessel during pre-start clearance, and (2) during airgun use, aid in establishing and maintaining the SZ by alerting the visual observer and crew of marine mammals that are outside of, but may approach and enter, the SZ.

During survey operations (*e.g.,* any day on which use of the airgun array is planned to occur and whenever the airgun array is in the water, whether activated or not), a minimum of two visual PSOs must be on duty and conducting visual observations at all times during daylight hours (*i.e.,* from 30 minutes prior to sunrise through 30 minutes following sunset). Visual monitoring of the pre-start clearance zone must begin no less than 30 minutes prior to ramp-up and monitoring must continue until 1 hour after use of the airgun array ceases or until 30 minutes past sunset. Visual PSOs shall coordinate to ensure 360° visual coverage around the vessel from the most appropriate observation posts and shall conduct visual observations using binoculars and the naked eye while free from distractions and in a consistent, systematic, and diligent manner.

PSOs shall establish and monitor the SZ and buffer zone. These zones shall be based upon the radial distance from the edges of the airgun array (rather than being based on the center of the array or around the vessel itself). During use of the airgun array (*i.e.,* anytime airguns are active, including ramp-up), detections of marine mammals within the buffer zone (but outside the SZ) shall be communicated to the operator to prepare for the potential shutdown of the airgun array. Visual PSOs will immediately communicate all observations to the on duty acoustic PSO(s), including any determination by the PSO regarding species identification, distance, and bearing and the degree of confidence in the determination. Any observations of marine mammals by crew members shall be relayed to the PSO team. During good conditions (*e.g.,* daylight hours; Beaufort sea state (BSS) 3 or less), visual PSOs shall conduct observations when the airgun array is not operating for comparison of sighting rates and behavior with and without use of the airgun array and between acquisition periods, to the maximum extent practicable.

Visual PSOs may be on watch for a maximum of 4 consecutive hours followed by a break of at least 1 hour between watches and may conduct a maximum of 12 hours of observation per 24-hour period. Combined observational duties (visual and acoustic but not at same time) may not exceed 12 hours per 24-hour period for any individual PSO.

*Passive Acoustic Monitoring*

Passive acoustic monitoring (PAM) means the use of trained personnel (sometimes referred to as PAM operators, herein referred to as acoustic PSOs) to operate PAM equipment to acoustically detect the presence of marine mammals. Acoustic monitoring involves acoustically detecting marine mammals regardless of distance from the source, as localization of animals may not always be possible. Acoustic monitoring is intended to further support visual monitoring (during daylight hours) in maintaining a SZ around the sound source that is clear of marine mammals. In cases where visual monitoring is not effective (*e.g.,* due to weather, nighttime), acoustic monitoring may be used to allow certain activities to occur, as further detailed below.

PAM will take place in addition to the visual monitoring program. Visual monitoring typically is not effective during periods of poor visibility or at night and even with good visibility, is unable to detect marine mammals when they are below the surface or beyond visual range. Acoustic monitoring can be used in addition to visual observations to improve detection, identification, and localization of cetaceans. The acoustic monitoring would serve to alert visual PSOs (if on duty) when vocalizing cetaceans are detected. It is only useful when marine mammals vocalize, but it can be effective either by day or by night and does not depend on good visibility. It will be monitored in real time so that the visual observers can be advised when cetaceans are detected.

The R/V Langseth will use a towed PAM system, which must be monitored by at a minimum one on duty acoustic PSO beginning at least 30 minutes prior to ramp-up and at all times during use of the airgun array. Acoustic PSOs may be on watch for a maximum of 4 consecutive hours followed by a break of at least 1 hour between watches and may conduct a maximum of 12 hours of observation per 24-hour period. Combined observational duties (acoustic and visual but not at same time) may not exceed 12 hours per 24-hour period for any individual PSO.

Survey activity may continue for 30 minutes when the PAM system malfunctions or is damaged, while the PAM operator diagnoses the issue. If the diagnosis indicates that the PAM system must be repaired to solve the problem, operations may continue for an additional 10 hours without acoustic monitoring during daylight hours only under the following conditions:

- Sea state is less than or equal to BSS 4;
- No marine mammals (excluding delphinids) detected solely by PAM in the SZ in the previous 2 hours;
- NMFS is notified via email as soon as practicable with the time and location in which operations began occurring without an active PAM system; and
- Operations with an active airgun array, but without an operating PAM system, do not exceed a cumulative total of 10 hours in any 24-hour period.

*Establishment of Shutdown and Pre-Start Clearance Zones*

A SZ is a defined area within which occurrence of a marine mammal triggers mitigation action intended to reduce the potential for certain outcomes (*e.g.,* auditory injury, disruption of critical behaviors). The PSOs will establish a minimum SZ with a 500-m radius. The 500-m SZ will be based on radial distance from the edge of the airgun array (rather than being based on the center of the array or around the vessel itself). With certain exceptions (described below), if a marine mammal appears within or enters this zone, the airgun array will be shut down.

The pre-start clearance zone is defined as the area that must be clear of marine mammals prior to beginning ramp-up of the airgun array and includes the SZ plus the buffer zone. Detections of marine mammals within the pre-start clearance zone would prevent airgun operations from beginning (*i.e.,* ramp-up).

The 500-m SZ is intended to be precautionary in the sense that it would be expected to contain sound exceeding the injury criteria for all cetacean hearing groups, (based on the dual criteria of $SEL_{cum}$ and peak SPL), while also providing a consistent, reasonably observable zone within which PSOs would typically be able to conduct effective observational effort.

Additionally, a 500-m SZ is expected to minimize the likelihood that marine mammals will be exposed to levels likely to result in more severe behavioral responses. Although significantly greater distances may be observed from an elevated platform under good conditions, we expect that 500 m is likely regularly attainable for PSOs using the naked eye during typical conditions. The pre-start clearance zone simply represents the addition of a buffer to the SZ, doubling the SZ size during pre-clearance.

An extended SZ of 1,500 m must be enforced for all beaked whales, a large whale with a calf, and groups of six or more large whales. No buffer of this extended SZ is required, as NMFS concludes that this extended SZ is sufficiently protective to mitigate harassment to these groups.

*Pre-Start Clearance and Ramp-Up*

Ramp-up (sometimes referred to as ''soft start'') means the gradual and systematic increase of emitted sound levels from an airgun array. Ramp-up begins by first activating a single airgun of the smallest volume, followed by doubling the number of active elements in stages until the full complement of an array's airguns are active. Each stage should be approximately the same duration, and the total duration should not be less than approximately 20 minutes. The intent of pre-start clearance observation (30 minutes) is to ensure no marine mammals are observed within the pre-start clearance zone (or extended SZ, for beaked whales, a large whale with a calf, and groups of six or more large whales) prior to the beginning of ramp-up. During the pre-start clearance period is the only time observations of marine mammals in the buffer zone would prevent operations (*i.e.,* the beginning of ramp-up). The intent of ramp-up is to warn marine mammals of pending seismic survey operations and to allow sufficient time for those animals to leave the immediate vicinity prior to the sound source reaching full intensity. A ramp-up procedure, involving a step-wise increase in the number of airguns firing and total array volume until all operational airguns are activated and the full volume is achieved, is required at all times as part of the activation of the airgun array. All operators must adhere to the following pre-start clearance and ramp-up requirements:

- The operator must notify a designated PSO of the planned start of ramp-up as agreed upon with the lead PSO; the notification time should not be less than 60 minutes prior to the planned ramp-up in order to allow the PSOs time to monitor the pre-start clearance zone (and extended SZ) for 30 minutes prior to the initiation of ramp-up (pre-start clearance);
- Ramp-ups shall be scheduled so as to minimize the time spent with the source activated prior to reaching the designated run-in;
- One of the PSOs conducting pre-start clearance observations must be notified again immediately prior to initiating ramp-up procedures and the operator must receive confirmation from the PSO to proceed;
- Ramp-up may not be initiated if any marine mammal is within the applicable shutdown or buffer zone. If a marine mammal is observed within the pre-start clearance zone (or extended SZ, for beaked whales, a large whale with a calf, and groups of six or more large whales) during the 30 minute pre-start clearance period, ramp-up may not begin until the animal(s) has been observed exiting the zones or until an additional time period has elapsed with no further sightings (15 minutes for small odontocetes and pinnipeds, and 30 minutes for all mysticetes and all other odontocetes, including sperm whales, beaked whales, and large delphinids, such as pilot whales);
- Ramp-up shall begin by activating a single airgun of the smallest volume in the array and shall continue in stages by doubling the number of active elements at the commencement of each stage, with each stage of approximately the same duration. Duration shall not be less than 20 minutes. The operator must provide information to the PSO documenting that appropriate procedures were followed;
- PSOs must monitor the pre-start clearance zone and extended SZ during ramp-up, and ramp-up must cease and the source must be shut down upon detection of a marine mammal within the applicable zone. Once ramp-up has begun, detections of marine mammals within the buffer zone do not require shutdown, but such observation shall be communicated to the operator to prepare for the potential shutdown;
- Ramp-up may occur at times of poor visibility, including nighttime, if appropriate acoustic monitoring has occurred with no detections in the 30 minutes prior to beginning ramp-up. Airgun array activation may only occur at times of poor visibility where operational planning cannot reasonably avoid such circumstances;
- If the airgun array is shut down for brief periods (*i.e.,* less than 30 minutes) for reasons other than implementation of prescribed mitigation (*e.g.,* mechanical difficulty), it may be activated again without ramp-up if PSOs have maintained constant visual and/or acoustic observation and no visual or acoustic detections of marine mammals have occurred within the pre-start clearance zone (or extended SZ, where applicable). For any longer shutdown, pre-start clearance observation and ramp-up are required; and
- Testing of the airgun array involving all elements requires ramp-up. Testing limited to individual source elements or strings does not require ramp-up but does require pre-start clearance of 30 minutes.

*Shutdown*

The shutdown of an airgun array requires the immediate de-activation of all individual airgun elements of the array. Any PSO on duty will have the authority to call for shutdown of the airgun array if a marine mammal is detected within the applicable SZ. The operator must also establish and maintain clear lines of communication directly between PSOs on duty and crew controlling the airgun array to ensure that shutdown commands are conveyed swiftly while allowing PSOs to maintain watch. When both visual and acoustic PSOs are on duty, all detections will be immediately communicated to the remainder of the on-duty PSO team for potential verification of visual observations by the acoustic PSO or of acoustic detections by visual PSOs. When the airgun array is active (*i.e.,* anytime one or more airguns is active, including during ramp-up) and (1) a marine mammal appears within or enters the applicable SZ and/or (2) a marine mammal (other than delphinids, see below) is detected acoustically and localized within the applicable SZ, the airgun array will be shut down. When shutdown is called for by a PSO, the airgun array will be immediately deactivated and any dispute resolved only following deactivation. Additionally, shutdown will occur whenever PAM alone (without visual sighting), confirms presence of marine mammal(s) in the SZ. If the acoustic PSO cannot confirm presence within the SZ, visual PSOs will be notified but shutdown is not required.

Following a shutdown, airgun activity will not resume until the marine mammal has cleared the SZ. The animal will be considered to have cleared the SZ if it is visually observed to have departed the SZ (*i.e.,* animal is not required to fully exit the buffer zone where applicable), or it has not been seen within the SZ for 15 minutes for small odontocetes or 30 minutes for all mysticetes and all other odontocetes, including sperm whales, beaked whales,

and large delphinids, such as pilot whales.

The shutdown requirement is waived for pinnipeds and specific genera of small dolphins if an individual is detected within the SZ. The small dolphin group is intended to encompass those members of the Family Delphinidae most likely to voluntarily approach the source vessel for purposes of interacting with the vessel and/or airgun array (*e.g.,* bow riding). This exception to the shutdown requirement applies solely to pinnipeds and the specific genera of small dolphins (*Delphinus, Lagenodelphis, Stenella,* and *Tursiops*).

We include this pinniped and small dolphin exception because shutdown requirements for these species under all circumstances represent practicability concerns without likely commensurate benefits for the animals in question. Small dolphins are generally the most commonly observed marine mammals in the specific geographic region and would typically be the only marine mammals likely to intentionally approach the vessel. As described above, auditory injury is extremely unlikely to occur for mid-frequency cetaceans (*e.g.,* phocid seals and delphinids), as this group is relatively insensitive to sound produced at the predominant frequencies in an airgun pulse while also having a relatively high threshold for the onset of auditory injury (*i.e.,* permanent threshold shift).

A large body of anecdotal evidence indicates that small dolphins commonly approach vessels and/or towed arrays during active sound production for purposes of bow riding with no apparent effect observed (*e.g.,* Barkaszi *et al.,* 2012, Barkaszi and Kelly, 2018). The potential for increased shutdowns resulting from such a measure would require the Langseth to revisit the missed track line to reacquire data, resulting in an overall increase in the total sound energy input to the marine environment and an increase in the total duration over which the survey is active in a given area. Although other mid-frequency hearing specialists (*e.g.,* large delphinids) are no more likely to incur auditory injury than are small dolphins, they are much less likely to approach vessels. Therefore, retaining a shutdown requirement for large delphinids would not have similar impacts in terms of either practicability for the applicant or corollary increase in sound energy output and time on the water. We do anticipate some benefit for a shutdown requirement for large delphinids in that it simplifies somewhat the total range of decision-making for PSOs and may preclude any potential for physiological effects other than to the auditory system as well as some more severe behavioral reactions for any such animals in close proximity to the Langseth.

Visual PSOs shall use best professional judgment in making the decision to call for a shutdown if there is uncertainty regarding identification (*i.e.,* whether the observed marine mammal(s) belongs to one of the delphinid genera for which shutdown is waived or one of the species with a larger SZ).

L–DEO must implement shutdown if a marine mammal species for which take was not authorized or a species for which authorization was granted but the authorized takes have been met approaches the Level A or Level B harassment zones. L–DEO must also implement shutdown if any large whale (defined as a sperm whale or any mysticete species) with a calf (defined as an animal less than two-thirds the body size of an adult observed to be in close association with an adult) and/or an aggregation of six or more large whales are observed within the extended SZ (1,500 m).

*Vessel Strike Avoidance Mitigation Measures*

Vessel personnel should use an appropriate reference guide that includes identifying information on all marine mammals that may be encountered. Vessel operators must comply with the below measures except under extraordinary circumstances when the safety of the vessel or crew is in doubt or the safety of life at sea is in question. These requirements do not apply in any case where compliance would create an imminent and serious threat to a person or vessel or to the extent that a vessel is restricted in its ability to maneuver and, because of the restriction, cannot comply.

Vessel operators and crews must maintain a vigilant watch for all marine mammals and slow down, stop their vessel, or alter course, as appropriate and regardless of vessel size, to avoid striking any marine mammal. A single marine mammal at the surface may indicate the presence of submerged animals in the vicinity of the vessel; therefore, precautionary measures should always be exercised. A visual observer aboard the vessel must monitor a vessel strike avoidance zone around the vessel (separation distances stated below). Visual observers monitoring the vessel strike avoidance zone may be third-party observers (*i.e.,* PSOs) or crew members, but crew members responsible for these duties must be provided sufficient training to (1) distinguish marine mammals from other phenomena; and (2) broadly to identify a marine mammal as a right whale, other whale (defined in this context as sperm whales or baleen whales other than right whales), or other marine mammals.

Vessel speeds must be reduced to 10 knots (kn; 18.5 kilometers per hour (kph)) or less when mother/calf pairs, pods, or large assemblages of cetaceans are observed near a vessel. All vessels must maintain a minimum separation distance of 100 m from sperm whales and all other baleen whales. All vessels must, to the maximum extent practicable, attempt to maintain a minimum separation distance of 50 m from all other marine mammals, with an understanding that at times this may not be possible (*e.g.,* for animals that approach the vessel).

When marine mammals are sighted while a vessel is underway, the vessel shall take action as necessary to avoid violating the relevant separation distance (*e.g.,* attempt to remain parallel to the animal's course, avoid excessive speed or abrupt changes in direction until the animal has left the area). If marine mammals are sighted within the relevant separation distance, the vessel must reduce speed and shift the engine to neutral, not engaging the engines until animals are clear of the area. This does not apply to any vessel towing gear or any vessel that is navigationally constrained.

Based on our evaluation of the applicant's planned measures, as well as other measures considered by NMFS, NMFS has determined that the 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.

*Vessel-Based Visual Monitoring*

As described above, PSO observations will take place during daytime airgun operations. During seismic survey operations, at least five visual PSOs will be based aboard the Langseth. Two visual PSOs will be on duty at all times during daytime hours. Monitoring shall be conducted in accordance with the following requirements:

- The operator shall provide PSOs with bigeye binoculars (*e.g.,* 25 × 150; 2.7 view angle; individual ocular focus; height control) of appropriate quality solely for PSO use. These shall be pedestal-mounted on the deck at the most appropriate vantage point that provides for optimal sea surface observation, PSO safety, and safe operation of the vessel; and
- The operator will work with the selected third-party observer provider to ensure PSOs have all equipment (including backup equipment) needed to adequately perform necessary tasks, including accurate determination of distance and bearing to observed marine mammals.

PSOs must have the following requirements and qualifications:

- PSOs shall be independent, dedicated, trained visual and acoustic PSOs and must be employed by a third-party observer provider;
- PSOs shall have no tasks other than to conduct observational effort (visual or acoustic), collect data, and communicate with and instruct relevant vessel crew with regard to the presence of protected species and mitigation requirements (including brief alerts regarding maritime hazards);
- PSOs shall have successfully completed an approved PSO training course appropriate for their designated task (visual or acoustic). Acoustic PSOs are required to complete specialized training for operating PAM systems and are encouraged to have familiarity with the vessel with which they will be working;
- PSOs can act as acoustic or visual observers (but not at the same time) as long as they demonstrate that their training and experience are sufficient to perform the task at hand;
- NMFS must review and approve PSO resumes accompanied by a relevant training course information packet that includes the name and qualifications (*i.e.,* experience, training completed, or educational background) of the instructor(s), the course outline or syllabus, and course reference material as well as a document stating successful completion of the course;
- PSOs must successfully complete relevant training, including completion of all required coursework and passing (80 percent or greater) a written and/or oral examination developed for the training program;
- PSOs must have successfully attained a bachelor's degree from an accredited college or university with a major in one of the natural sciences, a minimum of 30 semester hours or equivalent in the biological sciences, and at least one undergraduate course in math or statistics; and
- The educational requirements may be waived if the PSO has acquired the relevant skills through alternate experience. Requests for such a waiver shall be submitted to NMFS and must include written justification. Requests shall be granted or denied (with justification) by NMFS within 1 week of receipt of submitted information. Alternate experience that may be considered includes, but is not limited to (1) secondary education and/or experience comparable to PSO duties; (2) previous work experience conducting academic, commercial, or government-sponsored protected species surveys; or (3) previous work experience as a PSO; the PSO should demonstrate good standing and consistently good performance of PSO duties.
- At least one of the visual and two of the acoustic PSOs aboard the vessel must have a minimum of 90 days at-sea experience working in those roles, respectively, with no more than 18 months elapsed since the conclusion of the at-sea experience. One visual PSO with such experience shall be designated as the lead for the entire protected species observation team. The lead PSO shall serve as primary point of contact for the vessel operator and ensure all PSO requirements per the IHA are met. To the maximum extent practicable, the experienced PSOs should be scheduled to be on duty with those PSOs with appropriate training but who have not yet gained relevant experience.
- For data collection purposes, PSOs shall use standardized electronic data collection forms. PSOs shall record detailed information about any implementation of mitigation requirements, including the distance of animals to the airgun array and description of specific actions that ensued, the behavior of the animal(s), any observed changes in behavior before and after implementation of mitigation, and if shutdown was implemented, the length of time before any subsequent ramp-up of the airgun array. If required mitigation was not implemented, PSOs should record a description of the circumstances. At a minimum, the following information must be recorded:
  - Vessel name, vessel size and type, maximum speed capability of vessel;
  - Dates (MM/DD/YYYY) of departures and returns to port with port name;
  - PSO names and affiliations, PSO ID (initials or other identifier);
  - Date (MM/DD/YYYY) and participants of PSO briefings;
  - Visual monitoring equipment used (description);
  - PSO location on vessel and height (meters) of observation location above water surface;
  - Watch status (description);
  - Dates (MM/DD/YYYY) and times (Greenwich Mean Time/UTC) of survey on/off effort and times (GMC/UTC) corresponding with PSO on/off effort;
  - Vessel location (decimal degrees) when survey effort began and ended and vessel location at beginning and end of visual PSO duty shifts;
  - Vessel location (decimal degrees) at 30-second intervals if obtainable from data collection software, otherwise at practical regular interval;

- Vessel heading (compass heading) and speed (knots) at beginning and end of visual PSO duty shifts and upon any change;
- Water depth (meters) (if obtainable from data collection software);
- Environmental conditions while on visual survey (at beginning and end of PSO shift and whenever conditions changed significantly), including BSS and any other relevant weather conditions including cloud cover, fog, sun glare, and overall visibility to the horizon;
- Factors that may have contributed to impaired observations during each PSO shift change or as needed as environmental conditions changed (description) (*e.g.,* vessel traffic, equipment malfunctions); and
- Vessel/Survey activity information (and changes thereof) (description), such as airgun power output while in operation, number and volume of airguns operating in the array, tow depth of the array, and any other notes of significance (*i.e.,* pre-start clearance, ramp-up, shutdown, testing, shooting, ramp-up completion, end of operations, streamers, *etc.*).

• Upon visual observation of any marine mammals, the following information must be recorded:

- Sighting ID (numeric);
- Watch status (sighting made by PSO on/off effort, opportunistic, crew, alternate vessel/platform);
- Location of PSO/observer (description);
- Vessel activity at the time of the sighting (*e.g.,* deploying, recovering, testing, shooting, data acquisition, other);
- PSO who sighted the animal/ID;
- Time/date of sighting (GMT/UTC, MM/DD/YYYY);
- Initial detection method (description);
- Sighting cue (description);
- Vessel location at time of sighting (decimal degrees);
- Water depth (meters);
- Direction of vessel's travel (compass direction);
- Speed (knots) of the vessel from which the observation was made;
- Direction of animal's travel relative to the vessel (description, compass heading);
- Bearing to sighting (degrees);
- Identification of the animal (*e.g.,* genus/species, lowest possible taxonomic level, or unidentified) and the composition of the group if there is a mix of species;
- Species reliability (an indicator of confidence in identification) (1 = unsure/possible, 2 = probable, 3 = definite/sure, 9 = unknown/not recorded);
- Estimated distance to the animal (meters) and method of estimating distance;
- Estimated number of animals (high/low/best) (numeric);
- Estimated number of animals by cohort (adults, yearlings, juveniles, calves, group composition, *etc.*);
- Description (as many distinguishing features as possible of each individual seen, including length, shape, color, pattern, scars or markings, shape and size of dorsal fin, shape of head, and blow characteristics);
- Detailed behavior observations (*e.g.,* number of blows/breaths, number of surfaces, breaching, spyhopping, diving, feeding, traveling; as explicit and detailed as possible; note any observed changes in behavior);
- Animal's closest point of approach (meters) and/or closest distance from any element of the airgun array;
- Description of any actions implemented in response to the sighting (*e.g.,* delays, shutdown, ramp-up) and time and location of the action;
- Photos (Yes/No);
- Photo Frame Numbers (List of numbers); and
- Conditions at time of sighting (Visibility; BSS).

If a marine mammal is detected while using the PAM system, the following information should be recorded:

• An acoustic encounter identification number, and whether the detection was linked with a visual sighting;

• Date and time when first and last heard;

• Types and nature of sounds heard (*e.g.,* clicks, whistles, creaks, burst pulses, continuous, sporadic, strength of signal); and

• Any additional information recorded such as water depth of the hydrophone array, bearing of the animal to the vessel (if determinable), species or taxonomic group (if determinable), spectrogram screenshot, and any other notable information.

*Reporting*

L–DEO shall submit a draft comprehensive report on all activities and monitoring results within 90 days of the completion of the survey or expiration of the IHA, whichever comes sooner. The report must describe all activities conducted and sightings of marine mammals, must provide full documentation of methods, results, and interpretation pertaining to all monitoring, and must summarize the dates and locations of survey operations and all marine mammal sightings (dates, times, locations, activities, associated survey activities). The draft report shall also include geo-referenced time-stamped vessel tracklines for all time periods during which airgun arrays were operating. Tracklines should include points recording any change in airgun array status (*e.g.,* when the sources began operating, when they were turned off, or when they changed operational status such as from full array to single gun or vice versa). Geographic Information System files shall be provided in Environmental Systems Research Institute shapefile format and include the UTC date and time, latitude in decimal degrees, and longitude in decimal degrees. All coordinates shall be referenced to the WGS84 geographic coordinate system. In addition to the report, all raw observational data shall be made available. The report must summarize data collected as described above in Monitoring and Reporting. A final report must be submitted within 30 days following resolution of any comments on the draft report.

The report must include a validation document concerning the use of PAM, which should include necessary noise validation diagrams and demonstrate whether background noise levels on the PAM deployment limited achievement of the planned detection goals. Copies of any vessel self-noise assessment reports must be included with the report.

*Reporting Injured or Dead Marine Mammals*

*Discovery of injured or dead marine mammals*—In the event that personnel involved in the survey activities discover an injured or dead marine mammal, the L–DEO shall report the incident to the Office of Protected Resources (OPR) and NMFS as soon as feasible. 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.

*Vessel strike*—In the event of a strike of a marine mammal by any vessel involved in the activities covered by the authorization, L–DEO shall report the incident to OPR and NMFS as soon as feasible. The report must include the following information:

- Time, date, and location (latitude/longitude) of the incident;
- Vessel's speed during and leading up to the incident;
- Vessel's course/heading and what operations were being conducted (if applicable);
- Status of all sound sources in use;
- Description of avoidance measures/requirements that were in place at the time of the strike and what additional measure were taken, if any, to avoid strike;
- Environmental conditions (*e.g.,* wind speed and direction, BSS, cloud cover, visibility) immediately preceding the strike;
- Species identification (if known) or description of the animal(s) involved;
- Estimated size and length of the animal that was struck;
- Description of the behavior of the marine mammal immediately preceding and following the strike;
- If available, description of the presence and behavior of any other marine mammals present immediately preceding the strike;
- Estimated fate of the animal (*e.g.,* dead, injured but alive, injured and moving, blood or tissue observed in the water, status unknown, disappeared); and
- To the extent practicable, photographs or video footage of the animal(s).

**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 all the species listed in table 1, given that the anticipated effects of this activity on these different marine mammal stocks are expected to be similar. Where there are meaningful differences between species or stocks they are included as separate subsections below. NMFS does not anticipate that serious injury or mortality would occur as a result of L–DEO's planned survey, even in the absence of mitigation, and no serious injury or mortality is authorized. As discussed in the Potential Effects of Specified Activities on Marine Mammals and Their Habitat section above, non-auditory physical effects and vessel strike are not expected to occur. NMFS expects that the majority of potential takes would be in the form of short-term Level B behavioral harassment, resulting from temporary avoidance of the area or decreased foraging (if such activity was occurring), reactions that are considered to be of low severity and with no lasting biological consequences (*e.g.,* Southall *et al.,* 2007).

We have authorized a limited number of Level A harassment events of five species in the form of PTS (humpback whale, minke whale, fin whale, sei whale, and harbor porpoise) and Level B harassment only of the remaining marine mammal species. If any PTS is incurred in marine mammals as a result of the specified activity, we expect only a small degree of PTS that would not result in severe hearing impairment because of the constant movement of both the Langseth and of the marine mammals in the project areas, as well as the fact that the vessel is not expected to remain in any one area in which individual marine mammals would be expected to concentrate for an extended period of time. Additionally, L–DEO will shut down the airgun array if marine mammals approach within 500 m (with the exception of specific genera of dolphins, see Mitigation), further reducing the expected duration and intensity of sound and therefore, the likelihood of marine mammals incurring PTS. Since the duration of exposure to loud sounds will be relatively short, it would be unlikely to affect the fitness of any individuals. Also, as described above, we expect that marine mammals would likely 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 of the Langseth's approach due to the vessel's relatively low speed when conducting seismic surveys.

In addition, the maximum expected Level B harassment zone around the survey vessel is 6,733 m for water depths greater than 1,000 m (and up to 10,100 m in water depths of 100 to 1,000 m), with 78% of the survey occurring in depths greater than 1,000 m. Therefore, the ensonified area surrounding the vessel is relatively small compared to the overall distribution of animals in the area and their use of the habitat. Feeding behavior is not likely to be significantly impacted as prey species are mobile and are broadly distributed throughout the survey area; therefore, marine mammals that may be temporarily displaced during survey activities are expected to be able to resume foraging once they have moved away from areas with disturbing levels of underwater noise. Because of the short duration (14 survey days) and temporary nature of the disturbance and the availability of similar habitat and resources in the surrounding area, the impacts to marine mammals and marine mammal prey species are not expected to cause significant or long-term fitness consequences for individual marine mammals or their populations.

Additionally, the acoustic ''footprint'' of the survey is very small relative to the ranges of all marine mammals that would potentially be affected. Sound levels will increase in the marine environment in a relatively small area surrounding the vessel compared to the range of the marine mammals within the survey area. The seismic array will be active 24 hours per day throughout the duration of the planned survey. However, the very brief overall duration of the planned survey (14 survey days) will further limit potential impacts that may occur as a result of the activity.

Of the marine mammal species that are likely to occur in the project area, the following species are listed as endangered under the ESA: humpback whales (Cape Verde/Northwest Africa DPS), blue whales, fin whales, sei whales, and sperm whales. The take numbers authorized for these species (table 6) are minimal relative to their modeled population sizes; therefore, we do not expect population-level impacts to any of these species. Moreover, the actual range of the populations extends

past the area covered by the model, so modeled population sizes are likely smaller than their actual population size. The other marine mammal species that may be taken by harassment during NSF's seismic survey are not listed as threatened or endangered under the ESA. There is no designated critical habitat for any ESA-listed marine mammals within the project area.

There are no rookeries, mating, or calving grounds known to be biologically important to marine mammals within the survey area, and there are no feeding areas known to be biologically important to marine mammals within the survey area.

*Marine Mammal Species With Active UMEs*

As discussed above, there are several active unusual mortality events (UMEs) for marine mammal populations that occur in the survey area. Elevated humpback whale mortalities have occurred along the Atlantic coast from Maine through Florida since January 2016. Of the cases examined, approximately half had evidence of human interaction (ship strike or entanglement). The UME does not yet provide cause for concern regarding population-level impacts. Only the West Indies DPS is potentially impacted by this UME, and their current population remains stable at approximately 12,000 individuals.

The mitigation measures are expected to reduce, to the extent practicable, the intensity and/or duration of takes for all species listed in table 1. In particular, they would provide animals the opportunity to move away from the sound source throughout the survey area before seismic survey equipment reaches full energy, thus, preventing them from being exposed to sound levels that have the potential to cause injury (Level A harassment) or more severe Level B harassment.

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 populations through effects on annual rates of recruitment or survival:

- No serious injury or mortality is anticipated or authorized;
- We have authorized a limited number of Level A harassment events of five species in the form of PTS; if any PTS is incurred as a result of the specified activity, we expect only a small degree of PTS that would not result in severe hearing impairment because of the constant movement of both the vessel and of the marine mammals in the project areas, as well as the fact that the vessel is not expected to remain in any one area in which individual marine mammals would be expected to concentrate for an extended period of time;
- The planned activity is temporary and of relatively short duration (38 days total with 14 days of planned survey activity);
- The vast majority of anticipated impacts of the planned activity on marine mammals would be temporary behavioral changes due to avoidance of the ensonified area, which is relatively small (*see* table 4);
- The availability of alternative areas of similar habitat value for marine mammals to temporarily vacate the survey area during the planned survey to avoid exposure to sounds from the activity is readily abundant;
- The potential adverse effects on fish or invertebrate species that serve as prey species for marine mammals from the planned survey would be temporary and spatially limited and impacts to marine mammal foraging would be minimal; and
- The planned mitigation measures are expected to reduce the number and severity of takes, to the extent practicable, by visually and/or acoustically detecting marine mammals within the established zones and implementing corresponding mitigation measures (*e.g.,* delay; shutdown).

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 monitoring and mitigation measures, NMFS finds that the marine mammal take from the planned activity will have a negligible impact on all affected marine mammal species or populations.

**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 population 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 population 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.

The number of takes NMFS authorized is below one-third of the modeled abundance for all relevant populations (specifically, take of individuals is less than four percent of the modeled abundance of each affected population, see table 6). This is conservative because the modeled abundance represents a population of the species and we assume all takes are of different individual animals, which is likely not the case. Some individuals may be encountered multiple times in a day, but PSOs will count them as separate individuals if they cannot be identified.

Based on the analysis contained herein of the planned activity, including the mitigation and monitoring measures, and the authorized take of marine mammals, NMFS finds that small numbers of marine mammals would be taken relative to the size of the affected species or populations.

**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.

The NMFS OPR ESA Interagency Cooperation Division issued a Biological Opinion under section 7 of the ESA, on the issuance of an IHA to NSF under section 101(a)(5)(D) of the MMPA by the NMFS OPR Permits and Conservation Division. The Biological Opinion concluded that the action is not likely to jeopardize the continued existence of ESA-listed humpback whales (Cape Verde/Northwest Africa DPS), blue whales, fin whales, sei whales, and sperm whales. There is no designated critical habitat in the action area for any ESA-listed marine mammal species.

### National Environmental Policy Act

To comply with the NEPA of 1969 (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 NOAA Administrative Order 216–6A, which do not individually or cumulatively have the potential for significant impacts on the quality of the human environment and for which we have not identified any extraordinary circumstances that would preclude this categorical exclusion. Accordingly, NMFS has determined that the issuance of the IHA qualifies to be categorically excluded from further NEPA review.

### Authorization

MFS has issued an IHA to L–DEO for the potential harassment of small numbers of 25 marine mammal species incidental to the marine geophysical survey at the Reykjanes Ridge in the North Atlantic Ocean that includes the previously explained mitigation, monitoring and reporting requirements.

Dated: June 27, 2024.

**Kimberly Damon-Randall,**

*Director, Office of Protected Resources, National Marine Fisheries Service.*

[FR Doc. 2024–14578 Filed 7–1–24; 8:45 am]

**BILLING CODE 3510–22–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

### U.S. Integrated Ocean Observing System (IOOS®) Advisory Committee Public Meeting

**AGENCY:** U.S. Integrated Ocean Observing System (IOOS®), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC)

**ACTION:** Notice of open meeting.

**SUMMARY:** Notice is hereby given of a hybrid meeting of the U. S. Integrated Ocean Observing System (IOOS®) Advisory Committee (Committee). The meeting is open to the public and an opportunity for oral and written comments will be provided.

**DATES:** The meeting will be held both virtually and in person from July 24, 2024 to July 25, 2024. Sessions will occur from 9 a.m. to 4:45 p.m. (EDT) on July 24, 2024 and from 9:30 a.m. to 5 p.m. (EDT) on July 25, 2024.

**ADDRESSES:** The meeting will be held at Pitch at the Wharf, 800 Maine Ave. SW, Washington, DC. To register for the meeting and/or submit public comments, use this link *https://forms.gle/mHrygLRsc3GMFRPYA* or email *Laura.Gewain@noaa.gov.* Registration is required. See **SUPPLEMENTARY INFORMATION** for instructions and other information about public participation.

**FOR FURTHER INFORMATION CONTACT:** Krisa Arzayus, Designated Federal Official, U.S. IOOS Advisory Committee, U.S. IOOS Program, Phone 240–533–9455; Email *krisa.arzayus@noaa.gov* or visit the U.S. IOOS Advisory Committee website at *http://ioos.noaa.gov/community/u-s-ioos-advisory-committee/.*

**SUPPLEMENTARY INFORMATION:** The Committee was established by the NOAA Administrator as directed by section 12304(d) of the Integrated Coastal and Ocean Observation System Act (the Act) as amended by section 103 of the Coordinated Ocean Observations and Research Act of 2020 (COORA) (Pub. L. 116–271, title I). 33 U.S.C. 3603(d). The Committee advises the NOAA Administrator and the Interagency Ocean Observation Committee (IOOC) on matters related to the responsibilities and authorities set forth in the Act and other appropriate matters as the Administrator, the Ocean Policy Committee described at 33 U.S.C. 3603(c)(1), and IOOC may refer to the Committee for review and advice. The charter and summaries of prior meetings can be found online at *https://ioos.noaa.gov/community/u-s-ioos-advisory-committee/.*

### Matters To Be Considered

The meeting will focus on: (1) NOAA and IOOS budget, (2) engaging with NOAA leadership, (3) working session on Enterprise Excellence, and (4) new membership. The latest version of the agenda will be posted at *http://ioos.noaa.gov/community/u-s-ioos-advisory-committee/.* The times and the agenda topics described here are subject to change.

### Public Comment Instructions

The meeting will be open to public participation (check agenda on website to confirm time). The Committee expects that public statements presented at its meetings will not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of three (3) minutes. Written comments should be received by the Designated Federal Official by July 16, 2024, to provide sufficient time for Committee review. Written comments received after July 16, 2024, will be distributed to the Committee, but may not be reviewed prior to the meeting date. To submit written comments, please fill out the brief form at *https://forms.gle/mHrygLRsc3GMFRPYA* or email your comments and the organization/company affiliation you represent to Laura Gewain, *Laura.Gewain@noaa.gov.* This NOAA public meeting will be recorded for use in preparation of minutes. If you have a public comment, you acknowledge you will be recorded and are aware you can opt out of the meeting. Participation in the meeting constitutes consent to the recording.

### Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Krisa Arzayus, Designated Federal Official by phone (240–533–9455) or email (*Krisa.Arzayus@noaa.gov)* or to Laura Gewain (*Laura.Gewain@noaa.gov)* by July 10, 2024.

**Carl C. Gouldman,**

*Director, U. S. Integrated Ocean Observing System Office, National Ocean Service, National Oceanic and Atmospheric Administration.*

[FR Doc. 2024–14527 Filed 7–1–24; 8:45 am]

**BILLING CODE 3510–NE–P**

## DEPARTMENT OF COMMERCE

### National Oceanic and Atmospheric Administration

**[RTID 0648–XD994]**

### Fisheries of the Exclusive Economic Zone Off Alaska; Bering Sea and Aleutian Islands Crab Rationalization Cost Recovery Program

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

**ACTION:** Notification of fee percentage.

**SUMMARY:** NMFS publishes notification of a 3 percent fee for cost recovery under the Bering Sea and Aleutian Islands Crab Rationalization Program (Program). This action is intended to provide holders of crab allocations notice of the 2024/2025 crab fishing year fee percentage so they can calculate the required cost recovery fee payment,

which must be submitted to NMFS by July 31, 2025.

**DATES:** The Crab Rationalization Program Registered Crab Receiver permit holder is responsible for submitting the fee liability payment to NMFS by July 31, 2025.

**FOR FURTHER INFORMATION CONTACT:** Amy Hadfield, (907) 586–7228.

**SUPPLEMENTARY INFORMATION:**

**Background**

NMFS Alaska Region administers the Program in the North Pacific. Fishing under the Program began on August 15, 2005. Regulations implementing the Program can be found at 50 CFR part 680.

The Program is a limited access privilege program authorized by section 313(j) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Program includes a cost recovery provision to collect fees to recover the actual costs directly related to the management, data collection, and enforcement of the Program. The Program is consistent with the cost recovery provisions included under section 304(d)(2)(A) of the Magnuson-Stevens Act. NMFS developed the cost recovery regulations to conform to statutory requirements and to reimburse the agency for the actual costs directly related to the management, data collection, and enforcement of the Program. The cost recovery provision allows collection of 133 percent of the actual management, data collection, and enforcement costs not to exceed 3 percent of the ex-vessel value of crab harvested under the Program. The Program provides that a proportional share of fees charged will be forwarded to the State of Alaska for reimbursement of its share of management and data collection costs for the Program.

A crab allocation holder generally incurs a cost recovery fee liability for every pound of crab landed. Catcher vessel and processor quota shareholders split the cost recovery fees equally with each paying half, while catcher/processor quota shareholders pay the full fee percentage for crab processed at sea. The crab allocations subject to cost recovery include Individual Fishing Quota, Crew Individual Fishing Quota, Individual Processing Quota, Community Development Quota, and the Adak community allocation. The Registered Crab Receiver (RCR) permit holder must collect the fee liability from the crab allocation holder who is landing crab. Additionally, the RCR permit holder must collect their own fee liability for all crab delivered to the RCR. The RCR permit holder is responsible for submitting this payment to NMFS on or before July 31, in the year following the crab fishing year in which landings of crab were made.

The dollar amount of the fee due is determined by multiplying the fee percentage (not to exceed 3 percent) by the ex-vessel value of crab debited from the allocation. Program details may be found in the implementing regulations at § 680.44.

**Fee Percentage**

Each year, NMFS calculates and publishes in the **Federal Register** the fee percentage according to the factors and methodology described at § 680.44(c)(2). The formula for determining the fee percentage is the ''direct program costs'' divided by ''value of the fishery,'' where ''direct program costs'' are the direct program costs for the Program for the previous fiscal year, and ''value of the fishery'' is the ex-vessel value of the catch subject to the crab cost recovery fee liability for the current year. Fee collections for any given year may be less than or greater than the actual costs and fishery value for that year, as regulations establish the fee percentage in the first quarter of the crab fishing year based on the fishery value and costs in the prior year.

According to the fee percentage formula described above, the estimated percentage of costs to value for the 2023/2024 fishery is higher than the maximum fee percentage of 3 percent. As the actual fee percentage is higher than the maximum fee percentage, the effective fee percentage will be 3 percent for the 2024/2025 crab fishing year. This is equal to the effective fee percentage for the 2023/2024 crab fishing year of 3 percent (88 FR 51301, August 3, 2023). While the fishery value increased by approximately 75 percent from last year, the current year fishery value is the second lowest value recorded for this fishery since 2013. Therefore, the overall low fishery value and the direct program costs result in a fee percentage higher than 3 percent. A more detailed explanation will be provided in the annual Crab Cost Recovery Report, which will be published in the first quarter of 2025. Similar to previous years, the largest direct Program costs were incurred by the NOAA Office of Law Enforcement and the State of Alaska Department of Fish and Game, respectively.

*Authority:* 16 U.S.C. 1862; Pub. L. 109–241; Pub. L. 109–479.

Dated: June 26, 2024.

**Lindsay Fullenkamp,**

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

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**BILLING CODE 3510–22–P**

## CONSUMER FINANCIAL PROTECTION BUREAU

### Fair Lending Report of the Consumer Financial Protection Bureau

**AGENCY:** Consumer Financial Protection Bureau.

**ACTION:** Fair Lending Report of the Consumer Financial Protection Bureau.

**SUMMARY:** The Consumer Financial Protection Bureau (CFPB) is issuing its eleventh Fair Lending Report of the Consumer Financial Protection Bureau (Fair Lending Report) to Congress. The CFPB is committed to ensuring fair, equitable, and nondiscriminatory access to credit for both individuals and communities. This report describes our fair lending activities in supervision and enforcement; guidance and rulemaking; interagency coordination; and outreach and education for calendar year 2023.

**DATES:** The CFPB released the 2023 Fair Lending Report on its website on June 26, 2024.

**FOR FURTHER INFORMATION CONTACT:** Susan Grutza, Senior Policy Counsel, Fair Lending, at 1–855–411–2372. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

**SUPPLEMENTARY INFORMATION:**

**1. Fair Lending Enforcement and Supervision**

*1.1. Risk-Based Prioritization*

Because Congress charged the Consumer Financial Protection Bureau (CFPB) with the responsibility of overseeing many lenders and products, the CFPB has long used a risk-based approach to prioritizing supervisory examinations and enforcement activity. This approach helps ensure that the CFPB focuses on areas that present substantial risk of credit discrimination for consumers and small businesses.[1]

As part of the prioritization process, the CFPB identifies emerging developments and trends by monitoring key consumer financial markets. If this field and market intelligence identifies

[1] *See* Risk-Based Approach to Examinations, *Supervisory Highlights* Summer 2013 at 23, *https://files.consumerfinance.gov/f/201308_cfpb_supervisory-highlights_august.pdf,* for additional information regarding the CFPB's risk-based approach in prioritizing supervisory examinations.

fair lending risks in a particular market, that information is used to determine the type and extent of assets applied to address those risks.

The prioritization process incorporates a number of additional factors, including tips and leads from industry whistleblowers, advocacy groups, and government agencies; supervisory and enforcement history; consumer complaints; and results from analysis of Home Mortgage Disclosure Act (HMDA) and other data.

As a result of its annual risk-based prioritization process, in 2023 the CFPB focused much of its fair lending supervision efforts on: mortgage origination (including redlining, property valuation bias, and HMDA and Regulation C compliance); credit card marketing and the use of alternative data in digital marketing; and on the use of automated systems and models, sometimes marketed as artificial intelligence (AI) and machine learning models, in credit card originations.

As in previous years, the CFPB's 2023 mortgage origination work continued to focus on redlining (intentional discrimination against applicants and prospective applicants living or seeking credit in minority neighborhoods, including by discouragement). The CFPB's mortgage work also included assessing potential discrimination in mortgage underwriting and pricing processes, including assessing whether there were disparities in application, underwriting, and pricing processes, and whether there were weaknesses in fair lending-related compliance management systems. The CFPB's mortgage origination work also included reviewing residential property appraisal service providers to identify risks that may arise due to potential discrimination or bias as well as HMDA data integrity and validation reviews.

The CFPB's credit card work included assessing credit card lenders' digital marketing practices relating to credit cards, as well as credit card lenders' use of alternative data in that marketing. The CFPB's credit card work also included evaluation of automated systems and models, sometimes marketed as artificial intelligence and machine learning models, used by credit card lenders in credit card originations, as well as assessing whether there were disparities in application, underwriting, and pricing processes, and whether the institutions searched for less discriminatory alternatives to the models used.

Across multiple markets, the CFPB continued to assess whether lenders complied with the adverse action notice requirements of the Equal Credit Opportunity Act (ECOA) and Regulation B and evaluated whether lenders maintain policies and procedures that unlawfully exclude property on the basis of geography in underwriting decisions, unlawfully exclude certain types of income, and treat criminal history in an unlawful manner.

*1.2. Fair Lending Enforcement*

Congress authorized the CFPB to bring actions to enforce the requirements of eighteen enumerated statutes, including ECOA, HMDA, and the Consumer Financial Protection Act of 2010 (CFPA), which prohibits unfair, deceptive, and abusive acts or practices. The CFPB is able to engage in research, conduct investigations, file administrative complaints, hold hearings, and adjudicate claims through the CFPB's administrative enforcement process. The CFPB also uses its independent litigation authority to file cases in Federal court alleging violations of fair lending laws under the CFPB's jurisdiction. Like other Federal regulators, the CFPB is required to refer matters to the Department of Justice (DOJ) when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination.[2]

*1.2.1. ECOA-Related Public Enforcement Actions*

In 2023, the CFPB announced two ECOA-related public enforcement actions, relating to discrimination on the basis of race and national origin, one against Citibank N.A. (Citibank) and the other against Colony Ridge Development, LLC, and Colony Ridge BV, LLC, and affiliate mortgage company Colony Ridge Land, LLC (collectively, the Colony Ridge defendants). For more information on these ECOA-related enforcement actions, see section 6.1.2 of this report.

*1.2.2. HMDA-Related Public Enforcement Actions*

HMDA, its implementing Regulation C, and Regulation B require mortgage lenders to report certain information about loan applications and originations to the CFPB and other Federal regulators. HMDA data are the most comprehensive source of publicly available information on the U.S. mortgage market. Both the public and regulators can use this information to monitor whether financial institutions are serving the housing needs of their communities, as well as to identify possible discriminatory lending patterns.

In 2023, the CFPB announced public enforcement actions against two repeat offenders for reporting false, erroneous, or incorrect HMDA data: Freedom Mortgage Corporation (Freedom Mortgage) and Bank of America, N.A.

The CFPB will continue to monitor the rate at which mortgage lenders fail to collect and report applicants' demographic information. The rate of nonreporting of demographic information has been increasing since 2019, potentially compromising the ability of the CFPB and other financial regulators, enforcement agencies, academics, other mortgage lenders, and civil rights and consumer advocates, to detect and remedy redlining, discouragement, and other forms of discrimination in the mortgage market. The CFPB's evaluations will include assessments of lenders' demographic reporting practices and HMDA compliance systems to ensure they are monitoring for inaccurate or incomplete demographic information reporting and complying with HMDA.

Freedom Mortgage

On October 10, 2023, the CFPB filed a lawsuit against Freedom Mortgage, a residential mortgage loan originator and servicer, alleging that it submitted legally-required mortgage loan data that were riddled with errors.[3] In 2020, Freedom Mortgage reported HMDA data on over 700,000 applications and originated nearly 400,000 HMDA-reportable loans worth almost $100 billion, making it the third largest mortgage lender in the United States by origination volume. Freedom Mortgage is a repeat offender: at the time the CFPB filed its complaint, Freedom was already under a CFPB Consent Order related to previous HMDA violations. In 2019, the CFPB issued an order against Freedom finding that it intentionally misreported certain HMDA data fields from at least 2014 to 2017.[4] In the CFPB's lawsuit, the CFPB alleges that the mortgage loan data for 2020 that Freedom Mortgage submitted contained widespread errors across multiple data fields, in violation of HMDA and Regulation C. The CFPB's complaint further alleges that by reporting inaccurate HMDA mortgage loan data for 2020, Freedom Mortgage also violated the 2019 order and the CFPA. The CFPB seeks appropriate injunctive relief and a civil money penalty.

[2] *See* 15 U.S.C. 1691e(g).

[3] *See https://www.consumerfinance.gov/enforcement/actions/freedom-mortgage-corporation-hmda-2023/.*

[4] *See https://files.consumerfinance.gov/f/documents/cfpb_freedom-mortgage-corporation_consent-order_2019-05.pdf.*

Bank of America

On November 28, 2023, the CFPB issued an order against Bank of America for routinely submitting falsified HMDA data.[5] The CFPB found that between 2016 and late 2020, hundreds of Bank of America's loan officers failed to ask applicants for their race, ethnicity, and sex, as required by law, and instead falsely recorded that the applicants chose not to provide this information, in violation of HMDA, Regulation C, and the CFPA. The CFPB's order requires Bank of America to pay a $12 million civil money penalty and to develop policies and procedures to ensure compliance with HMDA and Regulation C, including recording and auditing phone applications to make sure that HMDA data are accurately collected and recorded.

*1.2.3. ECOA Referrals to Department of Justice*

The CFPB must refer to DOJ any matter when it has reason to believe that a creditor has engaged in a pattern or practice of lending discrimination in violation of ECOA.[6] The CFPB may refer other potential ECOA violations to DOJ as well.[7] In 2023, the CFPB referred 18 matters to DOJ pursuant to 15 U.S.C. 1691e(g). More information on these referrals can be found in section 6.1.6 of this report.

*1.2.4. Implementing Enforcement Orders*

When an enforcement action is resolved through a public enforcement order, the CFPB (together with other government entities, when relevant) takes steps to ensure that the respondent or defendant complies with the requirements of the order. Depending on the specific requirements of individual public enforcement orders, the CFPB may take steps to ensure that borrowers who are eligible for compensation receive remuneration and that the defendant has complied with the injunctive provisions of the order, including implementing a comprehensive fair lending compliance management system.

*1.3. Fair Lending Supervision*

The CFPB's Supervision program assesses compliance with Federal consumer financial protection laws and regulations at banks and nonbanks over which the CFPB has supervisory authority. As a result of the CFPB's efforts to fulfill its fair lending mission during 2023, the CFPB initiated 28 fair lending examinations or targeted reviews.

In 2023, two of the most frequently identified fair lending issues in supervisory communications related to the granting of pricing exceptions and HMDA violations.

In 2023, the CFPB issued several fair lending-related Matters Requiring Attention and entered Memoranda of Understanding directing entities to take corrective actions that the CFPB will monitor through follow-up supervisory actions. In these communications, the CFPB directed mortgage lenders to correct violations relating to redlining, including by institutions providing consumer remediation designed to spur lending in redlined areas. The CFPB also directed lenders to enhance their fair lending compliance management systems in several ways, including by directing institutions to, when testing and approving credit scoring models, document the specific business needs the models serve, as well as document specific standards for assessing whether a model serves each stated business need. Further, the CFPB also directed the institutions to test credit scoring models for prohibited basis disparities and to require documentation of considerations the institutions will give to how to assess those disparities against the stated business needs. To ensure compliance with ECOA and Regulation B, institutions were directed to develop a process for the consideration of a range of less discriminatory models. Additionally, institutions were directed to test and validate the methodologies used to identify principal reasons in adverse action notices required under ECOA and Regulation B. Finally, institutions were directed to implement policies, procedures, and controls designed to effectively manage HMDA compliance, including regarding integrity of data collection.

During 2023, informed by the Director's priority to address risks of consumer harm from advanced and emerging technologies in consumer finance, the CFPB continued to increase its technical capacity and analyses to ensure that the use of this technology does not pose risks to consumers or violate Federal consumer financial law.

**2. Rulemaking and Guidance**

*2.1. Rulemaking*

During 2023, the CFPB issued a final rule on small business lending data collection and issued a notice of proposed rulemaking on automated valuation models (AVMs).

The CFPB publishes an agenda of its planned rulemaking activity biannually, which is available at: *https://www.consumerfinance.gov/rules-policy/regulatory-agenda.*

*2.1.1. Small Business Lending Data Collection Rulemaking*

In section 1071 of the Dodd-Frank Act, Congress directed the CFPB to adopt regulations governing the collection of small business lending data.[8] Section 1071 amended ECOA to require financial institutions to compile, maintain, and submit to the CFPB certain data on applications for credit for women-owned, minority-owned, and small businesses.

Congress enacted section 1071 for the purpose of facilitating enforcement of fair lending laws and enabling communities, governmental entities, and creditors to identify business and community development needs and opportunities for women-owned, minority-owned, and small businesses.

On March 30, 2023, the CFPB issued a final rule amending Regulation B to implement changes to ECOA made by section 1071 of the Dodd-Frank Act.[9] Consistent with section 1071, covered financial institutions are required to collect and report to the CFPB data on applications for credit for small businesses, including those that are owned by women or minorities. The rule also addresses the CFPB's approach to privacy interests and the publication of section 1071 data; shielding certain demographic data from underwriters and other persons; recordkeeping requirements; enforcement provisions; and the rule's effective and compliance dates.

In light of court orders in ongoing litigation, the CFPB has announced plans to extend the compliance dates in the small business lending rule.[10] More information about pending litigation is contained in section 5 of this report.

*2.1.2. Automated Valuation Models Rulemaking*

On June 1, 2023, the CFPB, along with its interagency partners, the Board of Governors of the Federal Reserve System (FRB), Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), National

[5] *See https://www.consumerfinance.gov/enforcement/actions/bank-of-america-na-hmda-data-2023/.*

[6] 15 U.S.C. 1691e(g).

[7] *Id.*

[8] 15 U.S.C. 1691c–2.

[9] CFPB, *Small Business Lending under the Equal Credit Opportunity Act (Regulation B)* (Mar. 30, 2023), *https://www.consumerfinance.gov/rules-policy/final-rules/small-business-lending-under-the-equal-credit-opportunity-act-regulation-b/.*

[10] More information is available at: *https://www.consumerfinance.gov/1071-rule/,* a page compiling key materials related to the CFPB's small business rulemaking, including information on the interim final rule to extend compliance deadlines.

Credit Union Administration (NCUA), and Federal Housing Finance Agency (FHFA) (collectively, the Agencies) requested public comment on a proposed rule designed to ensure the credibility and integrity of models used in real estate valuations.[11] In particular, the proposed rule would implement quality control standards for AVMs used by mortgage originators and secondary market issuers in valuing real estate collateral securing mortgage loans. AVMs are used as part of the real estate valuation process, driven in part by advances in database and modeling technology and the availability of larger property datasets. While advances in AVM technology and data availability have the potential to contribute to lower costs and reduce loan cycle times, it is important that institutions using AVMs take appropriate steps to ensure the credibility and integrity of their valuations. It is also important that the AVMs that institutions are using adhere to quality control standards designed to comply with applicable nondiscrimination laws.

The proposed standards are designed to ensure a high level of confidence in the estimates produced by AVMs; help protect against the manipulation of data; seek to avoid conflicts of interest; require random sample testing and reviews; and promote compliance with applicable nondiscrimination laws.

The comment period for the proposed rule closed on August 21, 2023.

*2.2. Guidance*

The CFPB issues guidance to its various stakeholders in many forms, including Consumer Financial Protection Circulars (Circulars), advisory opinions, interpretive rules, statements, bulletins, publications such as *Supervisory Highlights.*

*2.2.1. Proposed Interagency Guidance on Reconsiderations of Value for Residential Real Estate Valuations*

On June 8, 2023, the CFPB, along with FRB, FDIC, NCUA, and OCC requested public comment on proposed guidance addressing reconsiderations of value (ROV) for residential real estate transactions.[12] ROVs are requests from a financial institution to an appraiser or other preparer of a valuation report to reassess the value of residential real estate. A ROV may be warranted if a consumer provides information to a financial institution about potential deficiencies or other information that may affect the estimated value. The proposed guidance advises on policies that financial institutions may implement to allow consumers to provide financial institutions with information that may not have been considered during an appraisal, or if deficiencies are identified in the original appraisal.

The comment period for the proposed guidance closed on September 19, 2023.

*2.2.2. Consumer Financial Protection Circular 2023–03: Adverse Action Notification Requirements and the Proper Use of the CFPB's Sample Forms Provided in Regulation B*

On September 19, 2023, the CFPB released a circular pertaining to certain legal requirements that lenders must adhere to, including when using artificial intelligence and other complex models.[13] The circular describes how, under ECOA and Regulation B, lenders must make available to an applicant a statement of specific and accurate reasons when taking adverse action against the applicant and cannot simply use the CFPB sample adverse action forms and checklists if they do not reflect the actual reason for the denial of credit or other adverse action. This requirement is especially important with the growth of advanced algorithms and personal consumer data in credit underwriting. The legal requirement to explain the reasons for adverse actions helps improve consumers' chances for future credit and protect consumers from illegal discrimination and serve an educational role, allowing consumers to understand the reasons for a creditor's action and take steps to improve their credit status or rectify mistakes made by creditors.

*2.2.3. Coverage of Franchise Financing Under ECOA, Including the Small Business Lending Rule*

On June 5, 2023, the CFPB published a document affirming the extent to which ECOA and Regulation B apply with respect to franchisees seeking credit to finance their businesses.[14] Franchising is a significant portion of the small business ecosystem, and franchisees generally obtain credit either directly from the franchisor or from third party finance companies, which could be independent of the franchisor or brokered by or affiliated with the franchisor. These financing arrangements are likely ''credit'' and ''business credit'' under ECOA and Regulation B.

*2.2.4. Supervisory Highlights*

The CFPB's *Supervisory Highlights* reports provide general information about the CFPB's supervisory activities at banks and nonbanks without identifying specific entities. These reports communicate the CFPB's key examination findings and operational changes to the CFPB's supervision program. In 2023, the CFPB published three issues of *Supervisory Highlights.*[15]

The CFPB released the 30th edition of *Supervisory Highlights* on July 26, 2023, which covered examinations completed between July 1, 2022, and March 31, 2023.[16] This report included findings of ECOA and Regulation B violations in several areas, including pricing discrimination and discriminatory lending restrictions. Specifically, examiners found that mortgage lenders violated ECOA and Regulation B by discriminating in the incidence of granting pricing exceptions for competitive offers across a range of ECOA-protected characteristics, including race, national origin, sex, and age.

Additionally, this edition detailed examiners' findings on certain lending restrictions, including how lenders handled the treatment of applicants' criminal records. The use of criminal history in credit decisioning may create a heightened risk of violating ECOA and Regulation B. In this review, examiners uncovered risky policies and procedures relating to the use of criminal history information at several institutions in several areas of credit, including mortgage origination, auto lending, and credit cards, but most notably within small business lending.

Further, examiners identified institutions improperly treating income derived from public assistance. In some instances, lenders imposed stricter standards on income derived from public assistance programs, while in

[11] CFPB, OCC, FHFA, FRB, FDIC, NCUA. *Quality Control Standards for Automated Valuation Models* (June 1, 2023), *https://files.consumerfinance.gov/f/documents/cfpb_automated-valuation-models_proposed-rule-request-for-comment_2023-06.pdf.*

[12] CFPB, OCC, FRB, FDIC, NCUA, *Interagency Guidance on Reconsideration of Value of Residential Real Estate Valuations* (June 8, 2023), *https://files.consumerfinance.gov/f/documents/cfpb_interagency-guidance-reconsiderations-of-value-of-residential-real-estate_2023-06.pdf.*

[13] CFPB, *Consumer Financial Protection Circular 2023–03 Adverse action notification requirements and the proper use of the CFPB's sample forms provided in Regulation B* (Sept. 19. 2023), *https://www.consumerfinance.gov/compliance/circulars/circular-2023-03-adverse-action-notification-requirements-and-the-proper-use-of-the-cfpbs-sample-forms-provided-in-regulation-b/.*

[14] CFPB, *Coverage of Franchise Financing Under the Equal Credit Opportunity Act, Including the Small Business Lending Rule* (May 2023), *https://files.consumerfinance.gov/f/documents/cfpb_coverage-of-franchise-financing_2023-05.pdf.*

[15] CFPB Issue 29, *Junk Fees Special Edition,* Winter 2023; Issue 30, Summer 2023; Issue 31, *Junk Fees Update Special Edition* Fall 2023.

[16] CFPB, Issue 30, *Summer 2023* (July 31, 2023), *https://files.consumerfinance.gov/f/documents/cfpb_supervisory-highlights_issue-30_2023-07.pdf.*

other instances, institutions excluded income derived from certain public assistance programs.

In 2023, the CFPB issued two other editions of *Supervisory Highlights,* which pertained specifically to junk fees.

All issues of *Supervisory Highlights* are available at: *https://www.consumerfinance.gov/compliance/supervisory-highlights/.*

*2.2.5. HMDA Guidance and Resources*

Given the importance of accurate HMDA data, including to the CFPB's fair lending mission and for transparency in the mortgage market, the CFPB maintains a comprehensive suite of resources on its public website to help filers fulfill their reporting requirements under HMDA and Regulation C and to allow others to evaluate and study mortgage lending. A complete accounting of the CFPB's materials for HMDA data users and filers can be found in Appendix A of this report.

**3. Stakeholder Engagement**

The CFPB engages with external stakeholders, including Tribal governments, consumer advocates, civil rights organizations, industry, academia, and other government agencies. This engagement comes in varied forms, including disseminating the CFPB's work and policy priorities through blogs, press releases, or speeches, as well as reaching out directly to advocates and consumers through website updates and social media. The CFPB also regularly issues research and reports analyzing data and market conditions. To further an all-of-government approach to fair lending enforcement, the CFPB also participates in several interagency groups.

*3.1. Promoting and Broadcasting the Fair Lending and Access to Credit Mission*

*3.1.1. CFPB Blog Posts, Press Releases, and Other Communications*

The CFPB regularly uses blog posts, statements, press releases, guides, brochures, social media, media interviews, and other tools to timely and effectively communicate with stakeholders.

In 2023, the CFPB published numerous blog posts relating to fair lending topics, including: the joint letter sent to The Appraisal Foundation, urging it to revise its draft ethics rule; [17] the CFPB's Statement of Interest filed in *Connolly & Mott* v. *Lanham et al.* and the CFPB's commitment to ensuring fair and accurate appraisals; [18] the CFPB's Statement of Interest filed in *Roberson* v. *Health Career Institute LLC;* [19] an interagency proposed rulemaking on AVMs; [20] a blog explaining how chatbots, including those supported by large language models and those marketed as AI can fail to provide adequate customer service; [21] the CFPB's *Amicus* brief in *Saint-Jean* v. *Emigrant Mortgage Company;* [22] the publication of the 2022 Annual Fair Lending Report to Congress; [23] the CFPB's initiative to better understand the financial experiences of immigrants in the United States; [24] and the Appraisal Subcommittee's November 1 public hearing to discuss the challenges and solutions to preventing bias in the home appraisal process.[25]

The CFPB also issued several press releases relating to fair lending topics, including announcements regarding: the availability of the 2022 HMDA modified loan application register data; [26] the finalization of the small business lending rule,[27] the issuance of a joint statement confirming that automated systems and advanced technology is not an excuse for law-breaking behavior; [28] the publication of the proposed AVM rule and request for public comment; [29] an issue spotlight on AI chatbots in banking; [30] the publication of two new reports on the financial opportunities and challenges facing Southern communities; [31] the availability of 2022 HMDA data; [32] a roundtable on special purpose credit programs (SPCPs); [33] the issuance of Consumer Financial Protection Circular 2023–03, Adverse action notification requirements and the proper use of the CFPB's sample forms provided in Regulation B; [34] the Freedom Mortgage enforcement action for reporting allegedly erroneous data under HMDA; [35] the issuance of the CFPB and DOJ's joint statement reminding financial institutions that all credit applicants are protected from

[17] Patrice Alexander Ficklin and Tim Lambert, *Appraisal standards must include federal prohibitions against discrimination* (Feb. 14, 2023), *https://www.consumerfinance.gov/about-us/blog/appraisal-standards-must-include-federal-prohibitions-against-discrimination.*

[18] Seth Frotman, Zixta Q. Martinez, and Jon Seward, *Protecting homeowners from discriminatory home appraisals,* (Mar. 13, 2023), *https://www.consumerfinance.gov/about-us/blog/protecting-homeowners-from-discriminatory-home-appraisals/.*

[19] Seth Frotman, *Protecting people from discriminatory targeting* (Apr. 14, 2023), *https://www.consumerfinance.gov/about-us/blog/protecting-people-from-discriminatory-targeting/.*

[20] Rohit Chopra, *Algorithms, artificial intelligence, and fairness in home appraisals* (June 1, 2023), *https://www.consumerfinance.gov/about-us/blog/algorithms-artificial-intelligence-fairness-in-home-appraisals/.*

[21] Eric Halperin and Lorelei Salas, *The CFPB has entered the chat* (June 7, 2023), *https://www.consumerfinance.gov/about-us/blog/cfpb-has-entered-the-chat/.*

[22] Seth Frotman, *Protecting consumers' right to challenge discrimination* (June 26, 2023), *https://www.consumerfinance.gov/about-us/blog/protecting-consumers-right-to-challenge-discrimination/.*

[23] Patrice Alexander Ficklin, *The CFPB's 2022 fair lending annual report to congress* (June 29, 2023), *https://www.consumerfinance.gov/about-us/blog/the-cfpbs-2022-fair-lending-annual-report-to-congress/.*

[24] Sonia Lin, *Protecting immigrant access to fair credit opportunities,* (Oct. 12, 2023), *https://www.consumerfinance.gov/about-us/blog/protecting-immigrant-access-to-fair-credit-opportunities/.*

[25] CFPB, *Next public hearing on appraisal bias: November 1* (Oct. 23, 2023), *https://www.consumerfinance.gov/about-us/blog/next-public-hearing-on-appraisal-bias-november-1/.*

[26] CFPB, *2022 HMDA Data on Mortgage Lending Now Available* (Mar. 20, 2023), *https://www.consumerfinance.gov/about-us/newsroom/2022-hmda-data-on-mortgage-lending-now-available/.*

[27] CFPB, *CFPB Finalizes Rule to Create a New Data Set on Small Business Lending in America* (Mar. 30, 2023), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-finalizes-rule-to-create-a-new-data-set-on-small-business-lending-in-america/.*

[28] CFPB, *CFPB and Federal Partners Confirm Automated Systems and Advanced Technology Not an Excuse for Lawbreaking Behavior* (Apr. 25, 2023), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-federal-partners-confirm-automated-systems-advanced-technology-not-an-excuse-for-lawbreaking-behavior/.*

[29] CFPB, *Agencies Request Comment on Quality Control Standards for Automated Valuation Models Proposed Rule* (June 1, 2023), *https://www.consumerfinance.gov/about-us/newsroom/agencies-request-comment-on-quality-control-standards-for-automated-valuation-models-proposed-rule.*

[30] CFPB, *CFPB Issue Spotlight Analyzes ''Artificial Intelligence'' Chatbots in Banking* (June 6, 2023), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-issue-spotlight-analyzes-artificial-intelligence-chatbots-in-banking/.*

[31] CFPB, *CFPB Releases Reports on Banking Access and Consumer Finance in Southern States* (June 20, 2023), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-releases-reports-on-banking-access-and-consumer-finance-in-southern-states/.*

[32] CFPB, *FFIEC Announces Availability of 2022 Data on Mortgage Lending* (June 29, 2023), *https://www.consumerfinance.gov/about-us/newsroom/ffiec-announces-availability-of-2022-data-on-mortgage-lending/.*

[33] CFPB, *Agencies to Host Roundtable on Special Purpose Credit Programs* (Aug. 24, 2023), *https://www.consumerfinance.gov/about-us/newsroom/agencies-to-host-roundtable-on-special-purpose-credit-programs/.*

[34] CFPB, *CFPB Issues Guidance on Credit Denials by Lenders Using Artificial Intelligence* (Sept. 19, 2023), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-guidance-on-credit-denials-by-lenders-using-artificial-intelligence/.*

[35] CFPB, *CFPB Sues Repeat Offender Freedom Mortgage Corporation for Providing False Information to Federal Regulators* (Oct. 10, 2023), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-sues-repeat-offender-freedom-mortgage-corporation-for-providing-false-information-to-federal-regulators/.*

discrimination on the basis of race, national origin, race, and other characteristics covered by ECOA, regardless of their immigration status; [36] the publication of a new analysis on State Community Reinvestment Act (CRA) laws, highlighting how states ensure financial institutions' lending, services, and investment activities meet the credit needs of their communities; [37] the Citibank enforcement action; [38] the Bank of America enforcement action; [39] and the Colony Ridge enforcement action.[40]

*3.1.2. CFPB Engagements With Stakeholders*

The CFPB often engages directly with external stakeholders to inform the CFPB's policy developments and message the CFPB's priorities and recent work. In 2023, CFPB staff participated in 69 stakeholder engagements related to fair lending and access to credit issues. Through speeches, presentations, podcasts, roundtables, webinars, and other smaller discussions on fair lending topics, the CFPB strives to keep abreast of economic and market realities that impact the lives of individuals, small businesses, and communities the CFPB is charged with protecting.

Throughout 2023, numerous engagements centered around the use of advanced technologies including their use in discriminatory targeting, consumer surveillance, and digital redlining; redlining; discrimination on the basis of receipt of public assistance income; false and erroneous HMDA data reporting; student lending; and credit reporting.

*3.2. Data and Reports*

*3.2.1. State Community Reinvestment Act: Summary of State Laws*

On November 2, 2023, the CFPB published a new analysis of state-specific versions of CRA laws, highlighting how States ensure financial institutions' lending, services, and investment activities meet the credit needs of their communities. Many States adopted laws similar to the Federal CRA in the decades following the 1977 passage of the landmark Federal anti-redlining law. The report examined the laws of seven States (Connecticut, Illinois, Massachusetts, New York, Rhode Island, Washington, West Virginia) and the District of Columbia, and found that data collected by Federal agencies, such as HMDA, are often used for State CRA compliance and other oversight purposes.[41]

*3.2.2. Banking and Credit Access in the Southern Region of the United States*

On June 21, 2023, the CFPB published a data spotlight, *Banking and Credit Access in the Southern Region of the U.S.*[42] Spanning the States of Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee, this report seeks to identify gaps as well as opportunities to increase financial access in the region, particularly through branch presence and bank account access, and capital access such as mortgage lending and small business lending. The analysis looks at trends by State, the region as a whole, and differences between rural and non-rural areas. Utilizing HMDA data, the analysis also identified differences for mortgage originations and denials by race and ethnicity in both rural and non-rural communities.

*3.2.3. Consumer Finances in Rural Areas of the Southern Region*

On June 21, 2023, the CFPB published a data spotlight, *Consumer Finances in Rural Areas of the Southern Region.*[43] This report is the second in a series profiling the finances of consumers in rural communities. Nearly 48 million people live in the southern region examined in this report, which includes Alabama, Arkansas, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, and Tennessee. Intended to provide a starting point in better understanding the financial lives of consumers in rural areas of the southern United States, this report takes a broad survey of consumer financial profiles, including credit scores, financial distress, medical debt, and other debt categories and compares profiles of consumers in the rural South to those in other geographies. Among other things, the report examines originations for auto loans by credit score and majority-minority census tracts, by State and for the region as a whole.

*3.2.4. Availability of 2022 HMDA Data*

On March 20, 2023, the CFPB announced the initial availability of the 2022 HMDA modified loan application register data on the Federal Financial Institutions Examination Council's (FFIEC) HMDA Platform for approximately 4,394 HMDA filers.[44] These published data contain loan-level information filed by financial institutions, modified to protect consumer privacy.[45]

On June 29, 2023, the FFIEC announced the availability of static ''Snapshot'' HMDA data, a static dataset of 2022 mortgage lending transactions at 4,460 financial institutions reported under HMDA as of May 1, 2023.[46] These data include a total of 48 data points providing information about the applicants, the property securing the loan or proposed to secure the loan in the case of non-originated applications, the transaction, and identifiers.

*3.2.5. Report on the Home Mortgage Disclosure Act Rule Voluntary Review*

On March 3, 2023, the CFPB published a report containing the findings of the CFPB's voluntary review of the CFPB's final HMDA rule (issued in October 2015) and related

[36] CFPB, CFPB and Justice Department Issue Joint Statement Cautioning that Financial Institutions May Not Use Immigration Status to Illegally Discriminate Against Credit Applicants (Oct. 12, 2023), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-justice-department-issue-joint-statement-cautioning-that-financial-institutions-may-not-use-immigration-status-to-illegally-discriminate-against-credit-applicants/.*

[37] CFPB, *CFPB Issues New Report on State Community Reinvestment Laws* (Nov. 2, 2023), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-issues-new-report-on-state-community-reinvestment-laws/.*

[38] CFPB, *CFPB Orders Citi to Pay $25.9 Million for Intentional, Illegal Discrimination Against Armenian Americans* (Nov. 8, 2023), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-citi-to-pay-25-9-million-for-intentional-illegal-discrimination-against-armenian-americans/.*

[39] CFPB, *CFPB Orders Bank of America to Pay $12 Million for Reporting False Mortgage Data* (Nov. 28, 2023), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-orders-bank-of-america-to-pay-12-million-for-reporting-false-mortgage-data/.*

[40] CFPB, *CFPB and Justice Department Sue Developer and Lender Colony Ridge for Bait-and-Switch Land Sales and Predatory Financing* (Dec. 20, 2023), *https://www.consumerfinance.gov/about-us/newsroom/cfpb-and-doj-sue-developer-and-lender-colony-ridge-for-bait-and-switch-land-sales-and-predatory-financing/.*

[41] CFPB, *State Community Reinvestment Act: Summary of State Laws* (Nov. 2, 2023), *https://www.consumerfinance.gov/data-research/research-reports/state-community-reinvestment-acts-summary-of-state-laws/.*

[42] CFPB, *Banking and Credit Access in the Southern Region of the U.S.* (June 21, 2023), *https://files.consumerfinance.gov/f/documents/cfpb_ocp-data-spotlight_banking-and-credit-access_2023-06.pdf.*

[43] CFPB, *Consumer Finances in Rural Areas of the Southern Region* (June 21, 2023), *https://files.consumerfinance.gov/f/documents/cfpb_or-data-point_consumer-finances-in-rural-south_2023-06.pdf.*

[44] CFPB, *2021 HMDA Data on Mortgage Lending Now Available* (Mar. 20, 2023), *https://www.consumerfinance.gov/about-us/newsroom/2022-hmda-data-on-mortgage-lending-now-available/.*

[45] Additional activity has occurred since the close of this reporting period. On March 26, 2024, the CFPB announced the availability of the HMDA modified loan application data for 2023, available at *https://ffiec.cfpb.gov/data-publication/modified-lar/2023.*

[46] CFPB, *FFIEC Announces Availability of 2022 Data on Mortgage Lending* (June 29, 2023), *https://www.consumerfinance.gov/about-us/newsroom/ffiec-announces-availability-of-2022-data-on-mortgage-lending/.*

amendments (collectively, the HMDA Rule).[47] The report analyzed, among other key issues, how changes in reporting thresholds and other amendments affected HMDA data coverage and the available data on the supply over time of open-ended lines of credit and closed-end mortgage loans; how new or revised HMDA data points have contributed to predicting underwriting and pricing outcomes; and how revised and expanded reporting of race and ethnicity helped provide additional data on subpopulation groups in the residential mortgage market.

*3.2.6. Data Point: 2022 Mortgage Market Activity and Trends*

On September 27, 2023, the CFPB released its annual report on residential mortgage lending activity and trends for 2022.[48] The report shows that in 2022, mortgage applications and originations declined markedly from the prior year, while rates, fees, discount points, and other costs increased. Overall affordability declined significantly, with borrowers spending more of their income on mortgage payments and lenders more often denying applications for insufficient income. Most refinances during the reported period were cash-out refinances, and, in a reversal of recent trends, the median credit score of refinance borrowers declined below the median credit score of purchase borrowers. As in years past, independent lenders continued to dominate home mortgage lending, with the exception of home equity lines of credit.

**4. Interagency Engagement**

The CFPB regularly coordinates with other Tribal, Federal, State, county, municipal, and international government entities; policymakers; and the organizations that represent them regarding current and emerging fair lending risks. Through numerous interagency organizations and taskforces, the CFPB coordinated its 2023 fair lending regulatory, supervisory, and enforcement activities to promote consistent, efficient, and effective enforcement of Federal fair lending laws.

The CFPB, along with the Department of Housing and Urban Development (HUD), Federal Trade Commission (FTC), FDIC, FRB, NCUA, OCC, DOJ, and FHFA, constitute the Interagency Task Force on Fair Lending. This Task Force meets regularly to discuss fair lending enforcement efforts, share current methods of conducting supervisory and enforcement fair lending activities, and coordinate fair lending policies. In 2023, the NCUA was the Chair of this Task Force.

Through the FFIEC, the CFPB has robust engagements with other partner agencies that focus on fair lending issues. For example, throughout the reporting period, the CFPB has continued to chair the HMDA and CRA Data Collection Subcommittee, a subcommittee of the FFIEC Task Force on Consumer Compliance. This subcommittee oversees FFIEC projects and programs involving HMDA data collection and dissemination, the preparation of the annual FFIEC budget for processing services, and the development and implementation of other related HMDA processing projects as directed by this Task Force.

Together with DOJ, HUD, and FTC, the CFPB also participates in the Interagency Working Group on Fair Lending Enforcement, a standing working group of Federal agencies that meets regularly to discuss issues relating to fair lending enforcement. The agencies use these meetings to also discuss fair lending developments and trends, methodologies for evaluating fair lending risks and violations, and coordination of fair lending enforcement efforts.

As required by section 1022 of the Dodd-Frank Act, the CFPB also consults with other agencies as part of its rulemaking process.[49] For example, in 2023, while developing its small business lending data collection final rule, the CFPB consulted or offered to consult with FRB, FDIC, NCUA, OCC, HUD, DOJ, FTC, the Department of Agriculture, the Department of the Treasury, the Economic Development Administration, the Farm Credit Administration (FCA), the Financial Crimes Enforcement Network, and the Small Business Administration (SBA) including, among other things, on consistency with any prudential, market, or systemic objectives administered by such agencies.

In addition to the established interagency organizations, CFPB personnel meet regularly with personnel from other agencies, including with DOJ, HUD, FTC, FHFA, State Attorneys General, and the prudential regulators to coordinate and discuss the CFPB's fair lending work.

*4.1. Special Purpose Credit Program Interagency Roundtable*

On September 12, 2023, the CFPB, along with HUD, OCC, and FHFA hosted a roundtable discussion on SPCPs.[50] In addition to remarks by the respective leaders of the participating agencies, the event included a roundtable discussion with representatives from community groups and trade organizations that are focused on the opportunities and benefits of SPCPs. The event was open to the public via livestream.

*4.2. Joint Statements*

On April 25, 2023, the CFPB, along with DOJ, Equal Employment Opportunity Commission, and FTC issued a joint statement committing to enforcement efforts against discrimination and bias in automated systems.[51] In the statement, all four agencies resolved to vigorously enforce their collective authorities and to monitor the development and use of automated systems, including those sometimes marketed as AI.

On October 12, 2023, the CFPB along with DOJ, issued a joint statement reminding financial institutions that, while ECOA and Regulation B do not expressly prohibit consideration of immigration status, they prohibit creditors from using immigration status to discriminate on the basis of national origin, race, or any other characteristic covered by ECOA.[52]

*4.3. Appraisal Bias*

Appraisal bias is a key fair lending priority of the CFPB. Throughout 2023, the CFPB has been very active with its interagency partners to advance work to combat appraisal bias through the FFIEC Appraisal Subcommittee (ASC), correspondence, court briefs, proposed guidance, and work of the Property

[47] CFPB, *Report on the Home Mortgage Disclosure Act Rule Voluntary Review* (Mar. 3, 2023), *https://files.consumerfinance.gov/f/documents/cfpb_hmda-voluntary-review_2023-03.pdf.*

[48] CFPB, *Data Point: 2022 Mortgage Market Activity and Trends* (Sept. 27, 2022), *https://www.consumerfinance.gov/data-research/research-reports/data-point-2022-mortgage-market-activity-trends/.*

[49] 12 U.S.C. 5512.

[50] CFPB, *Agencies to Host Roundtable on Special Purpose Credit Programs,* (Aug. 24, 2023), *https://www.consumerfinance.gov/about-us/newsroom/agencies-to-host-roundtable-on-special-purpose-credit-programs/.*

[51] CFPB; Dept. of Justice Civil Rights Div.; Equal Opportunity Comm'n; Federal Trade Comm'n; *Joint Statement on Enforcement Efforts Against Discrimination and Bias in Automated Systems,* (Apr. 25, 2023), *https://files.consumerfinance.gov/f/documents/cfpb_joint-statement-enforcement-against-discrimination-bias-automated-systems_2023-04.pdf.*

[52] CFPB; Dept. of Justice Civil Rights Div. *Joint Statement on Fair Lending and Credit Opportunities for Noncitizen Borrowers under the Equal Credit Opportunity Act* (Oct. 12, 2023), *https://files.consumerfinance.gov/f/documents/cfpb-joint-statement-on-fair-lending-and-credit-opportunities-for-noncitizen-b_jA2oRDf.pdf.*

Appraisal and Valuation Equity Task Force.

The ASC comprises designees from the CFPB and certain other Federal agencies, including FDIC, HUD, FRB, OCC, NCUA, and FHFA, and is tasked with providing Federal oversight of State appraiser and appraisal management company regulatory programs, as well as a monitoring and reviewing framework for The Appraisal Foundation, the private, nongovernmental organization that sets appraisal standards. CFPB Deputy Director Zixta Martinez currently serves as the Chairperson of the ASC. Through the ASC, the CFPB addresses topics including discriminatory bias in home appraisals.

The ASC held its first-ever hearing about appraisal bias on January 24, 2023. The hearing served to raise awareness of the issue of appraisal bias by focusing on its scope and impact, and to provide information on the role of the ASC in the appraisal regulatory system. On May 19, 2023, the ASC held its second public hearing, which explored the appraisal regulatory system and focused on appraisal standards, appraiser qualification criteria and barriers to entry into the profession, appraisal practice, and State regulation. The ASC held its third public hearing on November 1, 2023, which discussed how a residential appraisal is developed and reviewed, the ROV process for residential real estate valuations, and the development of rural appraisals. These hearings were the first three in a series of four planned hearings relating to appraisal bias.

On February 14, 2023, senior officials from the CFPB, FDIC, HUD, NCUA, FRB, DOJ, OCC, and FHFA submitted a joint letter to The Appraisal Foundation. The letter urged The Appraisal Foundation to revise its draft Ethics Rule for appraisers to include a detailed statement of Federal prohibitions against discrimination that exist under the FHA and ECOA. The agencies expressed concern that some appraisers may be unaware of these prohibitions and, of particular concern, that the draft Ethics Rule emphasized that ''[a]n appraiser must not engage in unethical discrimination,'' implying that appraisers may engage in ''ethical'' discrimination, a concept foreign to current law and practice.

On March 13, 2023, the CFPB filed a joint statement of interest with DOJ in *Connolly & Mott* v. *Lanham et al.,* explaining the application of the FHA and ECOA to lenders relying on discriminatory home appraisals. For more information on this statement of interest, see section 5.1 of this report.

On June 1, 2023, the CFPB, in conjunction with the FRB, FDIC, FHFA, NCUA, and OCC, proposed a rule regarding quality control standards for AVMs. For more information on this rulemaking, see section 2.1.2 of this report.

On June 8, 2023, the CFPB, in conjunction with the FRB, FDIC, NCUA, and OCC, requested public comment on proposed guidance addressing ROV for residential real estate transactions. The proposed guidance would advise on policies that financial institutions may implement to allow consumers to provide financial institutions with information that may not have been considered during an appraisal or if deficiencies are identified in the original appraisal. For more information on this proposed guidance, see section 2.2.1 of this report.

In 2023, the CFPB also continued to engage with other agencies on issues of bias in home appraisals through the Interagency Task Force on Property Appraisal and Valuation Equity. More information on this Task Force is available at *https://pave.hud.gov.*

**5. Amicus Program and Other Litigation**

*5.1. Amicus Briefs and Statements of Interest*

The CFPB files *amicus,* or ''friend-of-the-court,'' briefs in significant court cases concerning Federal consumer financial protection laws, including cases involving ECOA. These briefs provide courts with the CFPB's views and help ensure that consumer financial protection statutes are correctly and consistently interpreted. In 2023, the CFPB filed two fair lending related *amicus* briefs and a statement of interest.

On June 23, 2023, the CFPB filed an *amicus* brief in *Saint-Jean et al.* v. *Emigrant Mortgage Co. & Emigrant Bank* in support of Plaintiffs who won a jury verdict against Emigrant Mortgage Company and Emigrant Bank (Emigrant) for violating ECOA.[53] The jury found that Emigrant had for years targeted Black and Latino borrowers and neighborhoods in New York City with predatory mortgage loans and practices. The CFPB's brief addresses three issues raised on appeal to explain why the jury verdict should be affirmed: (1) the timeliness of Plaintiff's claims under the doctrine of equitable tolling, (2) the propriety of the district court's jury instructions under ECOA, and (3) the public policy goals undermined by enforcing a waiver of claims in a loan modification agreement.[54]

On April 14, 2023, the CFPB filed an *amicus* brief in *Roberson* v. *Health Career Institute LLC.*[55] In the brief, the CFPB explained that discriminatory targeting violates ECOA. In particular, the CFPB's brief explains that ECOA's prohibition on discrimination applies to ''any aspect of a credit transaction,'' meaning it covers every aspect of a borrower's dealings with a creditor, not just the specific terms of a loan—like the interest rate or fees. The CFPB's brief also explains that in order to survive a motion to dismiss under ECOA, plaintiffs need only plead facts that plausibly allege discrimination, rather than the elements of a prima facia case, which is not a pleading requirement but rather an evidentiary standard.[56]

On March 13, 2023, the CFPB and DOJ filed a joint statement of interest in *Connolly & Mott* v. *Lanham et al.* explaining that relying on discriminatory home appraisals can violate ECOA.[57] The law is clear that mortgage lenders cannot take race, sex, or any other prohibited bases into account when evaluating the creditworthiness of an applicant. As such, lenders cannot rely on a discriminatory appraisal if they knew, or should have known, that the appraisal was discriminatory. The statement of interest also explains that, to survive a motion to dismiss under ECOA, plaintiffs need only plead facts that plausibly allege discrimination, rather than establish a prima facie case, which is not a pleading requirement but rather an evidentiary standard. In the statement of interest, the Department of Justice also addresses how the FHA applies to discriminatory appraisals.[58]

More information regarding the CFPB's amicus program is available on the CFPB's website.[59]

*5.2. Litigation*

In September 2022, the CFPB was sued in the U.S. District Court for the

[53] Brief for CFPB as Amici Curiae Supporting Plaintiff-Appellees, *Saint-Jean* v. *Emigrant Mortg. Co.,* 50 F. Supp. 3d 300 (E.D.N.Y. 2014) (No. 22–3094).

[54] *See https://files.consumerfinance.gov/f/documents/cfpb_saint-jean-et-al-v-emigrant-mortgage-coemigrant-bank_2023-06.pdf.*

[55] Statement of Interest of the CFPB in Support of Plaintiffs, *Roberson et al* v. *Health Career Institute LLC, et al.* (S.D.Fla. 2023) (No. 9:22CV81883).

[56] *See https://www.consumerfinance.gov/compliance/amicus/briefs/roberson-v-health-career-institute-llc/.*

[57] Statement of Interest for the United States, *Connolly et al.* v. *Lanham et al.,* 685 F.Supp.3d 312 (No. 1:22CV02048).

[58] *See https://www.consumerfinance.gov/compliance/amicus/briefs/connolly-mott-v-lanham-et-al/.*

[59] *See generally https://www.consumerfinance.gov/policy-compliance/amicus/.*

Eastern District of Texas by the U.S. Chamber of Commerce et al., challenging an update to the UDAAP section of the CFPB's examination manual. The updated manual clarified that discriminatory conduct may violate the CFPA's prohibition on unfair practices and provided guidance to examiners on how discriminatory conduct should be examined to determine whether it violates the unfairness prohibition. The court granted plaintiffs' motion for summary judgment, vacated the manual update, and permanently enjoined the CFPB from engaging in any examination, supervision, or enforcement action against any member of the plaintiff associations based on the CFPB's interpretation of its unfairness authority set forth in the updated manual. The CFPB filed a notice of appeal in November 2023, and the appeal was stayed by the Fifth Circuit pending the Supreme Court's resolution of *CFPB* v. *CFSA.*[60]

On March 30, 2023, the CFPB issued its final rule on small business lending under ECOA, as required by section 1071 of the Dodd-Frank Act.[61] On April 26, 2023, the Texas Bankers Association and Rio Bank sued the CFPB in the U.S. District Court for the Southern District of Texas challenging the validity of the final rule. The court entered a preliminary injunction enjoining the CFPB from enforcing or implementing the rule against plaintiffs (including the American Bankers Association, who had joined as a plaintiff via an amended complaint filed on May 14, 2023) and their members, and stayed the compliance dates for plaintiffs and their members pending a decision in *CFPB* v. *CFSA*.[62] On October 26, 2023, the court extended that order to apply to all covered entities following the intervention of other plaintiffs seeking to join the lawsuit. Separately, on August 11, 2023, the Kentucky Bankers Association and several Kentucky banks sued to challenge the rule in the U.S. District Court for the Eastern District of Kentucky. The court preliminarily enjoined the CFPB from enforcing the rule pending a decision in *CFPB* v. *CFSA*.[63] A third lawsuit was filed on December 26, 2023, in the U.S. District Court for the Southern District of Florida by the Revenue Based Finance Coalition, a trade association representing merchant cash advance providers.

### 6. Interagency Reporting on ECOA and HMDA

The CFPB is statutorily required to file a report to Congress annually describing the administration of its functions under ECOA, summarizing public enforcement actions taken by other agencies with administrative enforcement responsibilities under ECOA, and providing an assessment of the extent to which compliance with ECOA has been achieved.[64] In addition, the CFPB's annual HMDA reporting requirement calls for the CFPB, in consultation with HUD, to report annually on the utility of HMDA's requirement that covered lenders itemize certain mortgage loan data.[65] The information below provides the required reporting.

#### *6.1. Reporting on ECOA Enforcement*

The enforcement and compliance efforts and assessments made by the eleven agencies assigned enforcement authority under section 704 of ECOA are discussed in this section, as reported by the agencies.

**BILLING CODE 4810–AM–P**

[60] Additional activity has occurred since the close of this reporting period. On May 16, 2024, the Supreme Court issued a decision in *CFPB* v. *CFSA. See CFPB* v. *Cmty. Fin. Servs. Ass'n of Am., Ltd.,* 601 U.S. 416 (2024).

[61] *See https://www.consumerfinance.gov/rules-policy/final-rules/small-business-lending-under-the-equal-credit-opportunity-act-regulation-b/.*

[62] Additional activity has occurred since the close of this reporting period. *See* n.65, *supra.*

[63] Additional activity has occurred since the close of this reporting period. *See* n.65, *supra.*

[64] 15 U.S.C. 1691f.

[65] 12 U.S.C. 2807.

TABLE 1: FFIEC AGENCIES WITH ADMINISTRATIVE ENFORCEMENT OF ECOA[66]

| FFIEC AGENCIES | | | | | |
|---|---|---|---|---|---|
| | Consumer Financial Protection Bureau (CFPB) | Federal Deposit Insurance Corporation (FDIC) | Board of Governors of the Federal Reserve System (FRB) | National Credit Union Administration (NCUA) | Office of the Comptroller of the Currency (OCC) |

TABLE 2: NON-FFIEC AGENCIES WITH ADMINISTRATIVE ENFORCEMENT OF ECOA

| NON-FFIEC AGENCIES | | | |
|---|---|---|---|
| | Agricultural Marketing Service (AMS) of the U.S. Department of Agriculture (USDA)[67] | Department of Transportation (DOT) | Farm Credit Administration (FCA) |
| | Federal Trade Commission (FTC) | Securities and Exchange Commission (SEC) | Small Business Administration (SBA)[68] |

*6.1.1. Public Enforcement Actions*

In 2023, of the Federal agencies with ECOA enforcement authority, the CFPB, FDIC, and FTC brought a total of four fair lending enforcement actions. Information on the DOJ's fair lending

[66] Collectively, the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the Consumer Financial Protection Bureau (Bureau) comprise the Federal Financial Institutions Examination Council (FFIEC). The State Liaison Committee was added to FFIEC in 2006 as a voting member. Federal Financial Institutions Examination Council, *http://www.ffiec.gov* (last visited Mar. 30, 2021).≤

[67] The Grain Inspection, Packers and Stockyards Administration (GIPSA) was eliminated as a stand-alone agency within USDA in 2017. The functions previously performed by GIPSA have been incorporated into the Agricultural Marketing Service (AMS), and ECOA reporting comes from the Packers and Stockyards Division, Fair Trade Practices Program, AMS.

[68] 15 U.S.C. 1691c.

program and fair lending related public enforcement actions can be found at: *https://www.justice.gov/crt/fair-lending-program-0.*

*6.1.2. CFPB Enforcement Actions*

In 2023, the CFPB brought two fair lending enforcement actions: Citibank and Colony Ridge.

Citibank

On November 8, 2023, the CFPB ordered Citibank, N.A. to pay $25.9 million in fines and consumer redress for intentionally and illegally discriminating against credit card applicants the bank identified as Armenian American.[69] From at least 2015 through 2021, Citibank discriminated against retail services credit card applicants with surnames that Citibank employees associated with consumers of Armenian national origin, targeting applicants with surnames ending in ''-ian'' and ''-yan'' as well as applicants in or around Glendale, California. Nicknamed ''Little Armenia,'' Glendale is home to approximately 15 percent of the Armenian American population in the U.S. When Citibank identified credit card applicants as potentially being of Armenian national origin, the bank applied more stringent criteria to these applications, including denying them outright and requiring additional information or placing a block on the account.

Further, Citibank supervisors conspired to hide the discrimination by instructing employees not to discuss the discriminatory practices in writing or on recorded phone lines. Citibank employees also lied about the bases of denial, providing false reasons to denied applicants.

Colony Ridge

On December 20, 2023, the CFPB, together with DOJ, filed a complaint against the Texas-based Colony Ridge defendants.[70] The lawsuit alleges Colony Ridge sells unsuspecting families flood-prone land without water, sewer, or electrical infrastructure, and that the company sets borrowers up to fail with loans they cannot afford. As alleged in the complaint, roughly one in four Colony Ridge loans ends in foreclosure, after which the company repurchases the properties and sells them to new borrowers. As alleged in the complaint, Colony Ridge targets Hispanic borrowers. In particular, Colony Ridge advertises almost exclusively in Spanish, often on TikTok or other social media platforms, often featuring national flags and regional music from Latin America. In their marketing, Colony Ridge promised consumers the American dream of home ownership with its own seller financing: an easy-to-obtain loan product that requires no credit check and only a small deposit. The complaint alleges that foreclosure and property deed records from September 2019 through September 2022 show that Colony Ridge initiated foreclosures on at least 30 percent of seller-financed lots within just three years of the purchase date, with most loan failures occurring even sooner. Records also confirm that Colony Ridge accounted for more than 92 percent of all foreclosures recorded in Liberty County, Texas between 2017 and 2022.

In the complaint, the CFPB and DOJ allege that defendants violated ECOA by targeting consumers of Hispanic origin with a predatory loan product. The CFPB separately alleges that the Colony Ridge defendants violated the CFPA by making deceptive representations to consumers; that Colony Ridge Development and Colony Ridge BV violated the Interstate Land Sales Full Disclosure Act (ILSA) by making untrue statements, omitting material facts, failing to provide required accurate translations, and failing to report and disclose required information; and that defendants violated the CFPA by virtue of their violations of ECOA and ILSA, respectively. DOJ further alleges defendants' conduct violated the FHA.

The joint complaint seeks, among other things, injunctions against defendants to prevent future violations of Federal consumer financial laws, redress to consumers, damages, and the imposition of civil money penalties.

*6.1.3. Interagency Enforcement Actions*

In 2023, the FTC, along with the State of Wisconsin, brought an enforcement action in Federal court against Rhinelander, a Wisconsin auto dealer group, its current and former owners, and general manager Daniel Towne, alleging, among other things, that defendants violated ECOA and Regulation B by discriminating against American Indian consumers by charging them higher financing costs and fees.[71] Among other things, the settlement with Rhinelander's current owners and Defendant Towne requires the company to establish a comprehensive fair lending program that will, among other components, allow consumers to seek outside financing for a purchase, and cap the additional interest markup Rhinelander can charge consumers, as well as require the current owners and Defendant Towne to pay $1 million to refund affected consumers.[72] The former owners, Rhinelander Auto Center, Inc. and Rhinelander Motor Company, agreed to a separate settlement, that requires the companies to permanently wind down the businesses and pay $100,000 to refund affected consumers.[73]

On March 8, 2023, the FDIC issued a public consent order for Cross River bank under section 3(q) of the Federal Deposit Insurance Act (Act), 12 U.S.C. 1813(q). The FDIC determined that Cross River bank engaged in unsafe or unsound banking practices related to its compliance with applicable fair lending laws and regulations by failing to establish and maintain internal controls, information systems, and prudent credit underwriting practices in conformance with the Safety and Soundness Standards contained in appendix A of 12 CFR part 364, or the violations of ECOA, 15 U.S.C. 1691, *et seq.,* as implemented by Regulation B, 12 CFR part 1002, and the Truth in Lending Act, 15 U.S.C. 1601, *et seq.,* as implemented by Regulation Z, 12 CFR part 1026.

*6.1.4. Number of Institutions Cited for ECOA/Regulation B Violations*

In 2023, the agencies and the CFPB collectively reported citing 189 institutions with violations of ECOA and/or Regulation B.

*6.1.5. Violations Cited During ECOA Examinations*

Among institutions examined for compliance with ECOA and Regulation B, the FFIEC agencies reported that the most frequently cited violations were as follows:

[69] *See https://www.consumerfinance.gov/enforcement/actions/citibank-n-a/.*

[70] *See https://www.consumerfinance.gov/enforcement/actions/colony-ridge/.*

[71] *FTC* v. *Rhinelander Auto Ctr., Inc.,* No. 23–cv–737 (W.D. Wis., filed Oct. 24, 2023), *available at https://www.ftc.gov/system/files/ftc_gov/pdf/1-ComplaintbyFTC-WIagainstRhinelander.pdf.*

[72] *FTC* v. *Rhinelander Auto Ctr., Inc.,* No. 23–cv–737 (W.D. Wis. Nov. 6, 2023) (stipulated order for permanent injunction, monetary judgment, and other relief as to Defendants Rhinelander Auto Group LLC, Rhinelander Import Group LLC, and Daniel Towne), *https://www.ftc.gov/system/files/ftc_gov/pdf/18-ConsentJudgment EnteredastoRAGRMGandTowne.pdf.*

[73] *FTC* v. *Rhinelander Auto Ctr., Inc.,* No. 23cv 737 (W.D. Wis. Nov. 6, 2023) (stipulated order for permanent injunction, monetary judgment, and other relief as to Defendants Rhinelander Auto Center, Inc., and Rhinelander Motor Company), *https://www.ftc.gov/system/files/ftc_gov/pdf/17-ConsentJudgmentEnteredastoRACandRMC.pdf.*

TABLE 3—REGULATION B VIOLATIONS CITED BY FFIEC AGENCIES, 2023

| Regulation B violations: 2023 | FFIEC Agencies reporting |
|---|---|
| *12 CFR 1002.4, 1002.7(d)(1): Discrimination*—Discrimination on a prohibited basis in a credit transaction; improperly requiring the signature of the applicant's spouse or other person. | NCUA,[74] CFPB.[75] |
| *12 CFR 1002.5(b), 12 CFR 1002.5(c), 12 CFR 1002.5(d): Inquiring about protected class*—Inquiring about the race, color, religion, national origin, or sex of an applicant or any other person in connection with a credit transaction, except as permitted in sec. 1002.5(b)(1) and (b)(2), or sec.1002.8 in the case of a special purpose credit program; requesting any information concerning an applicant's spouse or former spouse, except as permitted in sec. 1002.5(c)(2); requesting the marital status of a person applying for individual, unsecured credit, except as permitted in sec. 1002.5(d)(1) (for credit other than individual, unsecured, a creditor may inquire about the applicant's marital status, but must only use the terms ''married,'' ''unmarried,'' and ''separated''); inquiring as to whether income stated in an application is derived from alimony, child support, or separate maintenance payments, except as permitted in sec.1002.5(d)(2); or requesting information about birth control practices, intentions concerning the bearing or rearing of children, or capability to bear children, except as permitted in sec. 1002.5(d)(3). | FDIC,[76] OCC.[77] |
| *12 CFR 1002.6 (b)(2), (5): Specific rules concerning use of information*—Improperly evaluating age, receipt of public assistance in a credit transaction.. | CFPB. |
| *12 CFR 1002.9(a)(1)(i), (a)(2), (b)(1); (b)(2); (c): Adverse Action*—Failure to provide notice to the applicant 30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application; failure to provide appropriate notice to the applicant 30 days after taking adverse action on an incomplete application; failure to provide sufficient information in an adverse action notification, including the specific reasons for the action taken. | OCC,[78] NCUA,[79] FRB,[80] FDIC,[81] CFPB.[82] |
| *12 CFR 1002.13(a)(1), (b): Information for Monitoring Purposes*—Failure to obtain information for monitoring purposes; failure to request information on an application pertaining to the applicant's ethnicity or race. | OCC. |
| *12 CFR 1002.14 (a)(1), (a)(2), (a)(3), (a)(4): Appraisals and Valuations*—Failure to provide appraisals and other valuations. | OCC,[83] NCUA.[84] |

Among institutions examined for compliance with ECOA and Regulation B, the Non-FFIEC agencies reported that the most frequently cited violations were as follows:

TABLE 4: REGULATION B VIOLATIONS CITED BY NON-FFIEC AGENCIES ENFORCING ECOA, 2023

| Regulation B violations: 2023 | Non-FFIEC agencies reporting |
|---|---|
| *12 CFR 1002.9(a)(1)(i), (a)(2): Adverse Action*—Failure to provide notice to the applicant 30 days after receiving a completed application concerning the creditor's approval of, counteroffer to, or adverse action on the application; failure to provide sufficient information in an adverse action notification, including the specific reasons for the action taken. | FCA. |
| *12 CFR 1002.13: Failure to request and collect information for monitoring purposes*—Failure to obtain information for monitoring purposes. | FCA. |

The AMS, SEC, and the SBA reported that they received no complaints based on ECOA or Regulation B in 2023. The FTC is an enforcement agency and does not conduct compliance examinations.

*6.1.6. Referrals to the Department of Justice*

The agencies assigned enforcement authority under section 704 of ECOA must refer a matter to DOJ when there is reason to believe that a creditor has engaged in a pattern or practice of lending discrimination in violation of ECOA.[85] They also may refer other potential ECOA violations to DOJ.[86] In 2023, 5 agencies (FDIC, NCUA, FRB, OCC and CFPB) collectively made 33 such referrals to DOJ involving discrimination in violation of ECOA. This is an increase of 175 percent in such referrals since 2020 (12 referrals). A brief description of those matters follows.

In 2023, the CFPB referred 18 fair lending matters to DOJ. The referrals included: discrimination on the basis of race and national origin in mortgage lending (redlining); discrimination in underwriting on the basis of receipt of public assistance income; predatory targeting on the basis of race and national origin; discrimination in pricing exceptions on the basis of race, national origin, sex, and age; and discrimination in credit cards on the basis of national origin and race.

In 2023, the FDIC referred seven fair lending matters to DOJ. The referrals included: one matter involving discrimination on the basis of race in mortgage lending (redlining); three matters for discrimination on the basis of race and national origin in mortgage lending (redlining); one matter involving discrimination in underwriting in commercial loans on the basis of race, color, national origin, and religion; one matter involving discrimination in auto loan pricing on the basis of sex or gender; and one matter for discrimination in auto loan pricing on the basis of race and national origin.

NCUA referred six ECOA matters to DOJ which involved discrimination

[74] 12 CFR 1002.4(a).

[75] 12 CFR 1002.4, 1002.7(d)(1).

[76] 12 CFR 1002.5(b)–(d).

[77] 12 CFR 1002.5(b).

[78] 12 CFR 1002.9(a)(2); 1002.9(a)(1)(i); 1002.9(b)(2).

[79] 12 CFR 1002.9(a)(1); 1002.9(a)(2); 1002.9(b)(2).

[80] 12 CFR 1002.9(a)(1)(i); 1002.9(b)(2).

[81] 12 CFR 1002.9(a)(1);(a)(2); (b)(2).

[82] 12 CFR 1002.9(a)(1),(2); 1002.9(b); 1002.9(c).

[83] 12 CFR 1002.14(a)(1); 1002.14(a)(2).

[84] 12 CFR 1002.14(a)(2).

[85] 15 U.S.C. 1691e(g).

[86] *Id.*

based on age and discrimination based on marital status.

The OCC made one referral to DOJ for a matter that involved discrimination on the basis of race, color, or national origin in mortgage lending (redlining).

The FRB referred one fair lending matter to DOJ. The matter involved discrimination on the basis of marital status in agricultural and commercial lending.

*6.2. Reporting on HMDA*

The CFPB's annual HMDA reporting requirement calls for the CFPB, in consultation with HUD, to report annually on the utility of HMDA's requirement that covered lenders itemize loan data in order to disclose the number and dollar amount of certain mortgage loans and applications, grouped according to various characteristics.[87] The CFPB, in consultation with HUD, finds that itemization and tabulation of these data furthers the purposes of HMDA.

**7. Looking Forward & Focus on Digital Discrimination**

The CFPB has made clear that the same laws and regulations apply to all technologies, regardless of the complexity or novelty of the technology deployed by institutions, including when it comes to combatting unlawful discrimination or explaining how certain credit decisions are made. ECOA is a powerful means to address unlawful digital discrimination in any aspect of a credit transaction. In 2023, the CFPB continued to combat digital discrimination through enforcement matters,[88] supervisory matters,[89] rulemaking,[90] guidance,[91] and using an all-of-government interagency approach.[92]

Looking forward, the CFPB will continue to enforce the law to root out unlawful discrimination, including when discrimination may be disguised by other processes within credit transactions. This includes actions that financial institutions take around the selection and procurement of data for use in advanced technological methods. Data brokers sell myriad types of personal data and sensitive information about consumers, some of which may directly implicate protected bases under ECOA. These data, alone or in combination with other data, may create proxies for, or have a disparate impact on, any of the ECOA prohibited bases. Creditors subject to ECOA and Regulation B may violate these laws if they use these data to engage in discriminatory targeting, steering, redlining, or in other ways that create unlawful discrimination.

The same holds true for fraud screens purported to facilitate compliance with other consumer protection and banking laws. While fraud detection compliance regimes may serve important purposes, institutions that are subject to ECOA and Regulation B may not use fraud screens and associated policies and procedures as an excuse to violate or circumvent fair lending laws.[93]

Further, as the CFPB continues to monitor markets and institutions for fair lending compliance, the CFPB will also continue to review the fair lending testing regimes of financial institutions. Robust fair lending testing of models should include regular testing for disparate treatment and disparate impact, including searches for and implementation of less discriminatory alternatives using manual or automated techniques. CFPB exam teams will continue to explore the use of open-source automated debiasing methodologies to produce potential alternative models to the insitutions' credit scoring models.

In 2024 and beyond, the CFPB will continue to combat digital discrimination and also continue to take steps to be a leader when it comes to building the Federal government's capabilities to address these types of transformative technologies.

**Appendix A: HMDA Resources**

As stated in section 2.2.5, the CFPB maintains a comprehensive suite of resources pertaining to the reporting and use of HMDA data, in addition to the annual HMDA filing guides released annually by the FFIEC. These resources include: Executive Summaries of HMDA rule changes;[94] Small Entity Compliance Guide;[95] Institutional and Transactional Coverage Charts;[96] Reportable HMDA Data Chart;[97] sample data collection form;[98] FAQs;[99] a Beginners Guide to Accessing and Using HMDA Data;[100] and downloadable webinars,[101] which provide an overview of the HMDA rule. In June of 2023, the CFPB published a summary of the 2022 data on mortgage lending.[102] The CFPB also provides on its website an interactive version of Regulation C that is easier to access and navigate than the printed version of Regulation C.[103]

Together with the Federal Financial Institutions Examination Council

[87] 12 U.S.C. 2807.

[88] *See https://www.consumerfinance.gov/enforcement/actions/colony-ridge/.*

[89] *See* section 1.3, *supra*.

[90] CFPB, OCC, FHFA, FRB, FDIC, NCUA, *Quality Control Standards for Automated Valuation Models* (June 1, 2023), *https://files.consumerfinance.gov/f/documents/cfpb_automated-valuation-models_proposed-rule-request-for-comment_2023-06.pdf.*

[91] CFPB, *Consumer Financial Protection Circular 2023–03 Adverse action notification requirements and the proper use of the CFPB's sample forms provided in Regulation B* (Sept. 19. 2023), *https://www.consumerfinance.gov/compliance/circulars/circular-2023-03-adverse-action-notification-requirements-and-the-proper-use-of-the-cfpbs-sample-forms-provided-in-regulation-b/.*

[92] CFPB, OCC, FRB, FDIC, NCUA, *Interagency Guidance on Reconsideration of Value of Residential Real Estate Valuations* (June 8, 2023), *https://files.consumerfinance.gov/f/documents/cfpb_interagency-guidance-reconsiderations-of-value-of-residential-real-estate_2023-06.pdf;* CFPB; Dept. of Justice Civil Rights Div.; Equal Opportunity Comm'n; Federal Trade Comm'n; *Joint Statement on Enforcement Efforts Against Discrimination and Bias in Automated Systems* (Apr. 25, 2023), *https://files.consumerfinance.gov/f/documents/cfpb_joint-statement-enforcement-against-discrimination-bias-automated-systems_2023-04.pdf.*

[93] Discrimination on a prohibited basis can violate ECOA and Regulation B when it occurs in any aspect of a credit transaction, including when it occurs through practices that entities may characterize as related to fraud detection. *See, e.g., https://www.consumerfinance.gov/enforcement/actions/citibank-n-a/.*

[94] CFPB, *Executive Summary of the 2020 Home Mortgage Disclosure Act (Regulation C) Final Rule* (Apr. 16, 2020), *https://files.consumerfinance.gov/f/documents/cfpb_rule-executive-summary_hmda-2020.pdf; https://www.consumerfinance.gov/about-us/blog/changes-to-hmda-closed-end-loan-reporting-threshold/.* Summaries for different reporting years are available at: *https://www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/hmda-reporting-requirements/.*

[95] CFPB, *Home Mortgage Disclosure (Regulation C) Small Entity Compliance Guide* (Feb. 2023), *https://files.consumerfinance.gov/f/documents/cfpb_hmda_small-entity-compliance-guide_2023-02.pdf.*

[96] CFPB, *HMDA Institutional Coverage Chart, https://files.consumerfinance.gov/f/documents/cfpb_hmda-institutional-coverage_2023.pdf;* CFPB, *HMDA Transactional Coverage Chart, https://files.consumerfinance.gov/f/documents/cfpb_hmda-transactional-coverage_2023.pdf.*

[97] CFPB, *Reportable HMDA Data: A Regulatory and Reporting Overview Reference Chart for HMDA Data Collected in 2023* (Feb. 9, 2023), *https://files.consumerfinance.gov/f/documents/cfpb_reportable-hmda-data_regulatory-and-reporting-overview-reference-chart_2023-02.pdf.*

[98] CFPB, *Sample Data Collection Form, https://files.consumerfinance.gov/f/documents/201708_cfpb_hmda-sample-data-collection-form.pdf.*

[99] CFPB, *Home Mortgage Disclosure Act FAQs, https://www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/hmda-reporting-requirements/home-mortgage-disclosure-act-faqs/.*

[100] CFPB, *A Beginner's Guide to Accessing and Using Home Mortgage Disclosure Act Data* (June 13, 2022), *https://files.consumerfinance.gov/f/documents/cfpb_beginners-guide-accessing-using-hmda-data_guide_2022-06.pdf.*

[101] CFPB, *HMDA Webinars, https://www.consumerfinance.gov/compliance/compliance-resources/mortgage-resources/hmda-reporting-requirements/webinars/.*

[102] CFPB, *Summary of 2022 Data on Mortgage Lending* (June 29, 2023), *https://www.consumerfinance.gov/data-research/hmda/summary-of-2022-data-on-mortgage-lending/.*

[103] *Interactive Bureau Regulations, Regulation C, https://www.consumerfinance.gov/rules-policy/regulations/1003/.*

(FFIEC),[104] the CFPB also routinely updates its HMDA resources throughout the year to ensure HMDA reporters have the most up-to-date information. For example, in November 2023, the CFPB released the 2024 Filing Instructions Guide,[105] an online interactive Filing Instructions Guide,[106] and the 2023 Supplemental Guide for Quarterly Filers.[107] Together with the FFIEC, in March of 2023, the CFPB also published the 2023 edition of the HMDA Getting it Right Guide.[108] The CFPB also works with the FFIEC to publish data submission resources for HMDA filers and vendors on its Resources for HMDA Filers website, *https://ffiec.cfpb.gov.*

In addition, HMDA reporters can ask questions about HMDA and Regulation C, including how to submit HMDA data, by emailing the CFPB's HMDA Help at *HMDAHelp@cfpb.gov.* The CFPB also offers financial institutions, service providers, and others informal staff guidance on specific questions about the statutes and rules the CFPB implements, including ECOA and Regulation B and HMDA and Regulation C, through its Regulation Inquiries platform at *www.reginquiries.consumerfinance.gov.*

**Appendix B: Defined Terms**

| Term | Definition |
|---|---|
| AMS | Agricultural Marketing Service of the U.S. Department of Agriculture. |
| ASC | FFIEC's Appraisal Subcommittee. |
| AVM | Automated Valuation Models. |
| CFPA | Consumer Financial Protection Act of 2010. |
| CFPB | Consumer Financial Protection Bureau. |
| CRA | Community Reinvestment Act. |
| Dodd-Frank Act | Dodd-Frank Wall Street Reform and Consumer Protection Act. |
| DOJ | U.S. Department of Justice. |
| DOT | U.S. Department of Transportation. |
| ECOA | Equal Credit Opportunity Act. |
| FCA | Farm Credit Administration. |
| FDIC | Federal Deposit Insurance Corporation. |
| FHA | Fair Housing Act. |
| FHFA | Federal Housing Finance Agency. |
| Federal Reserve Board or FRB | Board of Governors of the Federal Reserve System. |
| FFIEC | Federal Financial Institutions Examination Council—the FFIEC member agencies are the Board of Governors of the Federal Reserve System (*FRB*), the Federal Deposit Insurance Corporation (*FDIC*), the National Credit Union Administration (*NCUA*), the Office of the Comptroller of the Currency (*OCC*), and the Consumer Financial Protection Bureau (CFPB). The State Liaison Committee was added to FFIEC in 2006 as a voting member. |
| FTC | Federal Trade Commission. |
| HMDA | Home Mortgage Disclosure Act. |
| HUD | U.S. Department of Housing and Urban Development. |
| ILSA | Interstate Land Sales Full Disclosure Act. |
| NCUA | National Credit Union Administration. |
| OCC | Office of the Comptroller of the Currency. |
| ROV | Reconsideration of Value. |
| SBA | Small Business Administration. |
| SEC | Securities and Exchange Commission. |
| SPCP | Special Purpose Credit Program. |
| UDAAP | Unfair, Deceptive, or Abusive Acts or Practices. |
| USDA | U.S. Department of Agriculture. |

## Signing Authority

The Director of the Bureau, Rohit Chopra, having reviewed and approved this document, is delegating the authority to electronically sign this document to Laura Galban, a Bureau Federal Register Liaison, for purposes of publication in the **Federal Register**.

**Laura Galban,**

*Federal Register Liaison, Consumer Financial Protection Bureau.*

[FR Doc. 2024–14533 Filed 7–1–24; 8:45 am]

**BILLING CODE 4810–AM–P**

[104] Collectively, the Board of Governors of the Federal Reserve System (FRB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), the Office of the Comptroller of the Currency (OCC), and the CFPB comprise the Federal Financial Institutions Examination Council (FFIEC). The State Liaison Committee was added to FFIEC in 2006 as a voting member. Federal Fin. Instit. Examination Council, *http://www.ffiec.gov* (last visited June 5, 2024).

[105] CFPB, *Filing instructions guide for HMDA data collected in 2024* (Nov. 2023), *https://s3.amazonaws.com/cfpb-hmda-public/prod/help/2024-hmda-fig.pdf.*

[106] 2023 FIG (Filing Instructions Guide), *https://ffiec.cfpb.gov/documentation/fig/2023/overview.*

[107] CFPB, *Supplemental Guide for Quarterly Filers for 2024* (Aug. 2023), *https://s3.amazonaws.com/cfpb-hmda-public/prod/help/supplemental-guide-for-quarterly-filers-for-2024.pdf.*

[108] Federal Fin. Instit. Examination Council, *A Guide to HMDA Reporting, Getting it Right!* (Mar. 23, 2023), *https://www.ffiec.gov/hmda/pdf/2023Guide.pdf.*

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Department of Defense Military Family Readiness Council; Notice of Federal Advisory Committee Meeting

**AGENCY:** Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Department of Defense (DoD).

**ACTION:** Notice of Federal advisory committee meeting.

**SUMMARY:** The DoD is publishing this notice to announce the following Federal Advisory Committee meeting of the DoD Military Family Readiness Council (MFRC) will take place.

**DATES:** Open to the public, Monday, June 17, 2024 from 1:00 p.m. to 3:30 p.m.

**ADDRESSES:** The meeting will be held by videoconference. Participant access information will be provided after registering. (Pre-meeting registration is required. See guidance in **SUPPLEMENTARY INFORMATION**, ''Meeting Accessibility'').

**FOR FURTHER INFORMATION CONTACT:** Vesen L. Thompson, (703) 571–2360 (voice), OSD Pentagon OUSD P–R Mailbox Family Readiness Council, *osd.pentagon.ousd-p-r.mbx.family-readiness-council@mail.mil* (Email). Mailing address: Office of the Deputy Assistant Secretary of Defense (Military Community & Family Policy), 1500 Defense Pentagon, Washington, DC 20301–1500, Room 5A726. Website: *http://www.militaryonesource.mil/those-who-support-mfrc.*

**SUPPLEMENTARY INFORMATION:** Due to circumstances beyond the control of the Department of Defense and the Designated Federal Officer (DFO), the Department of Defense Military Family Readiness Council was unable to provide public notification required by 41 CFR 102–3.150(a) concerning its June 17, 2024 meeting. Accordingly, the Advisory Committee Management Officer for the Department of Defense, pursuant to 41 CFR 102–3.150(b), waives the 15-calendar day notification requirement.

This meeting is being held under the provisions of chapter 10 of title 5, United States Code (U.S.C.) (commonly known as the ''Federal Advisory Committee Act'' or ''FACA''), 5 U.S.C. 552b (commonly known as the ''Government in the Sunshine Act''), and 41 CFR 102–3.140 and 102–3.155.

*Availability of Materials for the Meeting:* Additional information, including the agenda or any updates to the agenda, is available at the DoD MFRC website: *https://www.militaryonesource.mil/mfrc.*

Materials presented in the meeting may also be obtained on the DoD MFRC website.

*Purpose of the Meeting:* The purpose of the meeting is for the DoD MFRC to receive briefings and have discussions on topics related to Military Family Readiness Programs and Activities.

*Agenda:* Monday, June 17, 2024, from 1:00 p.m. to 3:30 p.m.—Welcome, Introductions, Announcements, Briefings on Changes to Healthcare Policy and Implication for Military Families.

*Meeting Accessibility:* Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, this meeting is open to the public from 1:00 p.m. to 3:30 p.m. on June 17, 2024. The meeting will be held by videoconference. The number of participants is limited and is on a first-come basis. All members of the public who wish to participate must register by contacting DoD MFRC at (*osd.pentagon.ousd-p-r.mbx.family-readiness-council@mail.mil*) or by contacting Mr. Vesen Thompson at (703) 571–2360 (voice). Once registered, the web address and/or audio number will be provided.

*Special Accommodations:* Individuals requiring special accommodations to access the public meeting should contact Mr. Vesen Thompson so that appropriate arrangements can be made.

*Written Statements:* Pursuant to 41 CFR 102–3.140, and section 10(a)(3) of the FACA, interested persons may submit a written statement to the DoD MFRC; however, email submissions are preferred. Persons interested in providing a written statement for review and consideration by DoD MFRC members attending the June 17, 2024 meeting are encouraged to do so at *osd.pentagon.ousd-p-r.mbx.family-readiness-council@mail.mil*). Written statements received after this date will be provided to DoD MFRC members in preparation for the next MFRC meeting. The DFO will review all timely submissions and ensure submitted written statements are provided to DoD MFRC members prior to the meeting that is subject to this notice. The DFO will review all timely submissions with the DoD MFRC Chair and ensure they are provided to the members of the DoD MFRC. Those who make submissions are requested to avoid including personally identifiable information such as names of adults and children, phone numbers, addresses, Social Security Numbers and other contact information within the body of the written statement.

Dated: June 26, 2024.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2024–14544 Filed 7–1–24; 8:45 am]

**BILLING CODE 6001–FR–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Charter Renewal of Department of Defense Federal Advisory Committees—Board of Actuaries

**AGENCY:** Department of Defense (DoD).

**ACTION:** Charter renewal of Federal advisory committee.

**SUMMARY:** The DoD is publishing this notice to announce that it is renewing the charter for the Department of Defense Board of Actuaries (''DoD BoA'').

**FOR FURTHER INFORMATION CONTACT:** Jim Freeman, Advisory Committee Management Officer for the DoD, 703–692–5952.

**SUPPLEMENTARY INFORMATION:** The DoD BoA's charter is being renewed in accordance with chapter 10 of title 5 United States Code (U.S.C.) (commonly known as the ''Federal Advisory Committee Act'' or ''FACA''), 5 U.S.C. 552b (commonly known as the ''Government in the Sunshine Act''), and 41 CFR 102–3.50(a). The charter and contact information for the DoD BoA's Designated Federal Officer (DFO) can be found at *https://www.facadatabase.gov/FACA/apex/FACAPublicAgencyNavigation.*

The DoD BoA provides independent advice and recommendations on matters relating to the DoD Military Retirement Fund, the DoD Education Fund, the DoD Voluntary Separation Incentive Fund, and such other funds as the Secretary of Defense shall specify.

Pursuant to 10 U.S.C. 183(b), the DoD BoA shall consist of three members from among qualified professional actuaries who are members of the Society of Actuaries. All members of the DoD BoA are appointed to provide advice on behalf of the Government on the basis of their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. A member of the DoD BoA who is not an employee of the United States is entitled to receive pay at the daily equivalent of the annual rate of basic pay of the highest rate of basic pay under the General Schedule of subchapter III of chapter 53 of title 5 U.S.C., for each day the member is engaged in the performance of duties vested in the DoD BoA. All members are entitled to reimbursement for official DoD BoA-related travel and per diem.

The public or interested organizations may submit written statements to the DoD BoA membership about the DoD BoA's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of a planned meeting of the DoD BoA. All written statements shall be submitted to the DFO for the DoD BoA, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: June 27, 2024.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2024–14565 Filed 7–1–24; 8:45 am]

**BILLING CODE 6001–FR–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Department of Defense Board of Actuaries; Notice of Federal Advisory Committee Meeting

**AGENCY:** Under Secretary of Defense for Personnel and Readiness, Department of Defense (DoD).

**ACTION:** Notice of Federal advisory committee meeting.

**SUMMARY:** The DoD is publishing this notice to announce that the following Federal Advisory Committee meeting of the DoD Board of Actuaries will take place.

**DATES:** Open to the public Wednesday, July 24, 2024, from 10:00 a.m. to 1:00 p.m. Eastern Standard Time (EST).

**ADDRESSES:** * * * THIS MEETING WILL BE HELD VIRTUALLY * * * If you need any assistance, please contact Inger Pettygrove at (703) 225–8803 or *Inger.m.pettygrove.civ@mail.mil* as soon as possible.

**FOR FURTHER INFORMATION CONTACT:** Inger Pettygrove, (703) 225–8803 (Voice), *inger.m.pettygrove.civ@mail.mil* (Email). Mailing address is Defense Human Resources Activity, DoD Office of the Actuary, 4800 Mark Center Drive, STE 03E25, Alexandria, VA 22350–8000. Website: *https://actuary.defense.gov/.* The most up-to-date changes to the meeting agenda can be found on the website.

**SUPPLEMENTARY INFORMATION:** This meeting is being held under the provisions of chapter 10 of title 5 United States Code (U.S.C.) (commonly known as the Federal Advisory Committee Act of 1972 (5 U.S.C. app.) or ''FACA''), the Government in the Sunshine Act of 1976 (5 U.S.C. 552b, as amended), and 41 Code of Federal Regulations (CFR) 102–3.140 and 102–3.150.

*Purpose of the Meeting:* The purpose of the meeting is for the DoD Board of Actuaries to review DoD actuarial methods and assumptions to be used in the valuations of the Military Retirement Fund, the Voluntary Separation Incentive Fund, and the Education Benefits Fund in accordance with the provisions of section 183, section 2006, chapter 74 (10 U.S.C. 1464 *et seq.*), and section 1175 of title 10, U.S.C.

**Agenda**

Military Retirement Fund/VSI Fund (10:00 a.m.)
1. Recent and Proposed Legislation
2. Briefing on Investment Experience
3. September 30, 2023, Valuation of the Military Retirement Fund *
4. Proposed Methods and Assumptions for September 30, 2024, Valuation of the Military Retirement Fund *
5. Proposed Methods and Assumptions for September 30, 2023, VSI Fund Valuation *

Education Benefits Fund (11:00 a.m.)
6. Fund Overview
7. Briefing on Investment Experience
8. September 30, 2023, Valuation Proposed Economic Assumptions *
9. September 30, 2023, Valuation Proposed Methods and Assumptions—Reserve Programs *
10. September 30, 2023, Valuation Proposed Methods and Assumptions—Active-Duty Programs *
11. Developments in Education Benefits

* Board approval required

*Meeting Accessibility:* Pursuant to 5 U.S.C. 552b and 41 CFR 102–3.140 through 102–3.165, this meeting is open to the public. All members of the public who wish to attend virtually must register by contacting Inger Pettygrove, (703) 225–8803 (Voice), *inger.m.pettygrove.civ@mail.mil* (Email) no later than Monday, July 22, 2024. Once registered, the web address and/or audio number will be provided.

*Written Statements:* Pursuant to 41 CFR 102–3.140 and 10(a)(3) of the FACA, the public or interested organizations may submit written comments to the DoD Board of Actuaries about its mission and topics pertaining to this public session. Persons desiring to attend the DoD Board of Actuaries meeting to make an oral presentation or submit a written statement for consideration at the meeting must notify Inger Pettygrove at (703) 225–8803, or *inger.m.pettygrove.civ@mail.mil,* by Wednesday, July 10, 2024.

Written comments need to be submitted in the following formats: Adobe Acrobat or Microsoft Word. Written comments may also be mailed to the address listed in **FOR FURTHER INFORMATION CONTACT**. Written comments not received by the DoD Board of Actuaries at least five (5) business days prior to the meeting date, or after, will be provided to the Chair of the DoD Board of Actuaries for consideration.

Advance copy of oral public comments must be sent via email at *inger.m.pettygrove.civ@mail.mil* with the subject line ''DoD Board of Actuaries: Request to Speak <insert the issue and question>'' no later than 11:59 p.m. EST on Wednesday, July 10, 2024. Submissions received after the deadline will not be considered for oral public comment but will be provided to the Chair of the DoD Board of Actuaries for consideration. All submitted oral comments become government property and may be published as part of the meeting record. Registration for oral public comment is on a first-come, first-served basis. Comments are limited to two (2) minutes or less per person. After the maximum number of speakers is exceeded, individuals registered to provide oral comment will be placed on a wait list and notified should an opening become available. Should time expire for oral public comments those not presented will be provided to the Chair of the DoD Board of Actuaries for consideration. You will be notified via email no later than Monday, July 22, 2024, if you have been identified to provide in-person public comment.

Please note that since the DoD Board of Actuaries operates under the provisions of the FACA, all written comments received will be treated as public documents and will be made available for public inspection.

Dated: June 27, 2024.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2024–14553 Filed 7–1–24; 8:45 am]

**BILLING CODE 6001–FR–P**

## DEPARTMENT OF DEFENSE

### Office of the Secretary

### Renewal of Department of Defense Federal Advisory Committees—Defense Business Board

**AGENCY:** Department of Defense (DoD).

**ACTION:** Renewal of Federal advisory committee.

**SUMMARY:** The DoD is publishing this notice to announce that it is renewing the Defense Business Board (DBB).

**FOR FURTHER INFORMATION CONTACT:** Jim Freeman, DoD Advisory Committee Management Officer, 703–692–5952.

**SUPPLEMENTARY INFORMATION:** The DoD is renewing the DBB in accordance with chapter 10 of title 5 United States Code (U.S.C.) (commonly known as the ''Federal Advisory Committee Act'' or ''FACA'') (5 U.S.C. 552b (commonly known as the ''Government in the Sunshine Act'') and 41 CFR 102–3.50(d). The charter and contact information for the DBB's Designated Federal Officer (DFO) are found at *https://www.facadatabase.gov/FACA/apex/FACAPublicAgencyNavigation.*

The DBB provides the Secretary of Defense and Deputy Secretary of

Defense with independent advice and actionable recommendations to address critical matters and challenges to accelerate adoption of effective and efficient business processes and functions, organizational management constructs, and business and organizational cultural changes within the DoD in response to specific tasking from the Secretary of Defense or the Deputy Secretary of Defense (''the DoD Appointing Authority''). The DBB examines and advises on DoD executive management, innovative business processes, and governance from private, public, and academic sector perspectives. The DBB is composed of no more than 20 members who meet one of more of the follow criteria: (a) proven track record of sound judgement in leading or governing large, complex public or private-sector organizations, including academia; (b) significant management-level (executive level managers that are titled ''chief'' followed by their function) global business or academic experience including, but not limited to the areas of executive management, corporate strategy, governance, business process improvement and innovation, global business services/shared services, audit and finance, supply chain and logistics, human resources/talent management, data/analytics management and use, real property management, organizational design and optimization, energy and climate, or technology; (c) demonstrated performance in developing new business theories, innovation, and concepts; (d) career as a distinguished academic or researcher in business at an accredited college or institute of higher education; or (e) a proven track record as an innovative leader in small and minority owned businesses.

Individual members are appointed according to DoD policy and procedures, and serve a term of service of one-to-four years with annual renewals. One member will be appointed as Chair of the DBB. No member, unless approved according to DoD policy and procedures, may serve more than two consecutive terms of service on the DBB, or serve on more than two DoD Federal advisory committees at one time.

DBB members who are not full-time or permanent part-time Federal civilian officers or employees, or active-duty members of the Uniformed Services, are appointed as experts or consultants, pursuant to 5 U.S.C. 3109, to serve as special government employee members. DBB members who are full-time or permanent part-time Federal civilian officers or employees, or active-duty members of the Uniformed Services are appointed pursuant to 41 CFR 102–3.130(a), to serve as regular government employee members.

All DBB members are appointed to provide advice based on their best judgment without representing any particular point of view and in a manner that is free from conflict of interest. Except for reimbursement of official DBB-related travel and per diem, members serve without compensation.

The public or interested organizations may submit written statements about the DBB's mission and functions. Written statements may be submitted at any time or in response to the stated agenda of planned meeting of the DBB. All written statements shall be submitted to the DFO for the DBB, and this individual will ensure that the written statements are provided to the membership for their consideration.

Dated: June 27, 2024.

**Aaron T. Siegel,**

*Alternate OSD Federal Register Liaison Officer, Department of Defense.*

[FR Doc. 2024–14554 Filed 7–1–24; 8:45 am]

**BILLING CODE 6001–FR–P**

## DEPARTMENT OF DEFENSE

### Department of the Army, Corps of Engineers

### Intent To Prepare a Supplemental Environmental Impact Statement for the San Clemente Shoreline Protection Project

**AGENCY:** Corps of Engineers, Department of the Army, DoD.

**ACTION:** Notice of intent.

**SUMMARY:** The U.S. Army Corps of Engineers (USACE) intends to prepare a Supplemental Environmental Impact Statement (SEIS) to evaluate further dredging of suitable beach nourishment sediment associated with the construction of the San Clemente Shoreline Protection Project, a coastal storm risk management project, and include an additional borrow area(s) to obtain beach compatible sediment for future renourishments. This SEIS will supplement the San Clemente Shoreline Protection Project Final Feasibility Report and Joint Final Environmental Impact Statement/Environmental Impact Report dated February 2012 (FR/EIS/EIR), San Clemente Shoreline Protection Project Supplemental Environmental Assessments (SEA) prepared in 2023, and San Clemente Shoreline Protection Project Revised SEA prepared in 2024. The SEIS will not reformulate the broad array of alternatives previously examined in the FR/EIS/EIR and SEAs but will consider reasonable alternatives received during the scoping process. Mitigation will be considered as required for any additional impacts addressed in the SEIS.

**DATES:** To ensure consideration, all comments concerning the scope of the SEIS must be received on or before August 1, 2024.

**ADDRESSES:** You may submit comments related to the SEIS by any of the following methods: *Mail:* U.S. Army Corps of Engineers, Los Angeles District, 915 Wilshire Boulevard (Attn: CESPL–PDR–L San Clemente), Los Angeles, California 90017 *or Email: kenneth.wong@usace.army.mil.*

**FOR FURTHER INFORMATION CONTACT:** Kenneth Wong, Planning Division, USACE Los Angeles District, (213) 361–2269, *kenneth.wong@usace.army.mil.*

**SUPPLEMENTARY INFORMATION:**

1. *Background:* The project was authorized by the Water Resources Reform and Development Act of 2014, Public Law 113–121, section 7002 for the purpose of reducing coastal storm damages by constructing a beach fill/berm along the San Clemente shoreline. The authorized project includes construction of an approximate 50-foot-wide beach nourishment project along a 3,412-foot-long stretch of shoreline using beach compatible sediment, with renourishment on the average of every 6 years over a 50-year period of federal participation. The authorization did not identify a specific borrow site for the beach fill; however, it identified that the site(s) would be off the coast of San Diego County (*e.g.,* Oceanside). The project is further described in the Final Feasibility Report and Final Environmental Impact Statement dated February 2012 (FR/EIS/EIR); supplemental environmental assessment (SEA) dated May 2023; and SEA dated March 2024. Construction of the project was initiated in December 2023. However, due in part to equipment damage and sediment compatibility issues encountered at the Oceanside borrow area, construction was temporarily paused. To allow for operational flexibility, the 2024 SEA evaluated inclusion of the Surfside-Sunset borrow area, a 106-acre borrow site offshore Surfside-Sunset beaches located 29 miles to the north of San Clemente in Orange County, as an alternate borrow site for initial construction of the project.

After the 2024 SEA's FONSI was signed (March 18, 2024), further analysis indicated that continued use of the Surfside-Sunset borrow site to complete initial construction of the

project could result in significant effects on air quality due to the duration of dredging operations, including time and distance required to transport sediment from Surfside-Sunset to San Clemente Beach. Therefore, a SEIS is needed to evaluate potential significant impacts to air quality associated with further use of Surfside-Sunset to complete initial construction. Furthermore, the 2024 SEA only evaluated use of Surfside-Sunset to complete initial construction but not further use of the borrow area for future renourishments. The SEIS will also evaluate use of Surfside-Sunset for future renourishments.

2. *Purpose and Need for the Proposed Action:* The purpose of the proposed action is to identify borrow sites with sufficient beach compatible sediment required to complete all the planned beach nourishments for the authorized coastal storm risk management project. The need for the project is to protect public properties and private structures currently susceptible to damages caused by erosion (including land loss and undermining of structures), inundation (structures), and wave attack (structures, railroad).

3. *Proposed Action:* The proposed action is to identify suitable location(s) containing enough beach compatible sediment required to nourish San Clemente Beach and complete the coastal storm risk management project.

4. *Alternatives:* The alternatives currently identified include the preferred alternative and the no-action alternative. The preferred alternative includes the use of Surfside-Sunset borrow area in addition to the Oceanside borrow area to nourish San Clemente Beach on the average of every 6 years over the 50-year period of federal participation. The No Action Alternative is defined as continued use of only the Oceanside borrow area to complete the coastal storm risk management project; the Surfside-Sunset borrow area would not be used further. During scoping and development of the SEIS, USACE will determine if there are any additional borrow areas with suitable sediment in the general vicinity of the San Clemente Beach placement site in addition to Oceanside and Surfside-Sunset borrow areas that should be evaluated in the SEIS.

5. *Summary of Potential Impacts.*

*Air Quality:* Continued use of the Surfside-Sunset borrow area would result in emissions within the South Coast Air Basin where the borrow area, vessel transit corridor, and placement sites are located. The South Coast Air Basin is in extreme nonattainment for ozone. Pursuant to 40 CFR 93.153(b)(1), the applicability rates for ozone precursors volatile organic carbon (VOC) and nitrogen oxides ($NO_X$) are each 10 tons per year. The total of direct and indirect emissions of $NO_X$ for the continued use of the borrow area to complete construction and for future renourishments would exceed the applicability rate for $NO_X$.

*Biological Resources:* The Surfside-Sunset borrow area as well as the vessel transit corridor for the hopper dredge to the San Clemente Beach placement site is located within a larger area identified by the National Marine Fisheries Service (NMFS) as essential for transit of green sea turtles (*Chelonia mydas),* a species protected under the Endangered Species Act. Potential effects include entrainment and vessel collision. The borrow area and vessel transit corridor are also located within a proposed critical habitat for the species which is expected to be finalized in the summer of 2024. Significant adverse effects to the forthcoming designated critical habitat are not expected.

6. *Scoping Process.*

*a.* Scoping will afford all interested parties an opportunity to provide comment on the proposed scope of analysis in the draft document. A scoping meeting will not be held. Comments on scoping, including potential alternatives, pertinent information, studies, and/or analyses, relevant to the proposed action may be submitted to the contacts listed above. If any reasonable alternatives are identified during the scoping period, USACE will evaluate those alternatives in the draft SEIS, along with the No Action Alternative.

*b.* This NOI commences the public scoping process to identify issues and potential alternatives for consideration in the SEIS. Throughout the scoping process, federal agencies; tribal, state, and local governments; and the public can help USACE identify significant resources and issues, impact-producing factors, reasonable alternatives, and potential mitigation measures to be analyzed in the SEIS, as well as to provide additional information. Comments received in response to this NOI, including names and addresses of those who comment, will be part of the public record. Comments submitted anonymously will be accepted and considered. Before including your address, phone number, email address, or other personal identifying information in your comment, be advised that your entire comment—including your personal identifying information—may be made publicly available at any time. While commenters can request their personal identifying information be withheld from public review, it cannot be guaranteed that this will be able to be accomplished.

7. *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 and application of section 404(b)(1) guidelines. 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 the Marine Mammal Protection Act.

8. *Schedule for the Decision-Making Process.* After the draft SEIS is completed, the USACE will publish a notice of availability (NOA) and request public comments on the draft SEIS. USACE anticipates issuing the NOA in July 2024. After the public comment period ends, the USACE will review and respond to comments received and will develop the final SEIS. USACE anticipates making the final SEIS available to the public in September or October 2024. A ROD will be completed no sooner than 30 days after the final SEIS is released, in accordance with 40 CFR 1506.11(b)(2).

**David R. Hibner,**

*Programs Director.*

[FR Doc. 2024–14552 Filed 7–1–24; 8:45 am]

**BILLING CODE 3720–58–P**

## DEPARTMENT OF EDUCATION

### Meeting, National Advisory Committee on Institutional Quality and Integrity

**AGENCY:** National Advisory Committee on Institutional Quality and Integrity (NACIQI or Committee), Office of Postsecondary Education, Department of Education.

**ACTION:** Announcement of an open meeting.

**SUMMARY:** This notice sets forth the agenda, time, and instructions to access or participate in the August 6–8, 2024, hybrid meeting of NACIQI, and provides information to members of the public regarding the meeting, including requesting to make written or oral comments. Committee members will meet in-person while accrediting agency representatives and public attendees will participate virtually. The notice of this meeting is required under U.S.

Code of Federal Regulations, Chapter 10 (Federal Advisory Committees) and section 114(d)(1)(B) of the Higher Education Act (HEA) of 1965, as amended.

**ADDRESSES:** Potomac Center Plaza, 10th Floor Auditorium, 550 12th Street SW, Washington, DC 20024 [Only NACIQI members and Department of Education staff will participate in the meeting at this address].

**DATES:** The hybrid NACIQI meeting will be held on August 6–8, 2024, from 9:00 a.m. to 5:00 p.m. Eastern Standard Time.

**FOR FURTHER INFORMATION CONTACT:** George Alan Smith, Executive Director/ Designated Federal Official (DFO), NACIQI, U.S. Department of Education, 400 Maryland Avenue SW, Washington, DC 20202, telephone: (202) 453–7757, or email: *George.Alan.Smith@ed.gov.*

**SUPPLEMENTARY INFORMATION:**

*Statutory Authority and Function:* NACIQI is established under Section 114 of the HEA (20 U.S.C. 1011c). NACIQI advises the Secretary of Education with respect to:

- The establishment and enforcement of the standards of accrediting agencies or associations under subpart 2, part H, Title IV of the HEA, as amended;
- The recognition of specific accrediting agencies or associations;
- The preparation and publication of the list of nationally recognized accrediting agencies and associations;
- The eligibility and certification process for institutions of higher education under Title IV of the HEA, together with recommendations for improvement in such process;
- The relationship between (1) accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions; and
- Any other advisory function relating to accreditation and institutional eligibility that the Secretary of Education may prescribe by regulation.

**Meeting Agenda**

The purpose of the meeting is to conduct a review of the following applications for renewals of recognition.

*Applications for Renewal of Recognition*

1. WASC Accrediting Commission for Community and Junior Colleges. Scope of Recognition: The accreditation and pre-accreditation (''Candidate for Accreditation'') of community and other colleges which have as a primary mission the granting of associate degrees, but which may also award certificates and other credentials, not to exceed the bachelor degree level, where the provision of such credentials is within the institution's mission and, if applicable, is authorized by their governmental authorities, and the accreditation of such programs offered via distance education and correspondence education at these colleges. This recognition also extends to the Committee on Substantive Change of the Commission, for decisions on substantive changes, and the Appeals Panel. Geographic Area of Accrediting Activities: Throughout the United States.

2. American Veterinary Medical Association, Council on Education. Scope of Recognition: The accreditation and preaccreditation (''Provisional Accreditation'') in the United States of programs leading to professional degrees (D.V.M. or V.M.D.) in veterinary medicine. Geographic Area of Accrediting Activities: Throughout the United States.

3. Accrediting Council for Continuing Education and Training. Scope of Recognition: The accreditation throughout the United States of institutions of higher education that offer continuing education and vocational programs that confer certificates or occupational associate degrees, including those programs offered via distance education. Geographic Area of Accrediting Activities: Throughout the United States.

4. Council on Education for Public Health. Scope of Recognition: The accreditation of schools of public health and public health programs outside schools of public health, at the baccalaureate and graduate degree levels, including those offered via distance education. Geographic Area of Accrediting Activities: Throughout the United States.

5. National Association of Schools of Dance, Commission on Accreditation. Scope of Recognition: The accreditation throughout the United States of freestanding institutions that offer dance and dance-related programs (both degree and non-degree-granting), including those offered via distance education. Geographic Area of Accrediting Activities: Throughout the United States.

6. National Association of Schools of Music, Commission on Accreditation. Scope of Recognition: The accreditation throughout the United States of freestanding institutions that offer music and music related programs (both degree and non-degree-granting) including those offered via distance. This recognition also extends to the Commission on Community College Accreditation. Geographic Area of Accrediting Activities: Throughout the United States.

7. National Association of Schools of Theatre, Commission on Accreditation. Scope of Recognition: The accreditation throughout the United States of freestanding institutions that offer theatre and theatre-related programs (both degree and non-degree-granting), including those offered via distance education. Geographic Area of Accrediting Activities: Throughout the United States.

8. Puerto Rico State Agency for the Approval of Public Postsecondary Vocational, Technical Institutions and Programs. Scope of Recognition: State agency for the approval of vocational education.

9. Maryland State Board of Nursing. Scope of Recognition: State agency for the approval of nursing education.

10. New York State Board of Regents (nursing education). Scope of Recognition: State approval agency for nursing education.

To ensure sufficient time for all agency reviews, including NACIQI questions and discussion, the Department requests that the agencies limit their opening statements to 10 minutes (total for one or more statements), and that the agencies avoid extended discussions about agency representatives and their backgrounds. Following the brief opening statement, the agency's presentation should focus on the regulatory criteria, and in particular, responses to areas where the staff has recommended a finding of noncompliance or substantial compliance, or where other concerns have been raised that the agency would like to address. However, the agency should expect that questions from NACIQI members may focus on other areas.

**Administration Policy Update**

Assistant Secretary for Postsecondary Education, Dr. Nasser Paydar, will provide an update on the Administration's postsecondary education policy priorities.

**Accreditor Dashboards Updates**

The Committee will refer to the Accreditor Dashboards for accrediting agencies up for review. These dashboards will include information about post-completion earnings and cumulative loan debt.

**Policy Discussion**

In addition to its review of accrediting agencies and State approval agencies for Secretarial recognition, there will be

time for Committee discussions regarding any of the categories within NACIQI's statutory authority in its capacity as an advisory committee.

**Instructions for Accessing the Meeting**

**Registration**

Committee members will meet in-person while agency representatives and public attendees will participate virtually.

You may register for the meeting on your computer using the link below. After you register, you will receive a confirmation email containing personalized participation links for each day of the three-day meeting no later than 8:00 a.m. Eastern Standard Time on August 6, 2024.

**Registration Link**

*https://cvent.me/N7blbg.*

**Public Comment**

*Submission of requests to make an oral comment regarding a specific accrediting agency under review, or to make an oral comment or written statement regarding other issues within the scope of NACIQI's authority:*

Opportunity to submit a written statement regarding a specific accrediting agency under review was solicited by a previous **Federal Register** notice published on May 3, 2023 (*88 FR 27876;* Document Number 2023–09362). The period for submission of such statements is now closed. Additional written statements regarding a specific accrediting agency or state approval agency under review will not be accepted at this time. However, members of the public may submit written statements regarding other issues within the scope of NACIQI's authority for consideration by NACIQI in the manner described below.

Members of the public may make oral comments regarding a specific accrediting agency under review and/or other agenda topics. Oral comments may not exceed three minutes. Oral comments about an agency's recognition when a compliance report has been required by the Senior Department Official or the Secretary must relate to the criteria for recognition cited in the Senior Department Official's letter that requested the report, or in the Secretary's appeal decision, if any. Oral comments about an agency seeking expansion of scope must be directed to the agency's ability to serve as a recognized accrediting agency with respect to the kinds of institutions or programs requested to be added. Oral comments about the renewal of an agency's recognition must relate to its compliance with the criteria for the Recognition of Accrediting Agencies, which are available at *http://www.ed.gov/admins/finaid/accred/index.html.*

Written statements and oral comments concerning NACIQI's work outside of a specific accrediting agency under review must be limited to matters within the scope of NACIQI's authority, as outlined under Section 114 of the HEA (20 U.S.C. 1011c), and written comments of any kind submitted after the deadline will not be considered by the Department or provided to NACIQI for purposes of the current cycle review.

**Instructions on Requesting To Make Public Comment**

To request to make oral comments of three minutes or less during the August 6–8, 2024, meeting, please follow either Method One or Method Two below. To submit a written statement to NACIQI concerning its work outside a specific accrediting agency under review, please follow Method One.

*Method One:* Submit a request by email to the *ThirdPartyComments@ed.gov* mailbox. Please do not send material directly to NACIQI members. Written statements to NACIQI concerning its work outside of a specific accrediting agency under review and requests to make oral comment must be received by July 30, 2024, and include the subject line ''Oral Comment Request: (agency name),'' ''Oral Comment Request: (subject)'' or ''Written Statement: (subject).'' The email must include the name(s), title, organization/affiliation, mailing address, email address, and telephone number, of the person(s) submitting a written statement or requesting to speak. All individuals submitting an advance request in accordance with this notice will be afforded an opportunity to speak. Written statements of any kind submitted after the deadline will not be considered by the Department or provided to NACIQI for purposes of the current cycle review.

*Method Two (Only available to those seeking to make oral comments):* Submit a request by email on August 6, 2024, between 7:45 a.m. and 8:45 a.m. Eastern Standard Time to the *ThirdPartyComments@ed.gov* mailbox. The email must include the subject on which the requestor wishes to comment, in addition to his or her name, title, organization/affiliation, mailing address, email address, and telephone number. If you intend to make your comments by dialing into the meeting rather than using a computer, please be sure to include that information in your email request. A total of up to fifteen minutes for each agenda item will be allotted for oral commenters who register on August 6, 2024, between 7:45 a.m. and 8:45 a.m. Eastern Standard Time. Individuals will be selected on a first-come, first-served basis. If selected, each commenter may not exceed three minutes.

*Access to Records of the Meeting:* The Department will post the official report of the meeting on the NACIQI website *https://sites.ed.gov/naciqi/archive-of-meetings/* within 90 days after the meeting. In addition, pursuant to 5 U.S.C. 1009(b), the public may request to inspect records of the meeting at 400 Maryland Avenue SW, Washington, DC, by emailing *aslrecordsmanager@ed.gov* or by calling (202) 453–7415 to schedule an appointment. Senior Department Official's (as defined in 34 CFR 602.3) decisions, pursuant to 34 CFR 602.36, associated with all NACIQI meetings can be found at the following website: *https://surveys.ope.ed.gov/erecognition/#/public-documents.*

*Reasonable Accommodations:* The dial-in information and weblink access to the meeting are accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

*Electronic Access to This Document:* The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* At this site you can view this document, as well as all other documents of the Department published in the **Federal Register**, in text or Adobe Portable Document Format (PDF). To use PDF, you must have Adobe Acrobat Reader, which is available free at the site. You also may access documents of the Department published in the **Federal Register** by using the article search feature at: *www.federalregister.gov.* Specifically, through the advanced search feature at this site, you can limit your search to documents published by the Department.

*Authority:* Section 114 of the HEA of 1964, as amended (20 U.S.C. 1011c).

**Antoinette Flores,**

*Deputy Assistant Secretary for Policy, Planning and Innovation, Office of Postsecondary Education.*

[FR Doc. 2024–14342 Filed 7–1–24; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF EDUCATION

### President's Advisory Commission on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics

**AGENCY:** Department of Education, President's Advisory Commission on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics.

**ACTION:** Announcement of an open meeting.

**SUMMARY:** This notice sets forth the agenda for the July 25, 2024, meeting of the President's Advisory Commission on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics (Commission), and how members of the public may attend the meeting and submit written comments pertaining to the work of the Commission.

**DATES:** The meeting of the Commission will be held on Thursday, July 25, 2024, from 12 p.m. to 4 p.m. Eastern Daylight Time.

**ADDRESSES:** The meeting will be conducted virtually.

**FOR FURTHER INFORMATION CONTACT:** Emmanuel Caudillo, Designated Federal Official, President's Advisory Commission on Advancing Educational Equity, Excellence, and Economic Opportunity for Hispanics, U.S. Department of Education, 400 Maryland Avenue SW, Room 7E220, Washington, DC 20202, telephone: (202) 377–4988, or email: *Emmanuel.Caudillo@ed.gov.*

**SUPPLEMENTARY INFORMATION:**

*The Commission's Statutory Authority and Function:* The Commission is established by Executive Order 14045 (September 13, 2021) and continued by Executive Order 14109 (September 29, 2023). The Commission is also governed by the provisions of 5 U.S.C. chapter 10 (Federal Advisory Committees), which sets forth standards for the formation and use of advisory committees. The Commission's duties are to advise the President, through the Secretary of Education, on matters pertaining to educational equity and economic opportunity for the Hispanic and Latino community in the following areas: (i) what is needed for the development, implementation, and coordination of educational programs and initiatives at the U.S. Department of Education (Department) and other agencies to improve educational opportunities and outcomes for Hispanics and Latinos; (ii) how to promote career pathways for in-demand jobs for Hispanic and Latino students, including registered apprenticeships, internships, fellowships, mentorships, and work-based learning initiatives; (iii) ways to strengthen the capacity of institutions, such as Hispanic-serving Institutions, to equitably serve Hispanic and Latino students and increase the participation of Hispanic and Latino students, Hispanic-serving school districts, and the Hispanic community in the programs of the Department and other agencies; (iv) how to increase public awareness of and generate solutions for the educational and training challenges and equity disparities that Hispanic and Latino students face and the causes of these challenges; and (v) approaches to establish local and national partnerships with public, private, philanthropic, and nonprofit stakeholders to advance the mission and objectives of this order, consistent with applicable law. Notice of this meeting is required by section 1009(a)(2) of 5 U.S.C. chapter 10 (Federal Advisory Committees).

*Meeting Agenda:* The agenda for the Commission meeting builds upon conversations and information shared in the Commission's six prior meetings and continues their engagement on advancing educational equity and economic opportunity for Hispanics. Specifically, during the meeting, the Commission will (1) receive updates and discuss recommendations from the Commission's four subcommittees: Advancing PreK–12 Educational Equity; Advancing Higher Education and Hispanic Serving Institutions (HSIs); Strengthening Economic Opportunity & Workforce Development; and Strengthening Public Partnerships and Public Awareness; (2) hear presentations from federal and community leaders on topics related to Executive Order 14045; and (3) and discuss strategies and next steps towards advancing duties of the Commission, as outlined by Executive Order 14045.

*Access to the Meeting:* Members of the public may register to attend the meeting virtually by accessing the link at *https://www.ed.gov/hispanicinitiative* or emailing *WhiteHouseHispanicInitiative@ed.gov* by 5 p.m. EDT on Wednesday, July 24, 2024. Instructions on how to access the meeting will be emailed to members of the public that register to attend and will be posted to *https://www.ed.gov/hispanicinitiative* no later than Wednesday, July 24, 2024, by 6 p.m. EDT.

*Public Comment:* Written comments pertaining to the work of the Commission may be submitted electronically to *WhiteHouseHispanicInitiative@ed.gov* by 5 p.m. EDT on Wednesday, July 24, 2024. Include in the subject line: ''Written Comments: Public Comment.'' The email must include the name(s), title, organizations/affiliation, mailing address, email address, and telephone number of the person(s) making the comment. Comments should be submitted as a Microsoft Word document or in a medium compatible with Microsoft Word (not a PDF file) that is attached to the electronic mail message (email) or is provided in the body of an email message. Please do not send material directly to members of the Commission.

*Reasonable Accommodations:* The meeting platform and access code are accessible to individuals with disabilities. If you will need an auxiliary aid or service for the meeting (*e.g.,* interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least one week before the meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

*Access to Records of the Meeting:* The Department will post the official report of the meeting on the Commission's website, at *https://sites.ed.gov/hispanic-initiative/presidential-advisory-commission* no later than 90 days after the meeting. Pursuant to 5 U.S.C. 1009(b), the public may request to inspect records of the meeting, and other Commission records, at 400 Maryland Avenue SW, Washington, DC, by emailing *Emmanuel.Caudillo@ed.gov* or by calling (202) 377–4988, to schedule an appointment.

*Electronic Access to this Document:* The official version of this document is the document published in the **Federal Register**. Free internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available via the Federal Digital System at: *www.gpo.gov/fdsys.* 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 PDF. To use PDF, you must have Adobe Acrobat Reader, which is

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

*Authority:* Executive Order 14045 (September 13, 2021) and continued by Executive Order 14109 (September 29, 2023).

**Alexis Barrett,**

*Chief of Staff, Office of the Secretary.*

[FR Doc. 2024–14505 Filed 7–1–24; 8:45 am]

**BILLING CODE 4000–01–P**

## DEPARTMENT OF ENERGY

### Agency Information Collection Extension

**AGENCY:** Department of Energy.

**ACTION:** Notice of request for comments.

**SUMMARY:** The Department of Energy (DOE) invites public comment on a proposed collection of information that DOE is developing for submission to the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995.

**DATES:** Comments regarding this proposed information collection must be received on or before August 30, 2024. If you anticipate any difficulty in submitting comments within that period, contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section as soon as possible.

**ADDRESSES:** Written comments may be sent to Bonneville Power Administration, Attn: Stephanie Noell, Privacy Program, CGI–7, P.O. Box 3621, Portland, OR 97208–3621, or by email at *privacy@bpa.gov.*

**FOR FURTHER INFORMATION CONTACT:** Stephanie Noell, Privacy Program, CGI–7, P.O. Box 3621, Portland, OR 97208–3621, (503) 230–3881, or *privacy@bpa.gov.*

**SUPPLEMENTARY INFORMATION:** Comments are invited on: (a) Whether the extended collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

This information collection request contains:

(1) *OMB No.:* 1910–NEW;

(2) *Information Collection Request Title:* Supplemental Labor Management Office (SLMO) Driver Attestation;

(3) *Type of Request:* New;

(4) *Purpose:* The purpose of the Information Collection Request is to collect information from BPA contractors at Bonneville Power Administration (BPA) sites pertaining to authorization to operate BPA owned/leased/provided motor vehicles by contracted labor personnel;

(5) *Annual Estimated Number of Respondents:* 250;

(6) *Annual Estimated Number of Total Responses:* 250;

(7) *Annual Estimated Number of Burden Hours:* 250;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $16,200.

*Statutory Authority:* The Bonneville Project Act codified in 16 U.S.C. 832a, the Federal Columbia River Transmission System Act of 1974 codified in 16 U.S.C. 838 *et seq.,* the Pacific Northwest Electric Power Planning and Conservation Act in 16 U.S.C. 839 *et seq.,* Department of Energy Establishment Act 42 U.S.C. 7101 *et seq.,* and 41 CFR 101–39.300 General Services Administration (GSA) Interagency Fleet Management System (IFMS).

### Signing Authority

This document of the Department of Energy was signed on June 25, 2024, by Candice D. Palen, Information Collection Clearance Manager, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on June 26, 2024.

**Treena V. Garrett,**

*Federal Register Liaison Officer, U.S. Department of Energy.*

[FR Doc. 2024–14485 Filed 7–1–24; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### President's Council of Advisors on Science and Technology (PCAST)

**AGENCY:** Office of Science, Department of Energy.

**ACTION:** Notice of an open virtual meeting.

**SUMMARY:** This notice announces an open virtual meeting of the President's Council of Advisors on Science and Technology (PCAST). The Federal Advisory Committee Act (FACA) requires that public notice of these meetings be announced in the **Federal Register**.

**DATES:** Thursday, July 11, 2024; 12 p.m.–5 p.m. EDT.

**ADDRESSES:** Information for viewing the livestream of the meeting can be found on the PCAST website closer to the meeting at: *www.whitehouse.gov/PCAST/meetings.*

**FOR FURTHER INFORMATION CONTACT:** Dr. Melissa A. Edwards, Designated Federal Officer, PCAST, email: *PCAST@ostp.eop.gov;* telephone: (202) 881–9018.

**SUPPLEMENTARY INFORMATION:**

*Purpose of the Board:* PCAST is an advisory group of the nation's leading scientists and engineers, appointed by the President to augment the science and technology advice available to him from the White House, cabinet departments, and other Federal agencies. See the Executive Order at *whitehouse.gov.* PCAST is consulted on and provides analyses and recommendations concerning a wide range of issues where understanding of science, technology, and innovation may bear on the policy choices before the President. The Designated Federal Officer is Dr. Melissa A. Edwards. Information about PCAST can be found at: *www.whitehouse.gov/PCAST.*

*Tentative Agenda: Open portion*—PCAST may discuss the future of research as it relates to societal challenges. Topics such as resilience against climate change, impacts of research on society, and others, may be discussed. Additionally, PCAST may discuss and consider for approval a letter on the Federal STEM Workforce. Additional information and the meeting agenda, including any changes that arise, will be posted on the PCAST website at: *www.whitehouse.gov/PCAST/meetings.*

*Public Participation:* The meeting will be held virtually for members of the public. It is the policy of PCAST to accept written public comments no longer than 10 pages and to

accommodate oral public comments whenever possible. PCAST expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

The public comment period for this meeting will take place on July 11, 2024, at a time specified in the meeting agenda. This public comment period is designed only for substantive commentary on PCAST's work, not for business marketing purposes.

This notice is being published less than 15 days prior to the meeting due to scheduling difficulties and members' availability.

*Oral Comments:* To be considered for the public speaker list at the meeting, interested parties should register to speak at *PCAST@ostp.eop.gov,* no later than 12 p.m. EDT on July 3, 2024. To accommodate as many speakers as possible, the time for public comments will be limited to two (2) minutes per person, with a total public comment period of up to 10 minutes. If more speakers register than there is space available on the agenda, PCAST will select speakers on a first-come, first-served basis from those who registered. Those not able to present oral comments may file written comments with the council.

*Written Comments:* Although written comments are accepted continuously, written comments should be submitted to *PCAST@ostp.eop.gov* no later than 12 p.m. EDT on July 3, 2024, so that the comments can be made available to the PCAST members for their consideration prior to this meeting.

PCAST operates under the provisions of FACA, all public comments and/or presentations will be treated as public documents and will be made available for public inspection, including being posted on the PCAST website at: *www.whitehouse.gov/PCAST/meetings.*

*Minutes:* Minutes will be available within 45 days at: *www.whitehouse.gov/PCAST/meetings.*

*Signing Authority:* This document of the Department of Energy was signed on June 27, 2024, by David Borak, Committee Management Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on June 27, 2024.

**Treena V. Garrett,**

*Federal Register Liaison Officer, U.S. Department of Energy.*

[FR Doc. 2024–14547 Filed 7–1–24; 8:45 am]

**BILLING CODE 6450–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Project No. 7630–005]**

### Town of South Hill; Notice of Availability of Environmental Assessment

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission or FERC) regulations, 18 CFR part 380, Commission staff reviewed the Town of South Hill, Virginia's application for surrender of exemption from licensing for the Whittles Mill Dam Project No. 7630 and have prepared an Environmental Assessment (EA) for the proposed surrender. The Town of South Hill proposes to keep the dam, powerhouse, and associated facilities intact to serve as a historic landmark and remove other electrical and mechanical components. The impoundment would be maintained at the level of the dam, and the Town of South Hill would retain ownership and management responsibilities associated with the property. The project is located on the Meherrin River in the Town of South Hill in Mecklenburg County, Virginia. The project does not occupy federal lands.

The EA contains Commission staff's analysis of the potential environmental effects of surrendering the exemption, and concludes that the proposed amendment, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

The EA may be viewed on the Commission's website at *http://www.ferc.gov* using the ''elibrary'' link. Enter the docket number (P–7630) in the docket number field to access the document. For assistance, contact FERC Online Support at *FERCOnlineSupport@ferc.gov* or toll-free at 1–866–208–3676, or for TTY, (202) 502–8659.

You may also register online at *http://www.ferc.gov/docs-filing/esubscription.asp* to be notified via email of new filings and issuances related to this or other pending projects. For assistance, contact FERC Online Support.

All comments must be filed by July 25, 2024.

The Commission strongly encourages electronic filing. Please file comments using the Commission's eFiling system at *http://www.ferc.gov/docs-filing/efiling.asp.* Commenters can submit brief comments up to 6,000 characters, without prior registration, using the eComment system at *http://www.ferc.gov/docs-filing/ecomment.asp.* For assistance, please contact FERC Online Support. In lieu of electronic filing, you may submit a paper copy. Submissions sent via the U.S. Postal Service must be addressed to: Debbie-Anne 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 Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852. The first page of any filing should include docket number P–7630–005.

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.*

For further information, contact Rebecca Martin at 202–502–6012 or *Rebecca.Martin@ferc.gov.*

Dated: June 25, 2024.

**Debbie-Anne A. Reese,**

*Acting Secretary.*

[FR Doc. 2024–14507 Filed 7–1–24; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. CP24–478–000]**

### Transcontinental Gas Pipe Line Company, LLC; Notice of Application and Establishing Intervention Deadline

Take notice that on June 13, 2024, Transcontinental Gas Pipe Line Company, LLC (Transco), P.O. Box

1396, Houston, Texas 77251, filed an application under section 7(b) of the Natural Gas Act (NGA) and Part 157 of the Commission's regulations requesting authorization to abandon its offshore platforms, gathering and transmission laterals in federal waters, offshore Louisiana in Vermillion (VR) Blocks 66, 67, 76 and 131 (Project). Specifically, Transco proposes to abandon: (1) the VR–66 Platform; (2) the VR–67 Platform; (3) the approximately 21.4-mile-long, 16-inch-diameter Pipeline Segment Number (PSN) 1584; (4) the approximately 1.6-mile-long, 16-inch-diameter PSN 1557; (5) the approximately 13.1-mile-long, 12-inch-diameter PSN 1552; (6) the approximately 1.4-mile-long, 16-inch-diameter PSN 1569; (7) the approximately 13.65-mile-long, 16-inch-diameter PSN 3531; (8) the approximately 13.72-mile-long, 20-inch-diameter PSN 3529; and (9) various appurtenances. Transco states the abandonment will eliminate costs and risks associated with retaining the facilities on its Central Louisiana Gathering System. Transco estimates the Project's total cost to be $19,764,345, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

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

Any questions regarding the proposed project should be directed to Travis Beach, Sr. Regulatory Analyst, Transcontinental Gas Pipe Line Company, LLC, P.O. Box 1396, Houston, Texas 77251, by phone at (346) 439–0447, or by email at *Travis.Beach@Williams.com.*

Pursuant to section 157.9 of the Commission's Rules of Practice and Procedure,[1] within 90 days of this Notice the Commission staff will either: complete its environmental review and place it into the Commission's public record (eLibrary) for this proceeding; or issue a Notice of Schedule for Environmental Review. If a Notice of Schedule for Environmental Review is issued, it will indicate, among other milestones, the anticipated date for the Commission staff's issuance of the final environmental impact statement (FEIS) or environmental assessment (EA) for this proposal. The filing of an EA in the Commission's public record for this proceeding or the issuance of a Notice of Schedule for Environmental Review will serve to notify federal and state agencies of the timing for the completion of all necessary reviews, and the subsequent need to complete all federal authorizations within 90 days of the date of issuance of the Commission staff's FEIS or EA.

**Public Participation**

There are three ways to become involved in the Commission's review of this project: you can file comments on the project, you can protest the filing, and you can file a motion to intervene in the proceeding. There is no fee or cost for filing comments or intervening. The deadline for filing a motion to intervene is 5:00 p.m. Eastern Time on July 16, 2024. How to file protests, motions to intervene, and comments is explained below.

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.*

*Comments*

Any person wishing to comment on the project may do so. Comments may include statements of support or objections, to the project as a whole or specific aspects of the project. The more specific your comments, the more useful they will be.

*Protests*

Pursuant to sections 157.10(a)(4)[2] and 385.211[3] of the Commission's regulations under the NGA, any person[4] may file a protest to the application. Protests must comply with the requirements specified in section 385.2001[5] of the Commission's regulations. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

To ensure that your comments or protests are timely and properly recorded, please submit your comments on or before July 16, 2024.

There are three methods you can use to submit your comments or protests to the Commission. In all instances, please reference the Project docket number CP24–478–000 in your submission.

(1) You may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project;

(2) You may file your comments or protests electronically by using the eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Comment on a Filing''; or

(3) You can file a paper copy of your comments or protests by mailing them to the following address below. Your written comments must reference the Project docket number (CP24–478–000).

To file via USPS: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To file via any other courier: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of comments (options 1 and 2 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

[1] 18 CFR 157.9.

[2] 18 CFR 157.10(a)(4).

[3] 18 CFR 385.211.

[4] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[5] 18 CFR 385.2001.

Persons who comment on the environmental review of this project will be placed on the Commission's environmental mailing list, and will receive notification when the environmental documents (EA or EIS) are issued for this project and will be notified of meetings associated with the Commission's environmental review process.

The Commission considers all comments received about the project in determining the appropriate action to be taken. However, the filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding. For instructions on how to intervene, see below.

*Interventions*

Any person, which includes individuals, organizations, businesses, municipalities, and other entities,[6] has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [7] and the regulations under the NGA [8] by the intervention deadline for the project, which is July 16, 2024. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

There are two ways to submit your motion to intervene. In both instances, please reference the Project docket number CP24–478–000 in your submission.

(1) You may file your motion to intervene by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Intervention.'' The eFiling feature includes a document-less intervention option; for more information, visit *https://www.ferc.gov/docs-filing/efiling/document-less-intervention.pdf.;* or

(2) You can file a paper copy of your motion to intervene, along with three copies, by mailing the documents to the address below. Your motion to intervene must reference the Project docket number CP24–478–000.

To file via USPS: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To file via any other courier: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of motions to intervene (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email at: Travis Beach, Sr. Regulatory Analyst, P.O. Box 1396, Houston, Texas 77251, or by email at *Travis.Beach@Williams.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online. Service can be via email with a link to the document.

All timely, unopposed [9] motions to intervene are automatically granted by operation of Rule 214(c)(1).[10] Motions to intervene that are filed after the intervention deadline are untimely, and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations.[11] A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

**Tracking the Proceeding**

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

*Intervention Deadline:* 5:00 p.m. Eastern Time on July 16, 2024.

**Debbie-Anne A. Reese,**

*Acting Secretary.*

[FR Doc. 2024–14511 Filed 7–1–24; 8:45 am]

**BILLING CODE 6717–01–P**

[6] 18 CFR 385.102(d).

[7] 18 CFR 385.214.

[8] 18 CFR 157.10.

[9] The applicant has 15 days from the submittal of a motion to intervene to file a written objection to the intervention.

[10] 18 CFR 385.214(c)(1).

[11] 18 CFR 385.214(b)(3) and (d).

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

## Combined Notice of Filings

Take notice that the Commission has received the following Natural Gas Pipeline Rate and Refund Report filings:

**Filings Instituting Proceedings**

*Docket Numbers:* PR24–78–000.
*Applicants:* Gulf Coast Express Pipeline LLC.
*Description:* § 284.123(g) Rate Filing: Revised Statement of Operating Conditions to be effective 6/29/2024.
*Filed Date:* 6/24/24.
*Accession Number:* 20240624–5197.
*Comment Date:* 5 p.m. ET 7/15/24.
*§ 284.123(g) Protest:* 5 p.m. ET 8/23/24.

*Docket Numbers:* RP24–840–000.
*Applicants:* Mountain Valley Pipeline, LLC.
*Description:* § 4(d) Rate Filing: Negotiated Rate Agreement—6/26/2024 to be effective 6/26/2024.
*Filed Date:* 6/25/24.
*Accession Number:* 20240625–5105.
*Comment Date:* 5 p.m. ET 7/8/24.

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.

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 25, 2024.

**Debbie-Anne A. Reese,**

*Acting Secretary.*

[FR Doc. 2024–14513 Filed 7–1–24; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

## Federal Energy Regulatory Commission

**[Docket No. CP24–479–000]**

## National Fuel Gas Supply Corporation; Notice of Request Under Blanket Authorization and Establishing Intervention and Protest Deadline

Take notice that on June 14, 2024, National Fuel Gas Supply Corporation (National Fuel), 6363 Main Street, Williamsville, New York 14221, filed in the above referenced docket, a prior notice request pursuant to sections 157.205 and 157.216 of the Commission's regulations under the Natural Gas Act (NGA), and National Fuel's blanket certificate issued in Docket No. CP83–4–000,[1] for authorization to abandon four (4) injection/withdrawal storage wells within the Zoar Storage Field (Zoar) located in Erie County, New York. National Fuel has determined that the Zoar Wells 0050–I, 0694–I, 0886–I, and 0893–I have elevated levels of general corrosion in the existing production casing, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*www.ferc.gov*). From the Commission's Home Page on the internet, this information is available on eLibrary. The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

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

Any questions concerning this request should be directed to Meghan M. Emes, Senior Attorney, National Fuel Gas Supply Corporation, 6363 Main Street, Williamsville, New York 14221, by telephone at (716) 857–7004, or by email at *emesm@natfuel.com.*

### Public Participation

There are three ways to become involved in the Commission's review of this project: you can file a protest to the project, you can file a motion to intervene in the proceeding, and you can file comments on the project. There is no fee or cost for filing protests, motions to intervene, or comments. The deadline for filing protests, motions to intervene, and comments is 5:00 p.m. Eastern Time on August 26, 2024. How to file protests, motions to intervene, and comments is explained below.

The Commission's Office of Public Participation (OPP) supports meaningful public engagement and participation in Commission proceedings. OPP can help members of the public, including landowners, environmental justice communities, Tribal members and others, access publicly available information and navigate Commission processes. For public inquiries and assistance with making filings such as interventions, comments, or requests for rehearing, the public is encouraged to contact OPP at (202) 502–6595 or *OPP@ferc.gov.*

*Protests*

Pursuant to section 157.205 of the Commission's regulations under the NGA,[2] any person [3] or the Commission's staff may file a protest to the request. If no protest is filed within the time allowed or if a protest is filed and then withdrawn within 30 days after the allowed time for filing a protest, the proposed activity shall be deemed to be authorized effective the day after the time allowed for protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request for authorization will be considered by the Commission.

Protests must comply with the requirements specified in section 157.205(e) of the Commission's regulations,[4] and must be submitted by the protest deadline, which is March 26, 2024. A protest may also serve as a motion to intervene so long as the protestor states it also seeks to be an intervenor.

*Interventions*

Any person has the option to file a motion to intervene in this proceeding. Only intervenors have the right to request rehearing of Commission orders issued in this proceeding and to subsequently challenge the Commission's orders in the U.S. Circuit Courts of Appeal.

To intervene, you must submit a motion to intervene to the Commission in accordance with Rule 214 of the Commission's Rules of Practice and Procedure [5] and the regulations under the NGA [6] by the intervention deadline for the project, which is August 26, 2024. As described further in Rule 214, your motion to intervene must state, to the extent known, your position regarding the proceeding, as well as your interest in the proceeding. For an individual, this could include your status as a landowner, ratepayer, resident of an impacted community, or recreationist. You do not need to have property directly impacted by the project in order to intervene. For more information about motions to intervene, refer to the FERC website at *https://www.ferc.gov/resources/guides/how-to/intervene.asp.*

[1] *National Fuel Gas Supply Corporation,* 21 FERC ¶ 62,298 (1982).

[2] 18 CFR 157.205.

[3] Persons include individuals, organizations, businesses, municipalities, and other entities. 18 CFR 385.102(d).

[4] 18 CFR 157.205(e).

[5] 18 CFR 385.214.

[6] 18 CFR 157.10.

All timely, unopposed motions to intervene are automatically granted by operation of Rule 214(c)(1). Motions to intervene that are filed after the intervention deadline are untimely and may be denied. Any late-filed motion to intervene must show good cause for being late and must explain why the time limitation should be waived and provide justification by reference to factors set forth in Rule 214(d) of the Commission's Rules and Regulations. A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies (paper or electronic) of all documents filed by the applicant and by all other parties.

*Comments*

Any person wishing to comment on the project may do so. The Commission considers all comments received about the project in determining the appropriate action to be taken. To ensure that your comments are timely and properly recorded, please submit your comments on or before August 26, 2024. The filing of a comment alone will not serve to make the filer a party to the proceeding. To become a party, you must intervene in the proceeding.

*How To File Protests, Interventions, and Comments*

There are two ways to submit protests, motions to intervene, and comments. In both instances, please reference the Project docket number CP24–479–000 in your submission.

(1) You may file your protest, motion to intervene, and comments by using the Commission's eFiling feature, which is located on the Commission's website (*www.ferc.gov*) under the link to Documents and Filings. New eFiling users must first create an account by clicking on ''eRegister.'' You will be asked to select the type of filing you are making; first select ''General'' and then select ''Protest,'' ''Intervention,'' or ''Comment on a Filing''; or [7]

(2) You can file a paper copy of your submission by mailing it to the address below. Your submission must reference the Project docket number CP24–479–000.

To file via USPS: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

To file via any other method: Debbie-Anne A. Reese, Acting Secretary, Federal Energy Regulatory Commission, 12225 Wilkins Avenue, Rockville, Maryland 20852

The Commission encourages electronic filing of submissions (option 1 above) and has eFiling staff available to assist you at (202) 502–8258 or *FercOnlineSupport@ferc.gov.*

Protests and motions to intervene must be served on the applicant either by mail or email (with a link to the document) at: Meghan M. Emes, Senior Attorney, National Fuel Gas Supply Corporation, 6363 Main Street, Williamsville, New York 14221 or by email at *emesm@natfuel.com.* Any subsequent submissions by an intervenor must be served on the applicant and all other parties to the proceeding. Contact information for parties can be downloaded from the service list at the eService link on FERC Online.

**Tracking the Proceeding**

Throughout the proceeding, additional information about the project will be available from the Commission's Office of External Affairs, at (866) 208–FERC, or on the FERC website at *www.ferc.gov* using the ''eLibrary'' link as described above. The eLibrary link also provides access to the texts of all formal documents issued by the Commission, such as orders, notices, and rulemakings.

In addition, the Commission offers a free service called eSubscription which allows you to keep track of all formal issuances and submittals in specific dockets. This can reduce the amount of time you spend researching proceedings by automatically providing you with notification of these filings, document summaries, and direct links to the documents. For more information and to register, go to *www.ferc.gov/docs-filing/esubscription.asp.*

Dated: June 25, 2024.

**Debbie-Anne A. Reese,**

*Acting Secretary.*

[FR Doc. 2024–14510 Filed 7–1–24; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

### Combined Notice of Filings #1

Take notice that the Commission received the following exempt wholesale generator filings:

*Docket Numbers:* EG24–214–000.

*Applicants:* VESI 12 LLC.

*Description:* VESI 12 LLC submits notice of self-certification of exempt wholesale generator status.

*Filed Date:* 6/25/24.

*Accession Number:* 20240625–5060.

*Comment Date:* 5 p.m. ET 7/16/24.

Take notice that the Commission received the following electric rate filings:

*Docket Numbers:* ER10–1585–025; ER10–1594–025; ER10–1617–025; ER10–1623–008; ER10–1628–025; ER10–1632–027; ER12–60–027; ER16–733–016; ER16–1148–016; ER20–2602–003.

*Applicants:* Nobles 2 Power Partners, LLC, Tenaska Energía de Mexico, S. de R. L. de C.V., LQA, LLC, Tenaska Power Management, LLC, Tenaska Power Services Co., Texas Electric Marketing, LLC, Tenaska Frontier Partners, Ltd., New Mexico Electric Marketing, LLC, California Electric Marketing, LLC, Alabama Electric Marketing, LLC.

*Description:* Triennial market power analysis for [Central/Southwest Power Pool Inc./Northeast/Northwest/Southeast/Southwest] Region of Alabama Electric Marketing, LLC, et al.

*Filed Date:* 6/21/24.

*Accession Number:* 20240621–5221.

*Comment Date:* 5 p.m. ET 8/20/24.

*Docket Numbers:* ER24–1717–003.

*Applicants:* PJM Interconnection, L.L.C.

*Description:* Tariff Amendment: Amendment of Amended ISA, SA No. 4401; AA1–095 in Docket ER24–1717 to be effective 6/10/2024.

*Filed Date:* 6/21/24.

*Accession Number:* 20240621–5176.

*Comment Date:* 5 p.m. ET 7/1/24.

*Docket Numbers:* ER24–2356–000.

*Applicants:* NSTAR Electric Company.

*Description:* Tariff Amendment: Cancellation—Medway Grid, LLC—Engineering, Design and Procurement Agreement to be effective 6/26/2024.

*Filed Date:* 6/25/24.

*Accession Number:* 20240625–5007.

*Comment Date:* 5 p.m. ET 7/16/24.

*Docket Numbers:* ER24–2357–000.

*Applicants:* Star Energy Partners, LLC.

*Description:* Notice of cancellation of market-based rates tariff of Star Enertgy Partners LLC.

*Filed Date:* 6/21/24.

*Accession Number:* 20240621–5220.

*Comment Date:* 5 p.m. ET 7/12/24.

*Docket Numbers:* ER24–2358–000.

*Applicants:* Southwest Power Pool, Inc.

*Description:* § 205(d) Rate Filing: 2066R13 Evergy Kansas Central, Inc. NITSA NOA to be effective 9/1/2024.

*Filed Date:* 6/25/24.

[7] Additionally, you may file your comments electronically by using the eComment feature, which is located on the Commission's website at *www.ferc.gov* under the link to Documents and Filings. Using eComment is an easy method for interested persons to submit brief, text-only comments on a project.

*Accession Number:* 20240625–5064.
*Comment Date:* 5 p.m. ET 7/16/24.

*Docket Numbers:* ER24–2359–000.
*Applicants:* Southwest Power Pool, Inc.
*Description:* § 205(d) Rate Filing: 2491R12 Evergy Kansas Central, Inc. NITSA NOA to be effective 9/1/2024.
*Filed Date:* 6/25/24.
*Accession Number:* 20240625–5070.
*Comment Date:* 5 p.m. ET 7/16/24.

*Docket Numbers:* ER24–2360–000.
*Applicants:* Tri-State Generation and Transmission Association, Inc.
*Description:* § 205(d) Rate Filing: Certificate of Concurrence for Agreement with PNM for Phase Shifter Transformer to be effective 5/10/2024.
*Filed Date:* 6/25/24.
*Accession Number:* 20240625–5071.
*Comment Date:* 5 p.m. ET 7/16/24.

*Docket Numbers:* ER24–2361–000.
*Applicants:* Southwest Power Pool, Inc.
*Description:* § 205(d) Rate Filing: 3620R6 Kansas City Board of Public Utilities NITSA NOA to be effective 9/1/2024.
*Filed Date:* 6/25/24.
*Accession Number:* 20240625–5078.
*Comment Date:* 5 p.m. ET 7/16/24.

*Docket Numbers:* ER24–2362–000.
*Applicants:* Southwest Power Pool, Inc.
*Description:* § 205(d) Rate Filing: 2415R19 Kansas Municipal Energy Agency NITSA and NOA to be effective 9/1/2024.
*Filed Date:* 6/25/24.
*Accession Number:* 20240625–5085.
*Comment Date:* 5 p.m. ET 7/16/24.

*Docket Numbers:* ER24–2363–000.
*Applicants:* Southwest Power Pool, Inc.
*Description:* § 205(d) Rate Filing: 2562R14 Kansas Municipal Energy Agency NITSA and NOA to be effective 9/1/2024.
*Filed Date:* 6/25/24.
*Accession Number:* 20240625–5087.
*Comment Date:* 5 p.m. ET 7/16/24.

*Docket Numbers:* ER24–2364–000.
*Applicants:* Southwest Power Pool, Inc.
*Description:* § 205(d) Rate Filing: 2900R24 KMEA NITSA NOA to be effective 9/1/2024.
*Filed Date:* 6/25/24.
*Accession Number:* 20240625–5091.
*Comment Date:* 5 p.m. ET 7/16/24.

*Docket Numbers:* ER24–2365–000.
*Applicants:* Southwest Power Pool, Inc.
*Description:* § 205(d) Rate Filing: 3675R5 Doniphan Electric Cooperative Assn, Inc. NITSA NOA to be effective 9/1/2024.
*Filed Date:* 6/25/24.
*Accession Number:* 20240625–5093.
*Comment Date:* 5 p.m. ET 7/16/24.

*Docket Numbers:* ER24–2366–000.
*Applicants:* Midcontinent Independent System Operator, Inc., Otter Tail Power Company.
*Description:* § 205(d) Rate Filing: Midcontinent Independent System Operator, Inc. submits tariff filing per 35.13(a)(2)(iii: 2024–06–25_SA 4298 OTP–NSP T–TIA (Erie Substation) to be effective 6/19/2024.
*Filed Date:* 6/25/24.
*Accession Number:* 20240625–5106.
*Comment Date:* 5 p.m. ET 7/16/24.

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 25, 2024.

**Debbie-Anne A. Reese,**

*Acting Secretary.*

[FR Doc. 2024–14512 Filed 7–1–24; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. ER24–2345–000]**

### SEPV Cuyama, LLC; Supplemental Notice That Initial Market-Based Rate Filing Includes Request for Blanket Section 204 Authorization

This is a supplemental notice in the above-referenced proceeding of SEPV Cuyama, LLC's application for market-based rate authority, with an accompanying rate tariff, noting that such application includes a request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability.

Any person desiring to intervene or to protest should file with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Anyone filing a motion to intervene or protest must serve a copy of that document on the Applicant.

Notice is hereby given that the deadline for filing protests with regard to the applicant's request for blanket authorization, under 18 CFR part 34, of future issuances of securities and assumptions of liability, is July 15, 2024.

The Commission encourages electronic submission of protests and interventions in lieu of paper, using the FERC Online links at *http://www.ferc.gov.* To facilitate electronic service, persons with internet access who will eFile a document and/or be listed as a contact for an intervenor must create and validate an eRegistration account using the eRegistration link. Select the eFiling link to log on and submit the intervention or protests.

Persons unable to file electronically may mail similar pleadings to the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426. Hand delivered submissions in docketed proceedings should be delivered to Health and Human Services, 12225 Wilkins Avenue, Rockville, Maryland 20852.

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the internet through the Commission's Home Page (*http://www.ferc.gov*). From the Commission's Home Page on the internet, this information is available on eLibrary.

The full text of this document is available on eLibrary in PDF and Microsoft Word format for viewing, printing, and/or downloading. To access this document in eLibrary, type the docket number excluding the last three digits of this document in the docket number field.

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

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 25, 2024.

**Debbie-Anne A. Reese,**

*Acting Secretary.*

[FR Doc. 2024–14509 Filed 7–1–24; 8:45 am]

**BILLING CODE 6717–01–P**

## DEPARTMENT OF ENERGY

### Federal Energy Regulatory Commission

**[Docket No. IC24–14–000]**

### Commission Information Collection Activities (Ferc–921); Comment Request; Extension

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Notice of information collection 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 collection, FERC–921, Ongoing Electronic Delivery of Data from Regional Transmission Organization and Independent System Operators (OMB Control Number 1902–0257), which will be submitted to Office of Management and Budget (OMB).

**DATES:** Comments on the collection of information are due August 1, 2024.

**ADDRESSES:** Send written comments on FERC–921 to OMB through *www.reginfo.gov/public/do/PRAMain,* Attention: Federal Energy Regulatory Commission Desk Officer. Please identify the OMB control number (1902–0257) in the subject line. Your comments should be sent within 30 days of publication of this notice in the **Federal Register**.

Please submit copies of your comments (identified by Docket No. IC24–14–000) to the Commission as noted below. 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:*

OMB submissions must be formatted and filed in accordance with submission guidelines at *www.reginfo.gov/public/do/PRAMain;* Using the search function under the ''Currently Under Review field,'' select Federal Energy Regulatory Commission; click ''submit'' and select ''comment'' to the right of the subject collection.

FERC 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* and telephone at (202) 502–6362.

*Title:* FERC–921, Ongoing Electronic Delivery of Data from Regional Transmission Organizations and Independent System Operators.

*OMB Control No.:* 1902–0257.

*Type of Request:* Three-year extension of the FERC–921 information collection requirements with no changes to the current reporting requirements.

Abstract: The collection of data in FERC–921 is an effort by the Commission, implemented under Order No. 760,[1] to detect potential anti-competitive or manipulative behavior or ineffective market rules. In Order No. 760, the Commission issued 18 CFR 35.28(g)(4), which requires ongoing electronic delivery of data by each Commission-approved Regional Transmission Organization (RTO) and Independent System Operator (ISO). The required data include physical and virtual offers and bids, market awards, resource outputs, marginal cost estimates, shift factors, financial transmission rights, internal bilateral contracts, uplift, and interchange pricing. Although provision was made by the Commission that market monitoring units (MMUs) may provide datasets, all data for this collection has (and is expected to continue to) come from each RTO or ISO and not the MMUs. Therefore, any associated burden is counted as burden on RTOs and ISOs.

While the ongoing delivery of data under FERC–921 is continuous and routine, each RTO or ISO makes sporadic changes to its individual market with Commission approval. When those changes occur, the RTO or ISO may need to change the data being routinely sent to the Commission to ensure compliance with Order No. 760. Such changes typically require respondents to alter the ongoing delivery of data under FERC–921. The burden associated with a change varies considerably based on the significance of the specific change; therefore, the estimate below is intended to reflect the incremental burden for an average change. Based on historical patterns, Commission staff estimates there to be about one and a half changes of this nature per RTO or ISO per year.

The Commission published a 60-day Paperwork Reduction Act Notice on April 24, 2024 (89 FR 31197). The public comment period ended on June 24, 2024. The Commission received no public comments in response.

*Types of Respondent:* Regional Transmission Organizations (RTOs) and Independent System Operators (ISOs).

*Estimate of Annual Burden:*[2] The Commission estimates the total annual

[1] *Enhancement of Electricity Market Surveillance and Analysis through Ongoing Electronic Delivery of Data from Regional Transmission Organizations and Independent System Operators,* Order No. 760, 77 FR 26674 (May 7, 2012).

[2] ''Burden'' is 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 1320.3.

burden and cost for this information collection by calculating the total hourly cost (including both mean wages and benefits) of three occupations [3] and then by multiplying that total hourly cost by the number of hours needed for each response. Specifically, the total hourly cost applied in this calculation is $88.03, calculated as the sum of weighted mean hourly wages and benefits of the following occupations:

- Computer Systems Analysts (Occupation Code: 15–1211): $56.57 (base hourly wage) ÷ 70.7% (benefits) = $80.01 × 75 percent of the time needed for each response = $60.0075;
- *Legal (Occupation Code: 23–0000):* $104.10 (base hourly wage) ÷ 70.7% (benefits) = $147.24 × 12.5 percent of the time needed for each response = $18.405; and
- *Database Administrators (Occupation Code: 15–1242):* $54.40 (base hourly wage) ÷ 70.7% (benefits) = $76.94 × 12.5 percent of the time needed for each response = $9.6175.

The burden estimates are as follows:

| Category | Number of respondents | Annual number of responses per respondent | Total number of responses | Average burden & cost per response | Total annual burden hours & cost | Annual cost per respondent ($) |
|---|---|---|---|---|---|---|
| | (1) | (2) | (1) * (2) = (3) | (4) | (3) * (4) = (5) | (5) ÷ (1) |
| Ongoing Electronic Delivery of Data. | 6 | 1 | [4] 6 | 52 hrs.; $4,577.56 ..... | 312 hrs.; $27,465.36 ..... | $4,577.56 |
| Data Delivery Changes Over the Year [5]. | 6 | 1 | 6 | 480 hrs.; $42,254.40 ..... | 2,880 hrs.; $253,526,40 | 42,254.40 |
| Total ..... | 6 | 2 | 12 | ..... | 3,192 hrs.; $280,991.76 | 46,831.96 |

*Comments:* Comments are invited on: (1) whether the collection 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 collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of automated collection techniques or other forms of information technology.

Dated: June 25, 2024.

**Debbie-Anne A. Reese,**

*Acting Secretary.*

[FR Doc. 2024–14508 Filed 7–1–24; 8:45 am]

**BILLING CODE 6717–01–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPPT–2024–0114; FRL–11809–03–OCSPP]**

## 1,1-Dichloroethane and 1,2-Dichloroethane; Science Advisory Committee on Chemicals (SACC) Peer Review; Notice of SACC Meeting, Availability of Draft Documents and Request for Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA or ''Agency'') is announcing the availability of and soliciting public comment on the draft risk evaluation for 1,1-dichloroethane and the draft human health hazard technical support document for 1,2-dichloroethane (also known as ethylene dichloride). The draft documents were prepared under the Toxic Substances Control Act (TSCA) and will be submitted to the Science Advisory Committee on Chemicals (SACC) for peer review. EPA is also announcing that there will be two virtual public meetings of the SACC: On August 27, 2024, a preparatory meeting for the SACC to consider the scope and clarity of the draft charge questions for the peer review; and on September 17 through 20, 2024, the peer review meeting for the SACC to consider the draft documents and public comments.

**DATES:**

*Preparatory Public Meeting*

*Meeting date:* August 27, 2024, 1:00 p.m. to approximately 4:00 p.m. (EDT).

*Comments:* Submit written comments on the scope and clarity of the charge questions on or before noon (12:00 p.m. EDT) on August 23, 2024.

*Registration:* To request time to present oral comments during the preparatory meeting, you must register by noon (12:00 p.m. EDT) on August 23, 2024. For those not making oral comments, registration will remain open through the end of the meeting on August 27, 2024.

*SACC Peer Review Public Meeting*

*Meeting dates:* September 17 through 20, 2024, 10:00 a.m. to approximately 5:00 p.m. (EDT).

*Comments:* Submit written comments on the draft documents on or before September 3, 2024.

*Registration:* To request time to present oral comments during the peer review meeting, you must register by noon, September 10, 2024. For those not making oral comments, registration will remain open through the end of the meeting.

[3] Hourly costs (for wages and benefits) are based on mean wage estimates by the Bureau of Labor Statistics' (BLS) Occupational Employment and Wage Statistics (OEWS) program from May 2023 for Utilities (*https://www.bls.gov/oes/current/naics2_22.htm*) and benefits information for private industry workers (released March 2023) for private industry workers (*https://www.bls.gov/news.release/ecec.nr0.htm*).

[4] Each RTO/ISO electronically submits data daily. To match past information collection requests, we are considering the collection of daily responses to be a single response, except in cases of a data delivery change.

[5] The hour burden associated with a ''Data Delivery Change Over the Year'' varies considerably based on the significance of the specific change; therefore, the estimate is intended to reflect the incremental burden for an average change. Based on historical patterns, staff estimates there to be about 1.5 changes of this nature per RTO or ISO per year. Based on our experience, we estimate that the total time required for a single change is 320 hours, and there are, on average, 1.5 changes annually, the estimated total time for this category of response is 480 hours (1.5 × 320 hours).

*Special Accommodations:* To allow sufficient time for EPA to process your request for special accommodations before the meeting, please submit the request at least ten business days in advance of the meeting.

**ADDRESSES:**

*Comments:* Submit written comments, identified by docket identification (ID) number EPA–HQ–OPPT–2024–0114, through *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional information on commenting or visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

*Meeting Registration:* Online registration will be available beginning in late July 2024. Please refer to the SACC website at *https://www.epa.gov/tsca-peer-review.* After registering, you will receive the webcast and streaming service meeting links and audio teleconference information.

*Special accommodation requests:* To request an accommodation for a disability, please contact the Designated Federal Official (DFO) listed under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:**

*Designated Federal Official (DFO):* Alie Muneer, Mission Support Division (7602M), Office of Program Support, Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency; telephone number: (202) 564–6369 or call the main office number: (202) 564–8450; email address: *muneer.alie@epa.gov.*

*Technical contact:* Clara Hull, Existing Chemicals Risk Management Division, Office of Pollution Prevention and Toxics, Office of Chemical Safety and Pollution Prevention, Environmental Protection Agency; telephone number: (202) 564–3954; email address: *hull.clara@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Executive Summary

### *A. What action is the Agency taking?*

EPA is announcing the availability of and soliciting public comment on the draft risk evaluation for 1,1-dichloroethane and the draft human health hazard technical support document for 1,2-dichloroethane. The draft documents were prepared under the Toxic Substances Control Act (TSCA) and will be submitted to the Science Advisory Committee on Chemicals (SACC) for peer review. EPA is also announcing that there will be two virtual public meetings of the SACC: On August 27, 2024, a preparatory meeting for the SACC to consider the scope and clarity of the draft charge questions for the peer review; and on September 17 through 20, 2024, the peer review meeting for the SACC to consider the draft documents and public comments.

This document provides instructions for accessing the materials, submitting written comments, and registering to provide oral comments and attend the public meetings.

### *B. What is the Agency's authority for taking this action?*

EPA established the SACC in 2016 in accordance with TSCA, 15 U.S.C. 2625(o), to provide independent advice and expert consultation with respect to the scientific and technical aspects of issues relating to the implementation of TSCA. The SACC operates in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. 10, and supports activities under TSCA, 15 U.S.C. 2601 *et seq.,* the Pollution Prevention Act (PPA), 42 U.S.C. 13101 *et seq.,* and other applicable statutes.

### *C. Does this action apply to me?*

This action is directed to the public in general and may be of particular interest to those involved in the manufacture, processing, distribution, and disposal of the subject chemical substances, and/or those interested in the assessment of risks involving chemical substances and mixtures regulated under TSCA (including members of at-risk communities, non-governmental organizations (NGOs), federal, state, and local officials). Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested.

### *D. What should I consider as I submit my comments to EPA?*

1. *Submitting CBI.* Do not submit CBI or other sensitive information to EPA through *https://www.regulations.gov* or email. To include information in your comment that you consider to be CBI or otherwise protected, please contact the DFO listed under **FOR FURTHER INFORMATION CONTACT** to obtain special instructions before submitting that information.

2. *Tips for preparing comments.* When preparing and submitting your comments, see *https://www.epa.gov/dockets/commenting-epa-dockets.* See also the instructions in Unit III.C.

### *E. How can I stay informed about SACC activities?*

You may subscribe to the following listserv for alerts regarding this and other SACC-related activities: *https://public.govdelivery.com/accounts/USAEPAOPPT/subscriber/new?topic_id=USAEPAOPPT_101.*

## II. Background

### *A. What is the purpose of the SACC?*

The SACC provides independent advice and recommendations to the EPA on the scientific and technical aspects of risk assessments, methodologies, and pollution prevention measures and approaches for chemicals regulated under TSCA. The SACC is composed of experts in toxicology; environmental risk assessment; exposure assessment; and related sciences (*e.g.,* synthetic biology, pharmacology, biotechnology, nanotechnology, biochemistry, biostatistics, physiologically based pharmacokinetic (PBPK) modeling, computational toxicology, epidemiology, environmental fate, and environmental engineering and sustainability). When needed, the SACC committee will be assisted by *ad hoc* reviewers with specific expertise in the topics under consideration.

### *B. Why is EPA conducting these risk evaluations?*

TSCA requires EPA to conduct risk evaluations on prioritized chemical substances and allows chemical manufacturers to request an EPA-conducted risk evaluation of a chemical substance (or category of chemical substances) using the procedures established in 40 CFR 702.37. TSCA also identifies the minimum components EPA must include in all chemical substance risk evaluations. The purpose of conducting risk evaluations is to determine whether a chemical substance presents an unreasonable risk to human health or the environment under the Conditions of Use (COUs). These evaluations include assessing unreasonable risks to relevant potentially exposed or susceptible subpopulations. As part of this process EPA: (1) Integrates hazard and exposure assessments using the best available science that is reasonably available to ensure decisions are based on the weight of the scientific evidence, and (2) Conducts peer review for risk evaluation approaches that have not been previously peer-reviewed. For more information about the three stages of EPA's process for ensuring the safety of existing chemicals (*i.e.,* prioritization, risk evaluation, and risk management), go to *https://www.epa.gov/assessing-*

*and-managing-chemicals-under-tsca/how-epa-evaluates-safety-existing-chemicals*.

*C. Why is EPA evaluating these chemical substances?*

In 2020, EPA issued final scope documents for the 20 chemical substances designated in December 2019 as High-Priority Substances for the TSCA risk evaluation process, which included 1,1-dichloroethane and 1,2-dichloroethane. The final scope documents outline the hazards, exposures, conditions of use, and the potentially exposed or susceptible subpopulations the Agency expected to consider in its risk evaluation for the substances (85 FR 55283, September 4, 2020 (FRL–10013–90)).

1,1-Dichloroethane (CASRN 75–34–3) is a chlorinated solvent that is manufactured and used primarily in industrial applications, such as a reactant for the manufacture of other chemicals or as a laboratory chemical. 1,2-dichloroethane (CASRN 107–06–2) is a colorless liquid, with a pleasant, chloroform-like odor, that is highly flammable and primarily used in plastic material manufacturing, specifically the manufacture of vinyl chloride. The reported total production volume of 1,1-dichloroethane in 2016 and 2020 was between 100 million and one billion pounds with a high percentage used for processing as a reactive intermediate and a small percentage used for commercial use as a laboratory chemical. The reported production volume of 1,2-dichloroethane was between 20 and 30 billion lbs/year, and a high percentage of the production volume is used for processing as a reactive intermediate in the manufacture of vinyl chloride.

Given that the largest reported environmental releases of 1,1-dichloroethane are to air, a major exposure pathway to 1,1-dichloroethane is through releases to air. Based on its physical and chemical properties including water solubility, vapor pressure, and Henry's Law Constant, 1,1-dichloroethane released to air is expected to remain primarily in air and 1,1-dichloroethane released to water will remain in water as it is water soluble. Continuous releases of 1,1-dichloroethane to water are expected to volatilize to air at rates dependent on environmental conditions, however, a portion of 1,1-dichloroethane will remain in the water column (maximum solubility is 5 g/liter). EPA, therefore, assessed relevant air, surface water, and land exposure pathways. EPA relied on databases reporting multi-year 1,1-dichloroethane releases to ambient air, surface water, and disposal to land, such as the Toxic Release Inventory (TRI), the National Emissions Inventory (NEI) and Discharge Monitoring Reports (DMR), among others, to conduct major portions of its exposure analysis.

Due to limited empirical data for human health and portions of the environmental hazard assessments, EPA relied on read-across approaches to supplement 1,1-dichloroethane data to propose hazard values. Specifically, for the human health assessment of 1,1-dichloroethane, EPA used 1,2-dichloroethane as an analog for a read-across method to supplement the non-cancer and cancer hazard information for 1,1-dichloroethane.

*D. What is the topic of the planned SACC peer review?*

EPA is submitting the draft risk evaluation of 1,1-dichloroethane, draft human health hazard technical support document of 1,2-dichloroethane, and associated supporting documents to the SACC for peer review, along with the public comments received. The draft risk evaluation for 1,1-dichloroethane includes analyses of physical-chemical properties, the fate and transport in the environment, exposure to workers and the general population including potentially exposed or susceptible subpopulations, releases to the environment, environmental hazard and risk characterization for terrestrial and aquatic species, and human health hazard and risk characterization for workers and the general population. EPA identified 1,2-dichloroethane as an analog for reading across to 1,1-dichloroethane non-cancer and cancer human health since EPA had limited non-cancer and cancer empirical toxicity data available for 1,1-dichloroethane. EPA is therefore submitting the draft human health hazard technical support document for 1,2-dichloroethane for peer review. EPA is in the process of preparing a draft risk evaluation for 1,2-dichloroethane that will be released later for public comment and peer review. The 1,2-dichloroethane human health hazard technical support document will also accompany the 1,2-dichloroethane draft risk evaluation when it is released for public comment but will not undergo additional peer review since is currently being evaluated along with 1,1-dichloroethane.

EPA is focusing its peer review charge on specific scientific areas and analyses. Many of the methods and analyses used in these evaluations are not novel and have been reviewed in the development of previous TSCA assessments. EPA is requesting feedback on approaches, results and calculations associated with the exposure, human health hazard and environmental hazard analyses. EPA is releasing the draft risk evaluation for public comment and independent, expert peer review. Once EPA receives comment and input from public comment and peer review, revisions will be made, and the Agency will finalize the 1,1-dichloroethane risk evaluation and incorporate information from the 1,2-dichloroethane draft human health hazard technical support document into the 1,2-dichloroethane draft risk evaluation.

## III. Public Meeting of the SACC

*A. What is the purpose of the virtual public meeting(s)?*

EPA is planning two virtual public meetings: (1) A preparatory public meeting for the SACC to consider and ask questions regarding the scope and clarity of the draft charge questions; and (2) a public peer review meeting for the SACC to consider and peer review the draft documents. These public meetings are part of the SACC's peer review of the Agency's methods and novel analyses for the draft risk evaluation of 1,1-dichloroethane and the draft human health hazard technical support document of 1,2-dichloroethane. The agenda for these meetings will be posted on the docket and will also be available through the SACC website.

To participate in these virtual public meetings, you must register online to receive the webcast and streaming service meeting links and audio teleconference information for each meeting. Online registration will be available beginning approximately one month prior to the meeting and will remain open through the end of the meeting. To make oral comments during one of these meetings, follow the instructions in this document.

Recommendations from this SACC review and public comments will be considered in the development of the TSCA risk evaluations for both chemical substances and may inform other EPA efforts related to the assessment and regulation of 1,1-dichloroethane and 1,2-dichloroethane. The Agency will be seeking SACC review of its data analyses and methodologies relevant to human health hazard and exposure analyses that have not been previously peer-reviewed.

*B. How can I access the documents?*

The draft risk evaluation for 1,1-dichloroethane, draft human health hazard technical support document for 1,2-dichloroethane, and related documents, including background

documents, related supporting materials, and draft charge questions, are available in the docket. As additional background materials become available, EPA will include those additional background materials (*e.g.,* SACC members and consultants participating in this meeting and the meeting agenda) in the docket and through links on the SACC website at *https://www.epa.gov/tsca-peer-review.*

After the public meeting, the SACC will prepare the meeting minutes and final report document summarizing its recommendations to the EPA, which will also be available in the docket and through the SACC website.

*C. How can I provide comments?*

To ensure proper receipt of comments, it is imperative that you identify docket ID No. EPA–HQ–OPPT–2024–0073 in the subject line on the first page of your comments and follow the instructions in this document.

1. *Written comments.* Submit written comments by the deadlines set in the **DATES** section of this document and as described in the **ADDRESSES** section of this document.

2. *Oral comments.* To request time to present oral comments during one of the virtual public meetings, you must register online by the deadlines set in the **DATES** section of this document. Oral comments during the virtual public meetings are limited to 5 minutes. In addition, each speaker should submit a written copy of their oral comments and any supporting materials (*e.g.,* presentation slides) to the DFO prior to the meetings for distribution to the SACC.

*Authority:* 15 U.S.C. 2625(o); 5 U.S.C. 10.

Dated: June 26, 2024.

**Michal Freedhoff,**

*Assistant Administrator, Office of Chemical Safety and Pollution Prevention.*

[FR Doc. 2024–14492 Filed 7–1–24; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OITA–2023–0383; FRL–12070–01–OMS]**

## Agency Information Collection Activities; Submission to the Office of Management and Budget for Review and Approval; Comment Request; Combined EPA-Tribal Environmental Plan (ETEP) and Indian Environmental General Assistance Program (GAP) Work Plan Template (New)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), Combined EPA-Tribal Environmental Plan (ETEP) and Indian Environmental General Assistance Program (GAP) Work Plan Template (EPA ICR Number 2790.01, OMB Control Number 2090–NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a request for approval of a new collection. Public comments were previously requested via the **Federal Register** on December 4, 2023 during a 60-day comment period. This notice allows for an additional 30 days for public comments.

**DATES:** Comments may be submitted on or before August 1, 2024.

**ADDRESSES:** Submit your comments, referencing Docket ID Number EPA–HQ–OITA–2023–0383 to EPA online using *www.regulations.gov* (our preferred method), by email to *docket_oms@epa.gov,* or by mail to: EPA Docket Center, Environmental Protection Agency, Mail Code 28221T, 1200 Pennsylvania Ave. NW, Washington, DC 20460. EPA's policy is that all comments received will be included in the public docket without change including any personal information provided, unless the comment includes profanity, threats, information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute.

Submit written comments and recommendations to OMB for the proposed information collection 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:** Abigail Cruz, Office of International and Tribal Affairs/American Indian Environmental Office, 2690R, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460; telephone number: 202–564–5999; fax number: 202–566–9744; email address: *cruz.abigail@epa.gov.*

**SUPPLEMENTARY INFORMATION:** This is a request for approval of a new collection. 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.

Public comments were previously requested via the **Federal Register** on December 4, 2023 during a 60-day comment period (88 FR 84140). This notice allows for an additional 30 days for public comments. Supporting documents, which explain in detail the information that the EPA will be collecting, are available in the public docket for this ICR. The docket can be viewed online at *www.regulations.gov* or in person at the EPA Docket Center, WJC West, Room 3334, 1301 Constitution Ave. NW, Washington, DC. The telephone number for the Docket Center is 202–566–1752. For additional information about EPA's public docket, visit *http://www.epa.gov/dockets.*

*Abstract:* EPA is seeking approval to begin use of a combined EPA-Tribal Environmental Plan (ETEP) and Indian Environmental General Assistance Program (GAP) work plan template. Use of the template would assist grantees and the Agency by providing Tribes with a standardized and streamlined method to report required information outlined at 40 CFR 35.507, in the 1992 Indian Environmental General Assistance Program Act, and in the 2022 GAP Guidance.

*Form numbers:* None.

*Respondents/affected entities:* Federally recognized Tribes and intertribal consortia.

*Respondent's obligation to respond:* Mandatory if the recipient chooses to combine their GAP EPA-Tribal Environmental Plan and Work Plan into one document.

*Estimated number of respondents:* 520 (total).

*Frequency of response:* once every 3–5 years with annual updates.

*Total estimated burden:* 212.5 hours (per year). Burden is defined at 5 CFR 1320.03(b).

*Total estimated cost:* $23,035 (per year), which includes $0 annualized capital or operation & maintenance costs.

*Changes in the estimates:* This is a new collection.

**Courtney Kerwin,**

*Director, Information Engagement Division.*

[FR Doc. 2024–14494 Filed 7–1–24; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[EPA–HQ–OPP–2023–0445; FRL–11370–03–OCSPP]**

## Pesticides; White Paper: Framework for Interagency Collaboration To Review Potential Antibacterial and Antifungal Resistance Risks Associated With Pesticide Use; Notice of Availability and Request for Comment

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) is announcing the availability of and soliciting public comment on a framework for expanding interagency collaboration to improve the communication and knowledge base within the federal family to fully consider potential adverse impact of pesticides on efficacy of human and animal drugs. In particular, the use of antifungal and antibacterial pesticides, that can potentially lead to resistance in human and animal pathogens and may compromise the effectiveness of medically important antibacterial and antifungal drugs.

**DATES:** Submit your comments on or before August 1, 2024.

**ADDRESSES:** Submit your comments, identified by docket identification (ID) number EPA–HQ–OPP–2023–0445, through *https://www.regulations.gov.* Follow the online instructions for submitting comments. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Additional instructions on commenting and visiting the docket, along with more information about dockets generally, is available at *https://www.epa.gov/dockets.*

**FOR FURTHER INFORMATION CONTACT:** Susan Jennings, Immediate Office (7501M), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460–0001; telephone number: (706) 355–8574; email address: *jennings.susan@epa.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Executive Summary

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

This action is being taken under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136 *et seq.*).

*B. What action is the Agency taking?*

EPA is announcing the availability of and requesting comment on a framework that outlines a process for EPA's collaboration with other federal agencies that recognizes the benefits of these pesticides to agriculture while minimizing their impact on public health and considers the goals of the One Health approach. While developing this framework, EPA has coordinated with HHS and USDA, under the oversight of the White House Executive Office of the President. Each of these agencies is charged with protecting health in areas that are directly impacted by resistance resulting from pesticides or drug products used to protect humans, animals, or plants. This framework clarifies that EPA intends to establish a process with those other federal agencies to consider their input when EPA evaluates antibacterial and antifungal pesticide products that may adversely impact the efficacy of human or animal drugs.

EPA is issuing this white paper to provide information and clarification to pesticide applicants, growers, the public health community, and the public about EPA's process for considering resistance issues related to regulatory decisions on antibacterial and antifungal pesticides with other federal agencies. While the requirements in FIFRA and the EPA regulations are binding on EPA and applicants, this white paper is not binding on EPA personnel, pesticide registrants and applicants, or the public. EPA may depart from the framework where circumstances warrant and without prior notice. Likewise, pesticide applicants may assert that the framework is not applicable to a specific pesticide or decision. Registrants and applicants may also propose alternative processes to the final framework in any application to EPA.

This framework is being published with a 30-day public comment period. EPA will consider any feedback received in producing the final framework, which EPA intends to issue by the end of 2024.

*C. Why is the Agency taking this action?*

Antimicrobial resistance in bacteria and fungi is a top threat to the public's health and a priority across the globe. The Centers for Disease Control and Prevention report that there are nearly 3 million antimicrobial-resistant infections and more than 35,000 associated deaths in the U.S. each year. According to USDA, plant diseases are also persistent threats to agricultural crops and global food security, having a significant impact on yields and quality. These diseases result in billions of dollars in economic losses and management inputs each year to crops, landscapes, and forests in the U.S. Plant diseases reduce yields, lower product quality or shelf-life, decrease aesthetic or nutritional value, and may contaminate food and feed with toxic compounds.

Some antibacterial and antifungal pesticides used in agriculture and in other settings belong to the same class as or share mechanisms of action with important antimicrobial drugs used in human and veterinary medicine.

On September 26, 2023, EPA and the other federal agencies issued a document entitled ''Concept Note: Soliciting Feedback from Stakeholders on the Structure of a Proposed Framework to Assess the Risk to the Effectiveness of Human and Animal Drugs Posed by Certain Antibacterial or Antifungal Pesticides'' (88 FR 65998) (FRL–11370–01–OCSPP). The concept note was intended to be the first step in creating a process to improve assessments of potential risks to human and animal health where the use of certain pesticides could potentially result in antimicrobial resistance that compromises the effectiveness of medically important antibacterial and antifungal drugs. The concept note solicited stakeholder input on the proposed structure for the process and potential solutions, research, and mitigation approaches to reduce the spread of resistance. The concept note posed several questions about how resistance occurs and is spread. The Agency received many comments; however, very few directly responded to the specific charge questions asked by the concept paper. The agencies did not receive sufficient information to resolve the many scientific questions about assessing the potential risk of antifungal or antibacterial pesticides to adversely impact the efficacy of human or animal drugs.

*D. Does this action apply to me?*

This action is directed to the public in general, although this action may be of particular interest to those persons who may be interested in assessments of potential risks to human and animal health where the use of certain pesticides could potentially result in antimicrobial resistance that compromises the effectiveness of medically important antibacterial and antifungal drugs. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be interested in this action. If you have any questions regarding the applicability of this action

to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

*E. What should I consider as I prepare my comments for EPA?*

1. Submitting CBI

Do not submit CBI information to EPA through email or *https://www.regulations.gov.* If you wish to include CBI in your comment, please follow the applicable instructions at *https://www.epa.gov/dockets/commenting-epa-dockets#rules* and clearly mark the information that you claim to be CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2.

2. Tips for Preparing Your Comments

When preparing and submitting your comments, see the commenting tips and instructions at *https://www.epa.gov/dockets/commenting-epa-dockets.*

**II. Request for Comments**

EPA is seeking comment on the document entitled ''Pesticides: White Paper: Framework for Interagency Collaboration to Review Potential Antibacterial and Antifungal Resistance Risks Associated with Pesticide Use Pesticides; Notice of Availability and Request for Comment'' (also referred to as the framework document), a copy of which is available in the docket.

*Authority:* 7 U.S.C. 136 *et seq.*

Dated: June 26, 2024.

**Michal Freedhoff,**

*Assistant Administrator, Office of Chemical Safety and Pollution Prevention.*

[FR Doc. 2024–14493 Filed 7–1–24; 8:45 am]

**BILLING CODE 6560–50–P**

## ENVIRONMENTAL PROTECTION AGENCY

**[CERCLA 01–2024–0015; EPA–R01–SFUND–2024–0214; FRL–11942–01–R1]**

## Prospective Purchaser Proposed Settlement Agreement and Covenant Not To Sue Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as Amended; in Re: Olin Chemical Superfund Site, Located in Wilmington, Massachusetts

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of proposed settlement agreement; request for public comment.

**SUMMARY:** The U.S. Environmental Protection Agency (''EPA'') is hereby providing notice of a proposed prospective purchaser settlement agreement between EPA and prospective purchaser Wilmington Woburn Industrial, LLC (''Settling Party''), which has an agreement to acquire the property located at 51 Eames Street in Wilmington, Middlesex County, Massachusetts, encompassing approximately 50 acres (''Property''), from Olin Corporation (''Contract''), embodied in an Administrative Agreement for Payment of Response Costs by Prospective Purchaser (''Settlement Agreement''). The proposed Settlement Agreement, EPA Region 1 CERCLA Docket No. 01–2024–0015, pertains to the Olin Chemical Superfund Site in Wilmington, Massachusetts (''Site'') and the Property, which is a portion of the Site. The proposed Settlement Agreement is entered into pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (''CERCLA,'' also known as the Superfund law), and the authority of the Attorney General of the United States to compromise and settle claims of the United States.

On September 28, 2023, the U.S. District Court for the District of Massachusetts entered the Consent Decree in *United States of America and Commonwealth of Massachusetts* v. *American Biltrite Inc., et al.* case (1:23–cv–11044), in which American Biltrite Inc., NOR–AM Agro LLC, Olin Corporation, and Stepan Company (''Settling Defendants'') agreed to implement the remedy selected in the Record of Decision issued by EPA for the Site on March 30, 2021 (''Record of Decision''). The proposed Settlement Agreement requires the Settling Party to provide full cooperation, assistance, and access to persons authorized to conduct response actions at the Property, including Settling Defendants' implementation, under EPA oversight, of the remedy embodied in the Record of Decision in accordance with the Consent Decree. The proposed Settlement Agreement also requires the Settling Party to perform certain remedial design and remedial action activities pursuant to the Contract in coordination with Settling Defendants and in accordance with the terms of the Consent Decree and associated Statement of Work. Under the proposed Settlement Agreement, the Settling Party will make a payment to EPA of $73,202.39 as well as pay EPA for future costs in supporting, developing, implementing, overseeing, or enforcing the Agreement. The Settling Party consents to and will not contest the authority of the United States to enter into this proposed Settlement Agreement or to implement or enforce its terms. The Settling Party recognizes that this proposed Settlement Agreement has been negotiated in good faith and that this Agreement is entered into without the admission or adjudication of any issue of fact or law.

**DATES:** Comments must be submitted by August 1, 2024.

**ADDRESSES:** The proposed Settlement Agreement and related Site documents are available at EPA's website *https://www.epa.gov/superfund/olin* or by going to *https://cumulis.epa.gov/supercpad/SiteProfiles/index.cfm?fuseaction=second.ars&id=0100438&doc=Y&colid=67528&region=01&type=AR.* The proposed Settlement Agreement and related Site documents are available for public inspection at the U.S. EPA, Region 1, SEMS Records and Information Center, 5 Post Office Square, Suite 100, Boston, MA 02109 by appointment only (by calling 617–918–1440 or by emailing *r1.records-sems@epa.gov*). The proposed Settlement Agreement is also available for public inspection at *https://www.regulations.gov* by searching for Docket ID No. EPA–R01–SFUND–2024–0214. Submit your comments online via *https://www.regulations.gov* (Docket ID No. EPA–R01–SFUND–2024–0214). Follow the online instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Maximilian Boal, Senior Enforcement Counsel, Office of Regional Counsel, U.S. Environmental Protection Agency, Region 1, 5 Post Office Square, Suite 100, Mail Code: 4–02, Boston, MA 02109, (617) 918–1750, email: *boal.maximilian@epa.gov.*

**SUPPLEMENTARY INFORMATION:** Once submitted, comments cannot be edited or removed from *Regulations.gov*. 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. 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 the full EPA public comment policy,

information about CBI or multimedia submissions, and general guidance on making effective comments, see: *https://www.epa.gov/dockets/commenting-epa-dockets.* Any personally identifiable information (*e.g.,* name, address, phone number) included in the comment form or in an attachment may be publicly disclosed in a docket or on the internet (via *Regulations.gov,* a federal agency website, or a third-party, non-government website with access to publicly-disclosed data on *Regulations.gov*). By submitting a comment, you agree to the *terms of participation* (visit: *https://www.regulations.gov/user-notice*) and *privacy notice* (visit: *https://www.regulations.gov/privacy-notice*).

For 30 days following the date of publication of this notice, EPA will receive written comments relating to the proposed Settlement Agreement. EPA will consider all comments received and may modify or withdraw its consent to this proposed Settlement Agreement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper, or inadequate. EPA's response to any comments received will be available for public inspection at the U.S. EPA, Region 1, SEMS Records and Information Center, 5 Post Office Square, Suite 100, Boston, MA 02109 by appointment only (by calling 617–918–1440 or by emailing *r1.records-sems@epa.gov*). EPA's response to any comments will also be made available at EPA's website *https://www.epa.gov/superfund/olin.*

**Bryan Olson,**

*Director, Superfund and Emergency Management Division, U.S. EPA, Region 1.*

[FR Doc. 2024–14490 Filed 7–1–24; 8:45 am]

**BILLING CODE P**

## FEDERAL RESERVE SYSTEM

### Change in Bank Control Notices; Acquisitions of Shares of a Bank or Bank Holding Company

The notificants listed below have applied under the Change in Bank Control Act (Act) (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire shares of a bank or bank holding company. The factors that are considered in acting on the applications are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the standards enumerated in paragraph 7 of the Act.

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than July 17, 2024.

*A. Federal Reserve Bank of San Francisco* (Joseph Cuenco, Assistant Vice President, Formations & Transactions) 101 Market Street, San Francisco, California 94105–1579. Comments can also be sent electronically to *sf.fisc.comments.applications@sf.frb.org:*

1. *Beech Tree Partners, LP, Newel George Daines, as manager, both of Providence, Utah; Appian Investments, LLC, Foxboro, Massachusetts; Gabrielle D. Gay, as manager, West Palm Beach, Florida; Linda S. Daines, New York, New York, individually and as manager of RFD51, LLC, and WKA19, LLC, both of Salt Lake City, Utah; Armani57, LLC, Peter C. Daines, as manager, and Ginger60, LLC, Holly Daines, as manager, all of Logan, Utah;* as a group acting in concert, to retain voting shares of Cache Valley Banking Company, and thereby indirectly retain voting shares of Cache Valley Bank, both of Logan, Utah, and Liberty Bank, Inc., Salt Lake City, Utah.

Board of Governors of the Federal Reserve System.

**Michele Taylor Fennell,**

*Deputy Associate Secretary of the Board.*

[FR Doc. 2024–14574 Filed 7–1–24; 8:45 am]

**BILLING CODE 6210–01–P**

## FEDERAL RESERVE SYSTEM

### Notice of Proposals To Engage In or To Acquire Companies Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR part 225) to engage de novo, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

The public portions of the applications listed below, as well as other related filings required by the Board, if any, are available for immediate inspection at the Federal Reserve Bank(s) indicated below and at the offices of the Board of Governors. This information may also be obtained on an expedited basis, upon request, by contacting the appropriate Federal Reserve Bank and from the Board's Freedom of Information Office at *https://www.federalreserve.gov/foia/request.htm.* Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act.

Comments received are subject to public disclosure. In general, comments received will be made available without change and will not be modified to remove personal or business information including confidential, contact, or other identifying information. Comments should not include any information such as confidential information that would not be appropriate for public disclosure.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors, Ann E. Misback, Secretary of the Board, 20th Street and Constitution Avenue NW, Washington, DC 20551–0001, not later than July 17, 2024.

*A. Federal Reserve Bank of Kansas City* (Jeffrey Imgarten, Assistant Vice President) 1 Memorial Drive, Kansas City, Missouri 64198–0001. Comments can also be sent electronically to *KCApplicationComments@kc.frb.org:*

1. *Stockmens Financial Corporation, Rapid City, South Dakota;* to acquire voting shares of AgCredit, Inc., Chadron,

Nebraska, and thereby engage in extending credit, activities related to extending credit, community development activities, and data processing activities, pursuant to sections 225.28(b)(1), (b)(2), (b)(12), and (b)(14) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System.

**Michele Taylor Fennell,**

*Deputy Associate Secretary of the Board.*

[FR Doc. 2024–14575 Filed 7–1–24; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Agency for Healthcare Research and Quality

### Supplemental Evidence and Data Request on Mindfulness-Based Interventions for Mental Health and Wellbeing in Children and Adolescents: A Systematic Review

**AGENCY:** Agency for Healthcare Research and Quality (AHRQ), HHS.

**ACTION:** Request for supplemental evidence and data submission.

**SUMMARY:** The Agency for Healthcare Research and Quality (AHRQ) is seeking scientific information submissions from the public. Scientific information is being solicited to inform our review on *Mindfulness-Based Interventions for Mental Health and Wellbeing in Children and Adolescents: A Systematic Review,* which is currently being conducted by AHRQ's Evidence-based Practice Centers (EPC) Program. Access to published and unpublished pertinent scientific information will improve the quality of this review.

**DATES:** *Submission Deadline* on or before August 1, 2024.

**ADDRESSES:**

*Email submissions: epc@ahrq.hhs.gov*

*Print submissions:*

*Mailing Address:* Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E53A, Rockville, MD 20857.

*Shipping Address (FedEx, UPS, etc.):* Center for Evidence and Practice Improvement, Agency for Healthcare Research and Quality, ATTN: EPC SEADs Coordinator, 5600 Fishers Lane, Mail Stop 06E77D, Rockville, MD 20857.

**FOR FURTHER INFORMATION CONTACT:** Kelly Carper, telephone: 301–427–1656 or email: *epc@ahrq.hhs.gov.*

**SUPPLEMENTARY INFORMATION:** The Agency for Healthcare Research and Quality has commissioned the Evidence-based Practice Centers (EPC) Program to complete a review of the evidence for *Mindfulness-Based Interventions for Mental Health and Wellbeing in Children and Adolescents: A Systematic Review.* AHRQ is conducting this review pursuant to section 902 of the Public Health Service Act, 42 U.S.C. 299a.

The EPC Program is dedicated to identifying as many studies as possible that are relevant to the questions for each of its reviews. In order to do so, we are supplementing the usual manual and electronic database searches of the literature by requesting information from the public (*e.g.,* details of studies conducted). We are looking for studies that report on *Mindfulness-Based Interventions for Mental Health and Wellbeing in Children and Adolescents: A Systematic Review.* The entire research protocol is available online at: *https://effectivehealthcare.ahrq.gov/products/ped-mindfulness/protocol*

This is to notify the public that the EPC Program would find the following information on *Mindfulness-Based Interventions for Mental Health and Wellbeing in Children and Adolescents: A Systematic Review* helpful:

- A list of completed studies that your organization has sponsored for this topic. In the list, please *indicate whether results are available on ClinicalTrials.gov along with the ClinicalTrials.gov trial number.*
- *For completed studies that do not have results on ClinicalTrials.gov,* a summary, including the following elements, if relevant: study number, study period, design, methodology, indication and diagnosis, inclusion and exclusion criteria, primary and secondary outcomes, baseline characteristics, number of patients screened/eligible/enrolled/lost to follow-up/withdrawn/analyzed, effectiveness/efficacy, and safety results.
- *A list of ongoing studies that your organization has sponsored for this topic.* In the list, please provide the ClinicalTrials.gov trial number or, if the trial is not registered, the protocol for the study including, if relevant, a study number, the study period, design, methodology, indication and diagnosis, inclusion and exclusion criteria, and primary and secondary outcomes.
- Description of whether the above studies constitute *ALL Phase II and above clinical trials* sponsored by your organization for this topic and an index outlining the relevant information in each submitted file.

Your contribution is very beneficial to the Program. Materials submitted must be publicly available or able to be made public. Materials that are considered confidential; marketing materials; study types not included in the review; or information on topics not included in the review cannot be used by the EPC Program. This is a voluntary request for information, and all costs for complying with this request must be borne by the submitter.

The draft of this review will be posted on AHRQ's EPC Program website and available for public comment for a period of 4 weeks. If you would like to be notified when the draft is posted, please sign up for the email list at: *https://effectivehealthcare.ahrq.gov/email-updates.*

The review will answer the following questions. This information is provided as background. AHRQ is not requesting that the public provide answers to these questions.

**Key Questions (KQ)**

KQ 1. What are the benefits and harms of mindfulness-based interventions in the general child and adolescent populations?

KQ 2. What are the benefits and harms of mindfulness-based interventions in children and adolescents diagnosed with anxiety and/or depression?

KQ 3. What are the benefits and harms of mindfulness-based interventions in children and adolescents with a chronic condition who are at risk for elevated symptoms of anxiety and/or depression?

PICOTS (POPULATIONS, INTERVENTIONS, COMPARATORS, OUTCOMES, TIMING, AND SETTING)

| | Inclusion criteria | Exclusion criteria |
|---|---|---|
| Population | KQ 1. Children and adolescents aged 3 to 18 years *without* known anxiety and/or depression.<br>KQ 2. Children and adolescents aged 3 to 18 years *with* a diagnosis of depression and/or anxiety.<br>KQ 3. Children and adolescents aged 3 to 18 years *with* a chronic condition who are at risk for elevated symptoms of or being diagnosed with anxiety and/or depression.<br>Definition of chronic physical conditions: Medical physical conditions (*i.e.,* conditions that primarily affect the body's systems and functions) that persist for one year or longer and require ongoing medical attention, limit activities of daily living, or both. | Studies with ≥20% of participants in the following groups and do not report findings by population.<br>• In institutions (*e.g.,* psychiatric inpatients, long-term care facilities).<br>• Diagnosed with advanced neurodevelopmental disorders (*e.g.,* severe autism spectrum disorders [for example, level 3 on DSM–5], severe attention-deficit/hyperactivity disorder [*e.g.,* based on DSM–5 definition], severe learning disorders [*e.g.,* more than 2 standard deviations below the mean in one or more areas of cognitive processing related to the specific learning disorder]).<br>• With major behavioral or emotional dysregulation (*e.g.,* conduct disorder, oppositional defiant disorder, disruptive mood dysregulation disorder).[a]<br>• With substance use disorder.<br>We will exclude studies with MBIs designed and/or administered only to parents/caregivers, as well as interventions administered by parents/caregivers.<br>We will exclude studies designed to treat test or sports performance anxiety, anxiety associated with medical/dental procedures and with interventions for specific high-risk exposures such as for post-sexual assault or another traumatic event. |
| Interventions | KQ 1–3<br>In addition to the minimum requirements identified above:<br>• Mindfulness-based intervention, provided alone or in addition to other therapies.<br>• Mindfulness is the primary component for multicomponent interventions (as a part of behavioral and similar non-pharmacological strategies), meaning that the intervention must be centered around mindfulness (*e.g.,* the majority of the sessions or focus are mindfulness-based).<br>• A mindfulness instructor (*e.g.,* therapist, teacher) must have some training in providing mindfulness. We do not specify the required minimum training.<br>• Clear specification of repeated practice (*e.g.,* more than one session with an instructor, or repeated self-directed exercises after at least one initial session with an instructor).<br>Examples of other therapies include structured mindfulness programs and mindfulness-based therapies such as:<br>• Mindfulness-based Stress Reduction<br>• Mindfulness-based Cognitive Therapy<br>• Acceptance and Commitment Therapy<br>Components of programs, if they are intentionally used to promote mindfulness principles and meet other criteria, may include:<br>• Relaxation techniques<br>• Meditation<br>• Mindful breathing<br>• Guided imagery<br>• Visualization | Pharmacologic interventions or traditional psychotherapies alone (*e.g.,* cognitive-behavioral therapy, play therapy, dialectical behavior therapy, parent-child interaction therapy) and integrative therapies alone including acupuncture/acupressure, expressive therapies, exercise, yoga, Tai Chi, biofeedback, hypnotherapy, massage, chiropractic care, homeopathy, diets (*e.g.,* gluten-free diet), traditional Chinese medicine, and Ayurveda. |
| Comparators | KQ 1. Usual care, enhanced usual care, waitlist control, sham, attention control, or no active intervention.<br>KQ 2–3. Usual care, enhanced usual care, waitlist control, sham, attention control, no active intervention, or conventional therapies (*i.e.,* pharmacotherapy for anxiety and/or depression [see Table 2], behavioral interventions[b]). | Other interventions not listed in the ''included'' list.<br>Other mindfulness-based interventions (*i.e.,* comparative effectiveness of MBIs). |
| Outcomes | KQ 1–3<br>Primary outcomes (children and adolescents outcomes)<br>• Quality of life (*e.g.,* PedsQL, KIDSCREEN, CHQ, ITQOL, PQ–LES–Q).<br>• General and social functioning (*e.g.,* SDQ, SSIS, CGI–I, CGAS), including behavior problems (*e.g.,* ECBI, CBCL, SDQ), coping skills (*e.g.,* CSI–CA, CCSC, RSQ), executive functioning (*e.g.,* BRIEF), academic performance (*e.g.,* WIAT, Woodcock-Johnson Tests of Achievement).<br>• Disability (*e.g.,* VABS, FDI, days of missed school).<br>• Depression (*e.g.,* CDI, BDI, MFQ, CES–D, CDRS–R, RADS, PHQ–A, PI–ED), diagnosis (KQs 2 and 3 only), and remission and response (KQs 1 and 3).<br>• Anxiety (*e.g.,* SCARED, MASC, SCAS, CAIS, GAD–7, PHQ–A, PI–ED), diagnosis (KQs 2 and 3 only), and remission and response (KQs 1 and 3).<br>• Any reported adverse events or unintended negative consequences attributed to treatment.<br>Additional outcomes (children and adolescents outcomes).<br>• Acceptance of experiences in the present moment (*e.g.,* CAMM).<br>• Autonomic arousal (*e.g.,* SCL, HRV).<br>• Executive functioning (*e.g.,* BRIEF).<br>• Subjective well-being (*e.g.,* PANAS–C, SLSS).<br>• Substance use. | Other outcomes, parent/caregiver outcomes. |

PICOTS (POPULATIONS, INTERVENTIONS, COMPARATORS, OUTCOMES, TIMING, AND SETTING)—Continued

| | Inclusion criteria | Exclusion criteria |
|---|---|---|
| Timing | • Psychological flexibility (*e.g.,* AFQ–Y, AAQ).<br>• Healthcare utilization.<br>• A minimum of 4 weeks since the beginning of the intervention or baseline assessment (if the intervention start cannot be determined) for all outcomes except for harms.<br>• We will extract harms reported at any followup, regardless of the duration since the intervention start or baseline assessment. | Mid-intervention assessment times. |
| Setting | KQ 1–3<br>• Administered in outpatient health care or community settings (*e.g.,* schools, residential).<br>• Trials conducted in countries rated as ''very high'' on the 2019 Human Development Index (as defined by the United Nations Development Program). | In-patient, ED/EMS, and psychiatric subacute settings (*e.g.,* partial hospitalization programs, intensive outpatient programs). |
| Study Design | • Randomized controlled trials (individually or site-randomized), with individually randomized trials reporting outcomes for a minimum of 10 participants per treatment arm.<br>• Period 1 data from crossover RCTs.<br>• Published in English-language.<br>• Published in 2010 or later. | Other study designs. |

Abbreviations: AAQ = Acceptance and Action Questionnaire; AFQ–Y = Avoidance and Fusion Questionnaire for Youth; BDI = Beck Depression Inventory; BRIEF = Behavior Rating Inventory of Executive Function; CAIS = Child Anxiety Impact Scale; CAMM = Child and Adolescent Mindfulness Measure; CBCL = Child Behavior Checklist; CCSC = Children's Coping Strategies Checklist; CDI = Children's Depression Inventory; CDRS–R = Children's Depression Rating Scale–Revised; CES–D = Center for Epidemiologic Studies Depression Scale; CGAS = Children's Global Assessment Scale; CGI–I = Clinical Global Impression-Improvement Scale; CHQ = Child Health Questionnaire; CSI–CA = Coping Strategies Inventory for Children and Adolescents; ED/EMS = emergency department/emergency medical services; ECBI = Eyberg Child Behavior Inventory; FDI = Functional Disability Inventory Child Form; GAD–7 = Generalized Anxiety Disorder scale; HRV = heart rate variability; ITQOL = Infant/Toddler Quality of Life Questionnaire; KQ = Key Question; MASC = Multidimensional Anxiety Scale for Children; MFQ = Mood and Feelings Questionnaire; NA = not applicable; PedsQL = Pediatric Quality of Life Inventory; PHQ–A = Patient Health Questionnaire for Adolescents; PICOTS = population, interventions, comparators, outcomes, timing, and setting; PI–ED = Paediatric Index of Emotional Distress; PQ–LES–Q = Perceived Quality of Life Scale; RADS = Reynolds Adolescent Depression Scale; RSQ = Responses to Stress Questionnaire; SCARED = Screen for Child Anxiety Related Emotional Disorders; SCAS = Spence Children's Anxiety Scale; SCL = Skin Conductance Level; SDQ = Strengths and Difficulties Questionnaire; SLSS = Students' Life Satisfaction Scale; SSIS = Social Skills Improvement System; PANAS–C = Positive and Negative Affect Schedule for Children; SWLS = Satisfaction with Life Scale; VABS = Vineland Adaptive Behavior Scales; WIAT = Wechsler Individual Achievement Test; WISC = Wechsler Intelligence Scale for Children.

[a] These are reviewed in other AHRQ systematic reviews.

[b] We defined behavioral interventions as nonpharmacologic strategies intended to enhance outcomes by modifying behavior and/or ways of thinking (*e.g.,*cognitive behavioral therapy, coping skills training, behavioral therapy, biofeedback, dialectical behavioral therapy).

Dated: June 27, 2024.

**Marquita Cullom,**

*Associate Director.*

[FR Doc. 2024–14573 Filed 7–1–24; 8:45 am]

**BILLING CODE 4160–90–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifiers: CMS–10849 and CMS–10516]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments must be received by September 3, 2024.

**ADDRESSES:** When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address: CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number: ____, Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

**FOR FURTHER INFORMATION CONTACT:** William N. Parham at (410) 786–4669.

**SUPPLEMENTARY INFORMATION:**

#### Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–10849—Negotiation Data Elements and Drug Price Negotiation Process for Initial Price Applicability Year 2027 under Sections 11001 and 11002 of the Inflation Reduction Act Information Collection Request

CMS–10516—Program Integrity: Exchange, Premium Stabilization

Programs, and Market Standards; Amendments to the HHS Notice of Benefit and Payment Parameters for 2014; Final Rule II

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

**Information Collections**

*1. Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Negotiation Data Elements and Drug Price Negotiation Process for Initial Price Applicability Year 2027 under Sections 11001 and 11002 of the Inflation Reduction Act Information Collection Request; *Use:* Under the authority in sections 11001 and 11002 of the Inflation Reduction Act of 2022 (Pub. L. 117–169), the Centers for Medicare & Medicaid Services (CMS) is implementing the Medicare Drug Price Negotiation Program, codified in sections 1191 through 1198 of the Social Security Act (''the Act''). The Act establishes the Negotiation Program to negotiate maximum fair prices (''MFPs''), defined at 1191(c)(3) of the Act, for certain high expenditure, single source selected drugs covered under Medicare Part B and Part D. For the second year of the Negotiation Program, the Secretary of Health and Human Services (the ''Secretary'') will select up to 15 high expenditure, single source drugs covered under Part D for negotiation.

*Negotiation Data Elements:* The statute requires that CMS consider certain data from Primary Manufacturers as part of the negotiation process. To the extent that more than one entity meets the statutory definition of manufacturer (specified in section 1193(a)(1) of the Act) for a selected drug for purposes of initial price applicability year 2027, CMS will designate the entity that holds the New Drug Application(s) (NDA(s))/Biologics License Application(s) (BLA(s)) for the selected drug to be ''the manufacturer'' of the selected drug (hereinafter the ''Primary Manufacturer''). The Primary Manufacturer's data submissions include non-FAMP and related data for selected drugs for the purpose of establishing a ceiling price, as outlined in section 1193(a)(4)(A) of the Act, and the negotiation factors outlined in section 1194(e)(1) of the Act for the purpose of formulating offers and counteroffers process pursuant to section 1193(a)(4)(B) of the Act. Some of these data are held by the Primary Manufacturer and are not currently available to CMS. Data described in sections 1194(e)(1) and 1193(a)(4) of the Act must be submitted by the Primary Manufacturer.

Section 1194(e)(2) of the Act requires CMS to consider certain data on selected drugs and their alternative treatments. Because the statute does not specify where these data come from, CMS will allow for optional submission from Primary Manufacturers and the public. CMS will additionally review existing literature, conduct internal analyses, and consult subject matter and clinical experts on the factors listed in section 1194(e)(2) of the Act. Manufacturers may optionally submit this information as part of their Negotiation Data Elements Information Collection Request Form. The public may also optionally submit evidence about the selected drugs and their alternative treatments.

*Drug Price Negotiation Process:* Any MFPs that are negotiated for these selected drugs will apply beginning in initial price applicability year 2027. For initial price applicability year 2027, the negotiation period begins on the earlier of the date that the Primary Manufacturer enters into a Medicare Drug Price Negotiation Program Agreement or February 28, 2025.

Section 1194(b)(2)(C) of the Act provides that if the Primary Manufacturer does not accept CMS' written initial offer, the Primary Manufacturer may submit an optional written counteroffer no later than 30 days after the date of receipt of CMS' written initial offer. If the Primary Manufacturer chooses to develop and submit a written counteroffer to CMS' written initial offer during the drug price negotiation process for initial price applicability year 2027, the Primary Manufacturer must submit the Counteroffer Form. CMS is also considering expanded use of the Counteroffer Form within the drug price negotiation process. *Form Number:* CMS–10849 (OMB control number: 0938–1452); *Frequency:* Once; *Affected Public:* Private Sector, Business or other for-profits; *Number of Respondents:* 340; *Number of Responses*: 340; *Total Annual Hours:* 16,264. (For policy questions regarding this collection contact Elisabeth Daniel at 667–290–8793.)

*2. Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Program Integrity: Exchange, Premium Stabilization Programs, and Market Standards; Amendments to the HHS Notice of Benefit and Payment Parameters for 2014; Final Rule II; *Use:* On March 23, 2010, the Patient Protection and Affordable Care Act (PPACA; Pub. L. 111–148) was signed into law and on March 30, 2010, the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111–152) was signed into law. The two laws implement various health insurance policies. On June 19, 2013, the Department of Health and Human Services (HHS) published proposed rule CMS–9957–P: Program Integrity: Exchanges, SHOP, Premium Stabilization Programs, and Market Standards (78 FR 37302) (Program Integrity Proposed Rule) which, among other things, contained third party disclosure requirements and data collections that supported the oversight of premium stabilization programs, State Exchanges, and qualified health plan (QHP) issuers in Federally-facilitated Exchanges (FFEs). Parts of the proposed rule were finalized as Patient Protection and Affordable Care Act; Program Integrity: Exchange, Premium Stabilization Programs, and Market Standards; Amendments to the HHS Notice of Benefit and Payment Parameters for 2014; Final Rule (Program Integrity Final Rule II), 78 FR 25326 (October 24, 2013). This ICR relates to a portion of the information collection request (ICR) requirements set forth in the final rule. *Form Number:* CMS–10516 (OMB control number: 0938–1277); *Frequency:* Annually; *Affected Public:* Private Sector, State, Local, or Tribal Governments; Business or other for-profits, and Not-for Profits; *Number of Respondents:* 457; *Number of Responses*: 457; *Total Annual Hours:* 42,771. (For questions regarding this collection, contact Andrea Honig at (301) 492–4147.)

**William N. Parham, III,**

*Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2024–14582 Filed 7–1–24; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Medicare & Medicaid Services

**[Document Identifiers: CMS–179, CMS–10536, CMS–R–153 and CMS–10326]**

### Agency Information Collection Activities: Proposed Collection; Comment Request

**AGENCY:** Centers for Medicare & Medicaid Services, Health and Human Services (HHS).

**ACTION:** Notice.

**SUMMARY:** The Centers for Medicare & Medicaid Services (CMS) is announcing an opportunity for the public to comment on CMS' intention to collect information from the public. Under the Paperwork Reduction Act of 1995 (PRA), federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information (including each proposed extension or reinstatement of an existing collection of information) and to allow 60 days for public comment on the proposed action. Interested persons are invited to send comments regarding our burden estimates or any other aspect of this collection of information, including the necessity and utility of the proposed information collection for the proper performance of the agency's functions, the accuracy of the estimated burden, ways to enhance the quality, utility, and clarity of the information to be collected, and the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

**DATES:** Comments must be received by September 3, 2024.

**ADDRESSES:** When commenting, please reference the document identifier or OMB control number. To be assured consideration, comments and recommendations must be submitted in any one of the following ways:

1. *Electronically.* You may send your comments electronically to *http://www.regulations.gov.* Follow the instructions for ''Comment or Submission'' or ''More Search Options'' to find the information collection document(s) that are accepting comments.

2. *By regular mail.* You may mail written comments to the following address:

CMS, Office of Strategic Operations and Regulatory Affairs, Division of Regulations Development, Attention: Document Identifier/OMB Control Number:__,Room C4–26–05, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

To obtain copies of a supporting statement and any related forms for the proposed collection(s) summarized in this notice, please access the CMS PRA website by copying and pasting the following web address into your web browser: *https://www.cms.gov/Regulations-and-Guidance/Legislation/PaperworkReductionActof1995/PRA-Listing.*

**FOR FURTHER INFORMATION CONTACT:** William N. Parham at (410) 786–4669.

**SUPPLEMENTARY INFORMATION:**

#### Contents

This notice sets out a summary of the use and burden associated with the following information collections. More detailed information can be found in each collection's supporting statement and associated materials (see **ADDRESSES**).

CMS–179 Medicaid State Plan Base Plan Pages

CMS–10536 Medicaid Eligibility and Enrollment (EE) Implementation Advanced Planning Document (IAPD) Template

CMS–R–153 Medicaid Drug Use Review (DUR) Program

CMS–10326 Electronic Submission of Medicare Graduate Medical Education (GME) Affiliation Agreements

Under the PRA (44 U.S.C. 3501–3520), federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. The term ''collection of information'' is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA requires federal agencies to publish a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension or reinstatement of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, CMS is publishing this notice.

#### Information Collections

*1. Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicaid State Plan Base Plan Pages; *Use:* State Medicaid agencies complete the plan pages while we review the information to determine if the state has met all of the requirements of the provisions the states choose to implement. If the requirements are met, we will approve the amendments to the state's Medicaid plan giving the state the authority to implement the flexibilities. For a state to receive Medicaid Title XIX funding, there must be an approved Title XIX state plan. *Form Number:* CMS–179 (OMB control number 0938–0193); *Frequency:* Occasionally; *Affected Public:* State, Local, and Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses:* 1,120; *Total Annual Hours:* 22,400. (For policy questions regarding this collection contact Gary Knight at 304–347–5723.)

*2. Type of Information Collection Request:* Extension of a currently approved collection; *Title of Information Collection:* Medicaid Eligibility and Enrollment (EE) Implementation Advanced Planning Document (IAPD) Template; *Use:* To assess the appropriateness of states' requests for enhanced federal financial participation for expenditures related to Medicaid eligibility determination systems, we will review the submitted information and documentation to make an approval determination for the advanced planning document. *Form Number:* CMS–10536 (OMB control number: 0938–1268); *Frequency:* Yearly, once, and occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 56; *Total Annual Responses: 168; Total Annual Hours:* 2,688. (For policy questions regarding this collection contact Loren Palestino at 410–786–8842.)

*3. Type of Information Collection Request:* Revision of a currently approved collection; *Title of Information Collection:* Medicaid Drug Use Review (DUR) Program; *Use:* States must provide for a review of drug therapy before each prescription is filled or delivered to a Medicaid patient. This review includes screening for potential drug therapy problems due to therapeutic duplication, drug-disease contraindications, drug-drug interactions, incorrect drug dosage or duration of drug treatment, drug-allergy interactions, and clinical abuse/misuse. Pharmacists must make a reasonable effort to obtain, record, and maintain Medicaid patient profiles. These profiles must reflect at least the patient's name, address, telephone number, date of birth/age, gender, history, *e.g.,* allergies, drug reactions, list of medications, and pharmacist's comments relevant to the individual's drug therapy. The State must conduct retrospective drug use review which provides for the ongoing periodic examination of claims data and other records in order to identify patterns of fraud, abuse, inappropriate

or medically unnecessary care. Patterns or trends of drug therapy problems are identified and reviewed to determine the need for intervention activity with pharmacists and/or physicians. States may conduct interventions via telephone, correspondence, or face-to-face contact. The states and managed care organizations (MCOs) are provided the reporting instrument (a survey) by CMS, and by responding to the survey, the states generate annual reports which are submitted to CMS for the purposes of monitoring compliance and evaluating the progress of states' DUR programs. The survey and the annual recordkeeping and reporting requirements under the pertinent regulations, are completed by pharmacists employed by, or contracted with the various state Medicaid programs and their MCOs. The annual reports submitted by states are reviewed and results are compiled by CMS in a format intended to provide information, comparisons and trends related to states' experiences with DUR. The states benefit from the information and may enhance their programs each year based on state reported innovative practices that are compiled by CMS from the annual reports. A comparison/summary of the data from the annual reports is published on Medicaid.gov annually, and serves as a resource for stakeholders, including but not limited to states, manufacturers, researchers, congress, CMS, the Office of Inspector General, non-governmental payers and clinicians on the topic of DUR in state Medicaid programs. *Form Number:* CMS–R–153 (OMB control number: 0938–0659); *Frequency:* Yearly, quarterly, and occasionally; *Affected Public:* State, Local, or Tribal Governments; *Number of Respondents:* 52; *Total Annual Responses:* 676; *Total Annual Hours:* 41,860. (For policy questions regarding this collection contact Mike Forman at 410–786–2666.)

*4. Type of Information Collection Request:* Reinstatement without change of a currently approved collection; *Title of Information Collection:* Electronic Submission of Medicare Graduate Medical Education (GME) Affiliation Agreements; *Use:* Existing regulations at § 413.75(b) permit hospitals that share residents to elect to form a Medicare GME affiliated group if they are in the same or contiguous urban or rural areas, if they are under common ownership, or if they are jointly listed as program sponsors or major participating institutions in the same program by the accrediting agency. The purpose of a Medicare GME affiliated group is to provide flexibility to hospitals in structuring rotations under an aggregate full time equivalent (FTE) resident cap when they share residents. The existing regulations at § 413.79(f)(1) specify that each hospital in a Medicare GME affiliated group must submit a Medicare GME affiliation agreement (as defined under § 413.75(b)) to the Medicare Administrative Contractor (MAC) servicing the hospital and send a copy to the Centers for Medicare and Medicaid Services' (CMS) Central Office, no later than July 1 of the residency program year during which the Medicare GME affiliation agreement will be in effect.

CMS will use the information contained in electronic affiliation agreements as documentation of the existence of Medicare GME affiliations, and to verify that the affiliations being formed by teaching hospitals for the purposes of sharing their Medicare GME FTE cap slots are valid according to CMS regulations. CMS will also use these affiliation agreements as reference materials when potential issues involving specific affiliations arise. While we have used hard copies of affiliation agreements for those same purposes in the past, we implemented this electronic submission process in order to expedite and ease the process of retrieving, analyzing and evaluating affiliation agreements. *Form Number:* CMS–10326 (OMB control number: 0938–1111); *Frequency:* Annually; *Affected Public:* Private Sector, Business or other for profits, Not for profit institutions; *Number of Respondents:* 125; *Total Annual Responses:* 125; *Total Annual Hours:* 166. (For policy questions regarding this collection contact Shevi Marciano at 410–786–2874.)

**William N. Parham, III,**

*Director, Division of Information Collections and Regulatory Impacts, Office of Strategic Operations and Regulatory Affairs.*

[FR Doc. 2024–14581 Filed 7–1–24; 8:45 am]

**BILLING CODE 4120–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Proposed Information Collection Activity; Child Care and Development Fund Plan for Tribes for FY 2026–2028 (ACF–118A) (Office of Management and Budget #0970–0198)

**AGENCY:** Office of Child Care; Administration for Children and Families; U.S. Department of Health and Human Services.

**ACTION:** Request for public comments.

**SUMMARY:** The Administration for Children and Families (ACF) Office of Child Care (OCC) is requesting a 3-year extension of the form ACF–118A: Child Care and Development Fund for Tribes (Office of Management and Budget # 0970–0198, expiration April 4, 2025) for Federal Fiscal Year (FFY) 2026–2028. There are changes proposed to the form to improve formatting, streamline questions, and reduce burden.

**DATES:** Comments due within September 3, 2024. In compliance with the requirements of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, ACF is soliciting public comment on the specific aspects of the information collection described above.

**ADDRESSES:** You can obtain copies of the proposed collection of information and submit comments by emailing *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

**SUPPLEMENTARY INFORMATION:**

*Description:* The Child Care and Development Fund (CCDF) Plan (the Plan) for Tribes is required from each CCDF Lead Agency in accordance with section 658E of the Child Care and Development Block Grant Act of 1990 (CCDBG Act), as amended, CCDBG Act of 2014 (Pub. L. 113–186), and 42 U.S.C. 9858. The majority of the Plan in this request is for tribal Lead Agencies that receive their funding directly from ACF, and does not apply to Tribes that consolidate their funding into approved 102–477 plans. However, all Tribes receiving CCDF funding must complete the triennial child count, which is part of the Plan. The Plan, submitted in the Child Care Automated Reporting System, is required triennially, and remains in effect for 3 years. The Plan provides ACF and the public with a description of, and assurance about the Tribes' child care programs. These Plans are the applications for CCDF funds.

OCC made the following changes based on feedback from tribes, including several listening sessions conducted over the past year:

- Reduced the burden overall by streamlining and removing questions;
- Revised questions based on 2024 CCDF final rule;
- Improved skip patterns to reduce burden; and
- Edited the document for plain language.

*Respondents:* Tribal CCDF Lead Agencies.

ANNUAL BURDEN ESTIMATES

| Instrument | Total number of respondents | Total number of responses per respondent | Average burden hours per response | Total burden hours | Annual burden hours |
|---|---|---|---|---|---|
| Triennial Child Count Only (all tribes) | 264 | 1 | 20 | 5,280 | 1,760 |
| ACF 118A Part I (for all direct funded tribes) | 214 | 1 | 60 | 12,840 | 4,280 |
| ACF–118A Part II (for direct funded tribes with small allocations only) | 138 | 1 | 5 | 690 | 230 |
| ACF–118A Part III (for direct funded tribes with medium and large allocations only) | 76 | 1 | 20 | 1,520 | 507 |
| Estimated Total Burden Over 3 Years and Total Annual Burden Hours | | | | 20,330 | 6,777 |

*Comments:* The Department specifically requests comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

*Authority:* Public Law 113–186 and 42 U.S.C. 9858c.

**Mary C. Jones,**

*ACF/OPRE Certifying Officer.*

[FR Doc. 2024–14530 Filed 7–1–24; 8:45 am]

**BILLING CODE 4184–87–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Announcement of the Intent To Award a Supplement to the Three Recipients of the Preferred Communities (PC) Program—Church World Service (CWS), U.S. Committee for Refugees and Immigrants (USCRI), and HIAS

**AGENCY:** Refugee Program, Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), Department of Health and Human Services (HHS).

**ACTION:** Notice of Issuance of a Supplement.

**SUMMARY:** The Office of Refugee Resettlement (ORR) announces the intent to award a supplement up to the amount of $5,500,000 to be distributed among the three recipients of the Preferred Communities (PC) program that are implementing the Ms. L. Settlement Agreement to provide housing. The three recipients are Church World Service (CWS), U.S. Committee for Refugees and Immigrants (USCRI), and HIAS. The supplement is for the provision of housing assistance as specified by the settlement agreement for *Ms. L., et al.* vs. *U.S. Immigration and Customs Enforcement et al.* These three recipients have already begun implementing the services, and additional supplemental funding will assist in the ability to serve the number of clients estimated to seek services within the proposed period of performance.

**DATES:** The proposed period of performance is March 1, 2024 through September 29, 2024.

**FOR FURTHER INFORMATION CONTACT:** Anastasia Brown, Division Director, Refugee Services, Administration for Children and Families, Office of Refugee Resettlement, Mary E. Switzer Building, 330 C Street SW, Washington, DC 20201 Telephone: 202–401–4559, Email: *anastasia.brown@acf.hhs.gov*.

**SUPPLEMENTARY INFORMATION:** ORR has been designated and has agreed to provide the referenced housing assistance. Three recipients—Church World Service (CWS), U.S. Committee for Refugees and Immigrants (USCRI), and HIAS—decided to participate and received supplemental funding to cover the costs of administration and provision of assistance.

To meet the terms of the Settlement Agreement, ORR will make housing assistance available to Ms. L. Settlement Class members, as determined necessary by a benefits administrator during a 12-month eligibility period. This may include assistance in locating housing; paying costs necessary to attain housing, such as a security deposit and first and last month's rent; and assistance to avoid eviction and meet other emergency housing needs during the 12-month eligibility period. Housing assistance will be for no more than a total of 6 months during the 12-month eligibility period absent extraordinary circumstances. ORR will work with Church World Service (CWS), US Committee for Refugees and Immigrants (USCRI), and HIAS to assign cases to each for housing assistance.

The recipients will employ benefit administrators, who will meet with each family (in person or virtually) and review the family's housing situation and budget. As needed, the family will be provided with rental assistance, assistance locating housing, and assistance in arrangements of deposits (typically first and last month's rent).

It is anticipated that to fully implement the Settlement Agreement, ORR will provide housing assistance through FY 2029.

ORR will supplement these three recipients for services for the remainder or FY 2024 and will provide additional supplemental funding for services in FY 2025 and FY 2026.

*Assistance Listing Number:* 93.576.

| Recipient | Award amount |
|---|---|
| Church World Service, NY, NY | Up to $2,127,920. |
| U.S. Committee for Refugees and Immigrants, Arlington, VA | Up to $2,127,920. |
| HIAS, Silver Spring, MD | Up to $1,238,640. |

*Statutory Authority: Ms. L.* v. *U.S. Immigration and Customs Enforcement* (2023) Settlement Agreement (Section IV.B.), available at: *https://www.justice.gov/opa/file/1319516/dl?inline.*

**Elizabeth Leo,**

*Policy Branch Chief, Office of Grants Policy, Office of Administration.*

[FR Doc. 2024–14591 Filed 6–28–24; 11:15 am]

**BILLING CODE 4184–90–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Administration for Children and Families

### Submission for Office of Management and Budget (OMB) Review; Revisions to Two Information Collections: Medical Assessment Form and Dental Assessment Form (OMB #0970–0466) and Mental Health Assessment Form and Public Health Investigation Forms, Tuberculosis and Non-Tuberculosis Illness (OMB #0970–0509)

**AGENCY:** Office of Refugee Resettlement, Administration for Children and Families, U.S. Department of Health and Human Services.

**ACTION:** Request for public comments.

**SUMMARY:** The Administration for Children and Families (ACF) is proposing a change of the described potential uses of data for two information collections: Medical Assessment Form and Dental Assessment Form (OMB #: 0970–0466) and Mental Health Assessment Form and Public Health Investigation Forms, Tuberculosis and Non-Tuberculosis Illness (OMB: #0970–0509).

**DATES:** *Comments due* August 1, 2024. OMB has agreed to make a decision about the updates to these collections of information following a public comment period of 30 days. Therefore, a comment is best assured of having its full effect if ACF receives it within 30 days of publication.

**ADDRESSES:** You can obtain copies of the proposed changes and submit comments by emailing *infocollection@acf.hhs.gov.* Identify all requests by the title of the information collection.

**SUPPLEMENTARY INFORMATION:**

*Description:* The following two ORR information collections capture health data on children in ORR care:

- Medical Assessment Form and Dental Assessment Form
- Mental Health Assessment Form and Public Health Investigation Form: Active TB, and Public Health Investigation Form: Non-TB Illness

The current description of purpose and use of the data collected states that confidential and sensitive health information will only be shared with external stakeholders (including other Federal agencies) for public health purposes (*e.g.,* contact investigations to identify children exposed to a reportable infectious disease). However, ORR has identified a need to share the health data of specific unaccompanied children with the Department of Homeland Security (DHS) which falls outside of the stated limitations. The need to communicate with DHS occurs when a newly referred child arrives at an ORR facility ill or requires emergent/urgent healthcare services shortly after placement and ORR was not notified in advance. For DHS to investigate the event, ORR must share confidential and sensitive health information including the child's alien number, name, signs/symptoms, diagnoses, and date of diagnosis. The goal of this data sharing effort is to identify areas of potential improvement in delivery of healthcare services and continuity of care for children transferred from DHS to Health and Human Services custody.

*Respondents:* Healthcare providers (pediatricians, medical specialists, and dentists), mental health professionals (psychiatrists, psychiatric nurse practitioners or physician's assistants, licensed psychologist or any other community based licensed mental health provider (*e.g.,* social worker), care provider program staff.

*Annual Burden Estimates:* No changes. For current burden estimates, see information below:

- *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202312-0970-002*
- *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202312-0970-003*

*Authority:* 6 U.S.C. 279: Exhibit 1, part A.2 of the Flores Settlement Agreement (*Jenny Lisette Flores, et al.,* v. *Janet Reno, Attorney General of the United States, et al.,* Case No. CV 85–4544–RJK [C.D. Cal. 1996]).

**Mary C. Jones,**

*ACF/OPRE Certifying Officer.*

[FR Doc. 2024–14556 Filed 7–1–24; 8:45 am]

**BILLING CODE 4184–45–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket Nos. FDA–2023–E–3130 and FDA–2023–E–3135]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; XENPOZYME

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for XENPOZYME and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

**DATES:** Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by September 3, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 30, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 3, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a

third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket Nos. FDA–2023–E–3130 and FDA–2023–E–3135 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; XENPOZYME.'' 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 § 10.20 (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:** Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product XENPOZYME (olipudase alfa-rcpc). XENPOZYME is indicated for treatment of non-central nervous system manifestations of acid sphingomyelinase deficiency in adult and pediatric patients. Subsequent to this approval, the USPTO received a patent term restoration application for XENPOZYME (U.S. Patent Nos. 8,314,319 and 8,658,162) from Genzyme Corporation and Icahn School of Medicine at Mount Sinai, and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated January 18, 2024, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of XENPOZYME represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

## II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for XENPOZYME is 5,971 days. Of this time, 5,669 days occurred during the testing phase of the regulatory review period, while 302 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* April 28, 2006. The applicant claims May 4, 2006, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was April 28, 2006, which was the first date after receipt of the IND that the investigational studies were allowed to proceed.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* November 3, 2021. FDA has verified the applicant's claim that the biologics license application (BLA) for XENPOZYME (BLA 761261) was

initially submitted on November 3, 2021.

3. *The date the application was approved:* August 31, 2022. FDA has verified the applicant's claim that BLA 761261 was approved on August 31, 2022.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,827 days of patent term extension.

**III. Petitions**

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket Nos. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: June 27, 2024.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2024–14538 Filed 7–1–24; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket Nos. FDA–2023–E–1833 and FDA–2023–E–1746]**

## Determination of Regulatory Review Period for Purposes of Patent Extension; TEZSPIRE

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for TEZSPIRE and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

**DATES:** Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by September 3, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 30, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 3, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket Nos. FDA–2023–E–1833 and FDA–2023–E–1746 ''For Determination of Regulatory Review Period for Purposes of Patent Extension; TEZSPIRE.'' 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 § 10.20 (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:** Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product TEZSPIRE (tezepelumab-ekko). TEZSPIRE is indicated for the add-on maintenance treatment of adult and pediatric patients aged 12 years and older with severe asthma. Subsequent to this approval, the USPTO received patent term restoration applications for TEZSPIRE (U.S. Patent Nos. 7,982,016 and 8,163,284) from Amgen Inc., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated September 28, 2023, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of TEZSPIRE represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

## II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for TEZSPIRE is 4,848 days. Of this time, 4,623 days occurred during the testing phase of the regulatory review period, while 225 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* September 10, 2008. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on September 10, 2008.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* May 7, 2021. FDA has verified the applicant's claim that the biologics license application (BLA) for TEZSPIRE (BLA 761224) was initially submitted on May 7, 2021.

3. *The date the application was approved:* December 17, 2021. FDA has verified the applicant's claim that BLA 761224 was approved on December 17, 2021.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 5 years of patent term extension.

## III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: June 27, 2024.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2024–14577 Filed 7–1–24; 8:45 am]

**BILLING CODE 4164–01–P**

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## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2023–E–1948]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; VYVGART

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for VYVGART and is publishing this notice of that determination as required by law. FDA has made the determination because of the

submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

**DATES:** Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by September 3, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 30, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 3, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2023–E–1948 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; VYVGART.'' 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 § 10.20 (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:** Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biological product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product VYVGART (efgartigimod). VYVGART is indicated for the treatment of generalized myasthenia gravis in adult patients who are anti-acetycholine receptor antibody positive. Subsequent to this approval, the USPTO received a patent term restoration application for VYVGART (U.S. Patent Nos. 8,163,881 and 8,834,871) from The Board of Regents of

the University of Texas System, and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated September 28, 2023, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of VYVGART represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

**II. Determination of Regulatory Review Period**

FDA has determined that the applicable regulatory review period for VYVGART is 1,710 days. Of this time, 1,344 days occurred during the testing phase of the regulatory review period, while 366 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* April 14, 2017. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on April 14, 2017.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* December 17, 2020. FDA has verified the applicant's claim that the biologics license application (BLA) for VYVGART (BLA 761195) was initially submitted on December 17, 2020.

3. *The date the application was approved:* December 17, 2021. FDA has verified the applicant's claim that BLA 761195 was approved on December 17, 2021.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,038 days of patent term extension.

**III. Petitions**

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: June 27, 2024.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2024–14532 Filed 7–1–24; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2023–E–1951]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; KIMMTRAK

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for KIMMTRAK and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

**DATES:** Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by September 3, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 30, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 3, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2023–E–1951 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; KIMMTRAK.'' 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 § 10.20 (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:** Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product KIMMTRAK (tebentafusp-tebn). KIMMTRAK is indicated for the treatment of HLA–A*02:01-positive adult patients with unresectable or metastatic uveal melanoma. Subsequent to this approval, the USPTO received a patent term restoration application for KIMMTRAK (U.S. Patent No. 8,519,100) from Immunocore Ltd., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated September 28, 2023, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of KIMMTRAK represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

## II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for KIMMTRAK is 3,641 days. Of this time, 3,424 days occurred during the testing phase of the regulatory review period, while 217 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* February 8, 2012. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on February 8, 2012.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* June 23, 2021. The applicant claims December 18, 2020, as the date the biologics license application (BLA) for KIMMTRAK (BLA 761228) was initially submitted. However, FDA records indicate that BLA 761228 was submitted on June 23, 2021.

3. *The date the application was approved:* January 25, 2022. FDA has verified the applicant's claim that BLA 761228 was approved on January 25, 2022.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,739 days of patent term extension.

## III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305),

Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: June 27, 2024.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2024–14540 Filed 7–1–24; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2023–E–3271]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; ZYNYZ

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for ZYNYZ and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

**DATES:** Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect must submit either electronic or written comments and ask for a redetermination by September 3, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 30, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 3, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are received on or before that date.

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2023–E–3271 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; ZYNYZ.'' 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 § 10.20 (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:** Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective

and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product ZYNYZ (retifanlimab-dlwr). ZYNYZ is indicated for treatment of adult patients with metastatic or recurrent locally advanced Merkel cell carcinoma. Subsequent to this approval, the USPTO received a patent term restoration application for ZYNYZ (U.S. Patent No. 10,577,422) from Incyte Corporation (Agent of MacroGenics, Inc.), and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated January 30, 2024, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of ZYNYZ represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

## II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for ZYNYZ is 2,372 days. Of this time, 2,145 days occurred during the testing phase of the regulatory review period, while 227 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* September 24, 2016. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on September 24, 2016.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* August 8, 2022. FDA has verified the applicant's claim that the biologics license application (BLA) for ZYNYZ (BLA 761334) was initially submitted on August 8, 2022.

3. *The date the application was approved:* March 22, 2023. FDA has verified the applicant's claim that BLA 761334 was approved on March 22, 2023.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 138 days of patent term extension.

## III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: June 27, 2024.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2024–14541 Filed 7–1–24; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket No. FDA–2023–E–3200]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; TECVAYLI

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for TECVAYLI and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

**DATES:** Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by September 3, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 30, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. Electronic comments must be submitted on or before September 3, 2024. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 3, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

*Electronic Submissions*

*Submit electronic comments in the following way:*

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*

• If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

*Submit written/paper submissions as follows:*

• *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

• For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket No. FDA–2023–E–3200 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; TECVAYLI.'' 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 § 10.20 (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:** Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product TECVAYLI (teclistamab-cqyv). TECVAYLI is indicated for the treatment of adult patients with relapsed or refractory multiple myeloma who have received at least four prior lines of therapy, including a proteasome inhibitor, an immunomodulatory agent and an anti-CD38 monoclonal antibody. This indication is approved under accelerated approval based on response rate. Subsequent to this approval, the USPTO received a patent term restoration application for TECVAYLI (U.S. Patent No. 10,072,088) from Janssen Biotech, Inc., and the USPTO requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated January 30, 2024, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of TECVAYLI represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

## II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for TECVAYLI is 2,050 days. Of this time, 1,748 days occurred during the testing phase of the regulatory review period, while 302 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* March 17, 2017. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on March 17, 2017.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* December 28, 2021. FDA has verified the applicant's claim that the biologics license application (BLA) for TECVAYLI (BLA 761291) was initially submitted on December 28, 2021.

3. *The date the application was approved:* October 25, 2022. FDA has verified the applicant's claim that BLA 761291 was approved on October 25, 2022.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension.

In its application for patent extension, this applicant seeks 70 days of patent term extension.

**III. Petitions**

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see DATES). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see DATES), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: June 27, 2024.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2024–14535 Filed 7–1–24; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

**[Docket Nos. FDA–2024–E–0159 and FDA–2024–E–0160]**

### Determination of Regulatory Review Period for Purposes of Patent Extension; ELFABRIO

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Notice.

**SUMMARY:** The Food and Drug Administration (FDA or the Agency) has determined the regulatory review period for ELFABRIO and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of applications to the Director of the U.S. Patent and Trademark Office (USPTO), Department of Commerce, for the extension of a patent which claims that human biological product.

**DATES:** Anyone with knowledge that any of the dates as published (see **SUPPLEMENTARY INFORMATION**) are incorrect may submit either electronic or written comments and ask for a redetermination by September 3, 2024. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by December 30, 2024. See ''Petitions'' in the **SUPPLEMENTARY INFORMATION** section for more information.

**ADDRESSES:** You may submit comments as follows. Please note that late, untimely filed comments will not be considered. The *https://www.regulations.gov* electronic filing system will accept comments until 11:59 p.m. Eastern Time at the end of September 3, 2024. Comments received by mail/hand delivery/courier (for written/paper submissions) will be considered timely if they are postmarked or the delivery service acceptance receipt is on or before that date.

*Electronic Submissions*

Submit electronic comments in the following way:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments. Comments submitted electronically, including attachments, to *https://www.regulations.gov* will be posted to the docket unchanged. Because your comment will be made public, you are solely responsible for ensuring that your comment does not include any confidential information that you or a third party may not wish to be posted, such as medical information, your or anyone else's Social Security number, or confidential business information, such as a manufacturing process. Please note that if you include your name, contact information, or other information that identifies you in the body of your comments, that information will be posted on *https://www.regulations.gov.*
- If you want to submit a comment with confidential information that you do not wish to be made available to the public, submit the comment as a written/paper submission and in the manner detailed (see ''Written/Paper Submissions'' and ''Instructions'').

*Written/Paper Submissions*

Submit written/paper submissions as follows:

- *Mail/Hand Delivery/Courier (for written/paper submissions):* Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.
- For written/paper comments submitted to the Dockets Management Staff, FDA will post your comment, as well as any attachments, except for information submitted, marked and identified, as confidential, if submitted as detailed in ''Instructions.''

*Instructions:* All submissions received must include the Docket Nos. FDA–2024–E–0159 and FDA–2024–E–0160 for ''Determination of Regulatory Review Period for Purposes of Patent Extension; ELFABRIO.'' 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 § 10.20 (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:** Beverly Friedman, Office of Regulatory Policy, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 51, Rm. 6250, Silver Spring, MD 20993, 301–796–3600.

**SUPPLEMENTARY INFORMATION:**

## I. Background

The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug or biologic product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human biological products, the testing phase begins when the exemption to permit the clinical investigations of the biological product becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human biological product and continues until FDA grants permission to market the biological product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of USPTO may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human biological product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA has approved for marketing the human biologic product ELFABRIO (pegunigalsidase alfa-iwxj). ELFABRIO is indicated for treatment of adults with confirmed Fabry disease. Subsequent to this approval, the USPTO received patent term restoration applications for ELFABRIO (U.S. Patent Nos. 9,194,011 and 10,280,414) from Protalix Ltd., and the USPTO requested FDA's assistance in determining the patents' eligibility for patent term restoration. In a letter dated January 24, 2024, FDA advised the USPTO that this human biological product had undergone a regulatory review period and that the approval of ELFABRIO represented the first permitted commercial marketing or use of the product. Thereafter, the USPTO requested that FDA determine the product's regulatory review period.

## II. Determination of Regulatory Review Period

FDA has determined that the applicable regulatory review period for ELFABRIO is 3,927 days. Of this time, 2,849 days occurred during the testing phase of the regulatory review period, while 1,078 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(i)) became effective:* August 9, 2012. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on August 9, 2012.

2. *The date the application was initially submitted with respect to the human biological product under section 351 of the Public Health Service Act (42 U.S.C. 262):* May 27, 2020. FDA has verified the applicant's claim that the biologics license application (BLA) for ELFABRIO (BLA 761161) was initially submitted on May 27, 2020.

3. *The date the application was approved:* May 9, 2023. FDA has verified the applicant's claim that BLA 761161 was approved on May 9, 2023.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the USPTO applies several statutory limitations in its calculations of the actual period for patent extension. In its applications for patent extension, this applicant seeks 1,271 days or 1,826 days of patent term extension.

## III. Petitions

Anyone with knowledge that any of the dates as published are incorrect may submit either electronic or written comments and, under 21 CFR 60.24, ask for a redetermination (see **DATES**). Furthermore, as specified in § 60.30 (21 CFR 60.30), any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must comply with all the requirements of § 60.30, including but not limited to: must be timely (see **DATES**), must be filed in accordance with § 10.20, must contain sufficient facts to merit an FDA investigation, and must certify that a true and complete copy of the petition has been served upon the patent applicant. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Submit petitions electronically to *https://www.regulations.gov* at Docket No. FDA–2013–S–0610. Submit written petitions (two copies are required) to the Dockets Management Staff (HFA–305), Food and Drug Administration, 5630 Fishers Lane, Rm. 1061, Rockville, MD 20852.

Dated: June 27, 2024.

**Lauren K. Roth,**

*Associate Commissioner for Policy.*

[FR Doc. 2024–14536 Filed 7–1–24; 8:45 am]

**BILLING CODE 4164–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Order of Succession

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** General notice.

Section C–C, Order of Succession, is hereby amended as follows:

Delete in its entirety Section C–C, Order of Succession, and insert the following:

During the absence or disability of the Director, CDC, or in the event of a vacancy in that office, the first official listed below who is available shall act as Director, except that during a planned period of absence, the Director may specify a different order of succession:

1. Principal Deputy Director
2. Deputy Director for Program and Science and CDC Chief Medical Officer
3. Deputy Director for Policy, Communication, and Legislative Affairs and CDC Chief Strategy Officer
4. Director of the Office of Readiness and Response
5. Director of the National Center for Emerging and Zoonotic Infectious Diseases
6. Director of the National Center for Immunization and Respiratory Diseases

**Robin Bailey,**

*Chief Operating Officer, Centers for Disease Control and Prevention.*

[FR Doc. 2024–14500 Filed 7–1–24; 8:45 am]

**BILLING CODE 4160–18–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### Eunice Kennedy Shriver National Institute of Child Health and Human Development; 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:* Eunice Kennedy Shriver National Institute of Child Health and Human Development Special Emphasis Panel; Ruth L. Kirschstein National Research Service Award (NRSA) Institutional Research Training Grant Review.

*Date:* November 18–19, 2024.

*Time:* 9:00 a.m. to 5:00 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* North Bethesda Marriott Hotel & Conference Center, Montgomery County Conference Center Facility, 5701 Marinelli Road, North Bethesda, MD 20852.

*Contact Person:* Christiane M. Robbins, Scientific Review Branch, *Eunice Kennedy Shriver* National Institute of Child Health and Human Development, NIH, 6710B Rockledge Drive, Rm 2121B, Bethesda, MD 20817, 301–451–4989, *crobbins@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research; 93.209, Contraception and Infertility Loan Repayment Program, National Institutes of Health, HHS)

Dated: June 26, 2024.

**Lauren A. Fleck,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024–14526 Filed 7–1–24; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Environmental Health Sciences; Notice of Closed 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 Environmental Health Sciences Special Emphasis Panel: Time-Sensitive/Exploratory Research Support in the Environmental Health Sciences.

*Date:* July 30, 2024.

*Time:* 1:30 p.m. to 2:30 p.m.

*Agenda:* To review and evaluate grant applications.

*Place:* National Institute of Environmental Health Sciences, Keystone Building, 530 Davis Drive, Durham, NC 27709 (Virtual Meeting).

*Contact Person:* Leroy Worth, Ph.D., Scientific Review Officer, Scientific Review Branch, Division of Extramural Research and Training, Nat. Institute of Environmental Health Sciences, P.O. Box 12233, MD EC–30/Room 3171, Research Triangle Park, NC 27709, 984–287–3340, *worth@niehs.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basic Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences; 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing, National Institutes of Health, HHS)

Dated: June 27, 2024.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024–14572 Filed 7–1–24; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### National Institutes of Health

### National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 1009 of the Federal Advisory Committee Act, as amended, notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

*Name of Committee:* National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel; NIDDK Multi Center Clinical Planning Applications.

*Date:* July 30, 2024.

*Time:* 2:00 p.m. to 3:30 p.m.

*Agenda:* To review and evaluate cooperative agreement applications.

*Place:* National Institutes of Health, NIDDK Democracy II, Suite 7000A, 6707 Democracy Boulevard, Bethesda, MD 20892 (Virtual Meeting).

*Contact Person:* Ryan G. Morris, Ph.D., Scientific Review Officer, National Institute of Diabetes and Digestive and Kidney, National Institute of Health, 6707 Democracy Boulevard, Rm. 7015, Bethesda, MD 20892–2542, 301–594–4721, *ryan.morris@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: June 27, 2024.

**Miguelina Perez,**

*Program Analyst, Office of Federal Advisory Committee Policy.*

[FR Doc. 2024–14576 Filed 7–1–24; 8:45 am]

**BILLING CODE 4140–01–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Accreditation and Approval of Camin Cargo Control, Inc. (La Marque, TX) as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of Camin Cargo Control, Inc. (La Marque, TX), as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Camin Cargo Control, Inc. (La Marque, TX), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of September 7, 2023.

**DATES:** Camin Cargo Control, Inc. (La Marque, TX) was approved and accredited as a commercial gauger and laboratory as of September 7, 2023. The next triennial inspection date will be scheduled for September 2026.

**FOR FURTHER INFORMATION CONTACT:** Robert P. Munivez, Laboratories and Scientific Services, U.S. Customs and Border Protection, 4150 Interwood South Parkway, Houston, TX 77032, tel. 281–560–2900.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Camin Cargo Control, Inc., 201 Texas Avenue, La Marque, TX 77568, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13.

Camin Cargo Control, Inc. (La Marque, TX) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

| API chapter | Title |
|---|---|
| 3 | Tank Gauging. |
| 7 | Temperature Determination. |
| 8 | Sampling. |
| 11 | Physical Properties Data. |
| 12 | Calculation of Petroleum Quantities. |
| 17 | Marine Measurement. |

Camin Cargo Control, Inc. (La Marque, TX), is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

| CBPL No. | ASTM | Title |
|---|---|---|
| 27–01 | D287 | Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method). |
| 27–02 | D1298 | Standard Test Method for Density, Relative Density, or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method. |
| 27–03 | D4006 | Standard Test Method for Water in Crude Oil by Distillation. |
| 27–04 | D95 | Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation. |
| 27–05 | D4928 | Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration. |
| 27–06 | D473 | Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method. |
| 27–07 | D4807 | Standard Test Method for Sediment in Crude Oil by Membrane Filtration. |
| 27–08 | D86 | Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure. |
| 27–11 | D445 | Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity). |
| 27–13 | D4294 | Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry. |
| 27–48 | D4052 | Standard Test Method for Density, Relative Density, and API Gravity of Liquids by Digital Density Meter. |
| 27–50 | D93 | Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester. |
| 27–53 | D2709 | Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge. |
| 27–57 | D7039 | Standard Test Method for Sulfur in Gasoline and Diesel Fuel by Monochromatic Wavelength Dispersive X-Ray Fluorescence Spectrometry. |
| 27–58 | D5191 | Standard Test Method for Vapor Pressure of Petroleum Products and Liquid Fuels (Mini Method). |

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (281) 560–2900. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

**James D. Sweet,**

*Laboratory Director, Houston, Laboratories and Scientific Services.*

[FR Doc. 2024–14563 Filed 7–1–24; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Accreditation and Approval of Bureau Veritas Commodities and Trade, Inc. (Torrance, CA) as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of Bureau Veritas Commodities and Trade, Inc. (Torrance, CA), as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Bureau Veritas Commodities and Trade, Inc. (Torrance, CA), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of October 26, 2023.

**DATES:** Bureau Veritas Commodities and Trade, Inc. (Torrance, CA) was approved and accredited as a commercial gauger and laboratory as of October 26, 2023. The next triennial inspection date will be scheduled for October 2026.

**FOR FURTHER INFORMATION CONTACT:** Mrs. Allison Blair, Laboratories and Scientific Services, U.S. Customs and Border Protection, 4150 Interwood South Parkway, Houston, TX 77032, tel. 281–560–2900.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Bureau Veritas Commodities and Trade, Inc, 22934 Lockness Ave., Torrance, California 90501, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13.

Bureau Veritas Commodities and Trade, Inc. (Torrance, CA) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

| API chapters | Title |
|---|---|
| 3 | Tank Gauging. |
| 7 | Temperature Determination. |
| 8 | Sampling. |
| 12 | Calculations. |
| 17 | Marine Measurement. |

Bureau Veritas Commodities and Trade, Inc. (Torrance, CA) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

| CBPL No. | ASTM | Title |
|---|---|---|
| 27–01 | D 287 | Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method). |
| 27–05 | D 4928 | Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration. |
| 27–06 | D 473 | Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method. |
| 27–07 | D 4807 | Standard Test Method for Sediment in Crude Oil by Membrane Filtration. |
| 27–08 | D 86 | Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure. |
| 27–10 | D 323 | Standard Test Method for Vapor Pressure of Petroleum Products (Reid Method). |
| 27–11 | D 445 | Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity). |
| 27–13 | D 4294 | Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry. |
| 27–46 | D 5002 | Standard Test Method for Density, Relative Density, and API Gravity of Crude Oils by Digital Density Analyzer. |
| 27–48 | D 4052 | Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter. |
| 27–58 | D 5191 | Standard Test Method For Vapor Pressure of Petroleum Products (Mini Method). |
| N/A | D 6730 | Standard Test Method for Determination of Individual Components in Spark Ignition Engine Fuels by 100-Metre Capillary (with Precolumn) High-Resolution Gas Chromatography. |

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (281) 560–2900. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

Dated: April 17, 2024.

**James D. Sweet,**

*Laboratory Director, Houston, Laboratories and Scientific Services.*

[FR Doc. 2024–14564 Filed 7–1–24; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Notice of Issuance of Final Determination Concerning a DisplayPort Male to Female Video Adapter

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of final determination.

**SUMMARY:** This document provides notice that U.S. Customs and Border Protection (''CBP'') has issued a final determination concerning the country of origin of a ''DisplayPort male to female adapter''. Based upon the facts presented, CBP has concluded that the country of origin of the adapter is Taiwan, where the printed circuit board assembly (''PCBA'') is manufactured.

**DATES:** The final determination was issued on June 27, 2024. A copy of the final determination is attached. Any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of this final determination no later than August 1, 2024.

**FOR FURTHER INFORMATION CONTACT:** Austen Walsh, Valuation and Special Programs Branch, Regulations and Rulings, Office of Trade, at (202) 325–0114.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given that on June 27, 2024, CBP issued a final determination concerning the country of origin of a DisplayPort adapter for purposes of title III of the Trade Agreements Act of 1979. This final determination, Headquarters Ruling Letter (''HQ'') H331939, was issued at the request of Aegis Multimedia Inc., under procedures set forth at 19 CFR part 177, subpart B, which implements title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–18). In the final determination, CBP has concluded that the country of origin of the DisplayPort adapter is Taiwan, where the PCBA is manufactured. The final determination also finds that the country of origin for marking purposes of the subject DisplayPort male to female adapter is Taiwan.

Section 177.29, CBP Regulations (19 CFR 177.29), provides that a notice of final determinations shall be published in the **Federal Register** within 60 days of the date the final determination is issued. Section 177.30, CBP Regulations (19 CFR 177.30), provides that any party-at-interest, as defined in 19 CFR 177.22(d), may seek judicial review of a final determination within 30 days of

publication of such determination in the **Federal Register**.

**Alice A. Kipel,**

*Executive Director, Regulations and Rulings, Office of Trade.*

**HQ H331939**

June 27, 2024

OT:RR:CTF:VS H331939 AMW

**Category: Origin**

Sammy Hsieh
Aegis Multimedia Inc.
2F, No. 21, LN 48 Guangming St.,
Tucheng Dist.
New Taipei, 236, Taiwan

Re: U.S. Government Procurement; Title III, Trade Agreements Act of 1979 (19 U.S.C. 2511); Subpart B, Part 177, CBP Regulations; Country of Origin of DisplayPort Male to Female Adapter

Dear Mr. Hsieh:

This is in response to your request, dated May 1, 2023, for a final determination concerning the country of origin of a video graphics array adapter pursuant to Title III of the Trade Agreements Act of 1979 (''TAA''), as amended (19 U.S.C. 2511 *et seq.*), and subpart B of Part 177, U.S. Customs and Border Protection (''CBP'') Regulations (19 CFR 177.21, *et seq.*). Your request, submitted as an electronic ruling request, was forwarded to this office from the National Commodity Specialist Division for response. Aegis Multimedia Inc. (''Aegis'') is a party-at-interest within the meaning of 19 CFR 177.22(d)(1) and 177.23(a) and is therefore entitled to request this final determination.

**Facts**

Aegis imports a ''DisplayPort male to female adapter'', which is an eight-inch-long video converter. The adapter is used to connect a desktop or laptop computer with a video graphics array (''VGA'') compliant monitor or television, converting signals transmitted between the computer and the monitor. You state that the adapter has one DisplayPort male connector (source signal input), one printed circuit board assembly attached to a VGA female connector (PCBA/signal output), and one eight-inch-long cable.

The adapter manufacturing process consists of two phases: (1) printed circuit board assembly (''PCBA'') production in Taiwan, and (2) final assembly in China.

*Phase One—PCBA Production (Taiwan)*

The PCBA is manufactured using surface mount technology (''SMT'') in which various components are affixed to a Taiwanese-origin circuit board:

1. Solder paste is applied to a bare circuit board. The stainless-steel foil of the bare circuit board is laser cut to form openings in the board for the size and location of each surface mount component at which point solder paste is applied.
2. A high-speed chip mounter is used to place smaller and lighter components (*e.g.,* small resistors, capacitors, and inductors) onto the circuit board.
3. A slow-speed chip mounter is used to place larger and heavier components (*e.g.,* ball grid array (''BGA'') chip, flash, and connectors) onto the circuit board.
4. The unfinished circuit board is placed in a reflow oven, which melts the previously applied solder paste to form a non-metallic compound between the above-mentioned parts and the bare circuit board.
5. The PCBA is placed in an automated optical inspection (''AOI'') device to be scanned to catastrophic failure and quality defects.
6. The PCBA is combined with the VGA female connector and soldered together by hand. After the PCBA and VGA connector are completed, the devices are placed in a plastic tray for packaging and shipment to Aegis's China facility.

*Phase Two—Final Assembly (China)*

The Chinese-origin components are assembled with the Taiwanese-origin PCBA/VGA female connector assembly at the manufacturer's plant. The final assembly occurs over the following 13 stages:

1. Flash programming software is downloaded onto the PCBA;
2. Eight-inch cable is prepared and checked for quantity of cables;
3. Visual inspection of eight-inch cable is conducted;
4. Wire insulation is stripped using a stripping machine; the wire is cut to proper length for use as a connector cable; and, the wire's copper conductor is placed in tin stove to cover surface with tin;
5. Top and bottom sides of the PCBA are soldered to the wiring;
6. Initial PCBA function testing and visual inspection of video quality is conducted;
7. A metal shell for the VGA female adapter is assembled and the PCBA is fitted into this shell;
8. The VGA female adapter's metal shell is placed into a molding machine and a polyvinyl chloride (''PVC'') ''strain relief'' component is applied to the base of the metal casing;
9. Acrylonitrile butadiene styrene (''ABS'') bottom and top shells are assembled for the DisplayPort male connector, placed over the metal shell, and punched to stamp the complete shell together;
10. Final PCBA function testing is conducted;
11. Visual inspection of video quality is conducted;
12. An ABS shell for the VGA female connector is placed over the metal shell assembled in step 7 and stamped together; and
13. The completed adapters are packaged in a zip bag and carton for shipment.

You state that the PCBA is used to convert the DisplayPort++ signal into a VGA signal, which allows a VGA monitor to use the DisplayPort signal transmitted from a desktop or laptop via the adapter. The PCBA also contains a ''flash'' software program, which you state will detect whether the DisplayPort++ signal is acceptable. If the signal is acceptable, the software will notify the chipset that it can convert the DisplayPort++ signal to a VGA signal.

**Issues**

What is the country of origin of the DisplayPort male to female adapter for purposes of U.S. Government procurement?

What is the proper country of origin marking of the imported DisplayPort male to female
adapter?

**Law and Analysis**

*Government Procurement*

CBP issues country of origin advisory rulings and final determinations as to whether an article is or would be a product of a designated country or instrumentality for the purposes of granting waivers of certain ''Buy American'' restrictions in U.S. law or practice for products offered for sale to the U.S. Government, pursuant to subpart B of Part 177, 19 CFR 177.21–177.31, which implements Title III of the TAA, as amended (19 U.S.C. 2511–2518).

CBP's authority to issue advisory rulings and final determinations is set forth in 19 U.S.C. 2515(b)(1), which states:

> For the purposes of this subchapter, the Secretary of the Treasury shall provide for the prompt issuance of advisory rulings and final determinations on whether, under section 2518(4)(B) of this title, *an article is or would be a product of a foreign country or instrumentality designated pursuant to section 2511(b) of this title.*

Emphasis added.

The Secretary of the Treasury's authority mentioned above, along with other customs revenue functions, are delegated to CBP in the Appendix to 19

CFR part 0—Treasury Department Order No. 100–16, 68 FR 28, 322 (May 23, 2003).

The rule of origin set forth under 19 U.S.C. 2518(4)(B) states:

> An article is a product of a country or instrumentality only if (i) it is wholly the growth, product, or manufacture of that country or instrumentality, or (ii) in the case of an article which consists in whole or in part of materials from another country or instrumentality, it has been substantially transformed into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

*See also* 19 CFR 177.22(a).

In rendering advisory rulings and final determinations for purposes of U.S. Government procurement, CBP applies the provisions of subpart B of Part 177 consistent with the Federal Procurement Regulation (''FAR''). *See* 19 CFR 177.21. In this regard, CBP recognizes that the FAR restricts the U.S. Government's purchase of products to U.S.-made or designated country end products for acquisitions subject to the TAA. *See* 48 CFR 25.403(c)(1).

The FAR, 48 CFR 25.003, defines ''designated country end product'' as:

> a WTO GPA [World Trade Organization Government Procurement Agreement] country end product, an FTA [Free Trade Agreement] country end product, a least developed country end product, or a Caribbean Basin country end product.

Section 25.003 defines ''WTO GPA country end product'' as an article that:

(1) Is wholly the growth, product, or manufacture of a WTO GPA country; or

(2) In the case of an article that consists in whole or in part of materials from another country, has been substantially transformed in a WTO GPA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term refers to a product offered for purchase under a supply contract, but for purposes of calculating the value of the end product includes services (except transportation services) incidental to the article, provided that the value of those incidental services does not exceed that of the article itself.

As previously noted, the adapter is assembled in China with a Taiwanese-origin PCBA. Taiwan is a TAA-designated country, and China is not.

In order to determine whether a substantial transformation occurs, CBP considers the totality of the circumstances and makes such determinations on a case-by-case basis. The country of origin of the item's components, extent of the processing that occurs within a country, and whether such processing renders a product with a new name, character, and use are primary considerations in such cases. Additionally, CBP considers factors such as the resources expended on product design and development, the extent and nature of post-assembly inspection and testing procedures, and worker skill required during the actual manufacturing process when determining whether a substantial transformation has occurred. No one factor is determinative.

Assembly operations that are minimal or simple, as opposed to complex or meaningful, will generally not result in a substantial transformation. Factors which may be relevant in this evaluation include the nature of the operation (including the number of components assembled), the number of different operations involved, and whether a significant period of time, skill, detail, and quality control are necessary for the assembly operation. *See* C.S.D. 80–111, C.S.D. 85–25, C.S.D. 89–110, C.S.D. 89–118, C.S.D. 90–51, and C.S.D. 90–97. If the manufacturing or combining process is a minor one, which leaves the identity of the article intact, a substantial transformation has not occurred. *See Uniroyal, Inc.* v. *United States,* 3 CIT 220, 542 F. Supp. 1026 (1982), *aff'd,* 702 F.2d 1022 (Fed. Cir. 1983) (imported shoe uppers added to an outer sole in the United States were the ''very essence of the finished shoe'' and the character of the product remained unchanged and did not undergo substantial transformation in the United States).

In C.S.D. 85–25, 19 Cust. Bull. 544 (1985), CBP held that for purposes of the Generalized System of Preferences (''GSP''), the assembly of a large number of fabricated components onto a printed circuit board in a process involving a considerable amount of time and skill resulted in a substantial transformation. In that case, in excess of 50 discrete fabricated components (such as resistors, capacitors, diodes, integrated circuits, sockets, and connectors) were assembled onto a Printed Circuit Board (''PCB''). CBP determined that the assembly of the PCBA involved a very large number of components and a significant number of different operations, required a relatively significant period of time, skill, attention to detail, and quality control.

As CBP considers the totality of circumstances in its substantial transformation analysis, considerations such as the origin of a PCBA may be taken into account together with the nature of the overall assembly operations. Indeed, in several matters, CBP has determined that the PCBA provides the character of the subject devices and, accordingly, the country of origin is that in which the PCBA is manufactured. For example, in Headquarters Ruling Letter (''HQ'') H331515, dated December 6, 2023, CBP determined that the use of SMT to create a PCBA in Mexico with the assembly of a Chinese light-emitting diode (''LED'') strip resulted in a substantial transformation. And in HQ H304124, dated November 19, 2019, CBP determined the country of origin of a cardiac monitoring strip to be Finland, the country of origin of the device's PCBA, because the PCBA again provided the functionality and essence of the monitoring strips. *See also,* HQ H322417, dated February 23, 2022 (finding the PCBA imparts the character of a smart watch).

Based on the information submitted, we find that the various components are substantially transformed when assembled into the PCBA in Taiwan. Similar to the decisions above, a variety of electronic components are added to the raw PCB via SMT in Taiwan to create the subject PCBAs. This includes the main chipset, which enables the subject device to convert the DisplayPort++ signal into a VGA signal. Of particular importance, we also note that it is the PCBA that enables the device to function as a connector, and, therefore, it imparts the character of the subject device. Furthermore, we note that the processing in China, which consists of wire cutting, stamping, fitting, and visual inspection, is not sufficiently complex and meaningful to result in a substantial transformation. Instead, as described above, the components added in China consist of casing and wires used to facilitate the functions performed by the PCBA. Based on the information provided, we conclude that the country of origin of the adapter is Taiwan, where the PCBA is manufactured. Accordingly, we find that the subject DisplayPort male to female adapter would be the product of a foreign country or instrumentality designated pursuant to 19 U.S.C. 2511(b)(1).

*Country of Origin Marking*

Section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304), provides that unless excepted, every article of foreign origin imported into the United States shall be marked in a conspicuous place as legibly, indelibly, and permanently as the nature of the article (or its container) will permit, in such a manner as to indicate to the ultimate purchaser in the United States, the

English name of the country of origin of the article. The Congressional intent in enacting 19 U.S.C. 1304 was ''that the *ultimate purchaser* should be able to know by an inspection of the marking on the imported goods the country of which the goods is the product. The evident purpose is to mark the goods so that at the time of purchase the *ultimate purchaser* may, by knowing where the goods were produced, be able to buy or refuse to buy them, if such marking should influence his will.'' *United States* v. *Friedlander & Co.,* 27 C.C.P.A. 297 at 302; C.A.D. 104 (1940) (emphases added).

Part 134 of CBP's Regulations (19 CFR part 134), implements the country of origin marking requirements and exceptions of 19 U.S.C. 1304. Section 134.1(b), CBP Regulations (19 CFR 134.1(b)), defines ''country of origin'' as:

> [T]he country of manufacture, production, or growth of any article of foreign origin entering the United States. Further work or material added to an article in another country must effect a substantial transformation in order to render such other country the ''country of origin'' within the meaning of this part. . . .

As outlined above, courts have held that a substantial transformation occurs when an article emerges from a process with a new name, character or use different from that possessed by the article prior to processing. *E.g., Energizer Battery, Inc.* v. *United States,* 190 F. Supp. 3d 1308 (Court Int'l Trade 2016); *United States* v. *Gibson-Thomsen Co., Inc.,* 27 CCPA 267, C.A.D. 98 (1940); *National Hand Tool Corp.* v. *United States,* 16 CIT 308 (1992), aff'd, 989 F.2d 1201 (Fed. Cir. 1993); *Anheuser Busch Brewing Association* v. *United States,* 207 U.S. 556 (1908) and *Uniroyal Inc.* v. *United States,* 542 F. Supp. 1026 (Court Int'l Trade 1982).

Based on the information and analysis provided above, the imported PCBA components undergo a substantial transformation when manufactured into the subject PCBA in Taiwan. In contrast, the PCBA does not undergo a change in name, character, and use during the final assembly process occurring in China, which is comparatively simple in nature. As a result, the country of origin for marking purposes of the subject DisplayPort male to female adapter is Taiwan, where the PCBA is manufactured.

**Holding**

Based on the facts and analysis set forth above, the DisplayPort male to female adapter, comprised of a Taiwan-origin PCBA, would be the product of a foreign country or instrumentality designated pursuant to 19 U.S.C. 2511(b). In addition, the country of origin for marking purposes of the adapter is Taiwan.

Notice of this final determination will be given in the **Federal Register**, as required by 19 CFR 177.29. Any party-at-interest other than the party which requested this final determination may request, pursuant to 19 CFR 177.31, that CBP reexamine the matter anew and issue a new final determination. Pursuant to 19 CFR 177.30, any party-at-interest may, within 30 days of publication of the **Federal Register** Notice referenced above, seek judicial review of this final determination before the U.S. Court of International Trade.

Sincerely,

Alice A. Kipel,

*Executive Director Regulations and Rulings Office of Trade.*

[FR Doc. 2024–14549 Filed 7–1–24; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Accreditation and Approval of Camin Cargo Control, Inc. (Pasadena, TX) as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of Camin Cargo Control, Inc. (Pasadena, TX), as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Camin Cargo Control, Inc. (Pasadena, TX), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of July 26, 2023.

**DATES:** Camin Cargo Control, Inc. (Pasadena, TX) was approved and accredited as a commercial gauger and laboratory as of July 26, 2023. The next triennial inspection date will be scheduled for July 2026.

**FOR FURTHER INFORMATION CONTACT:** Robert P. Munivez, Laboratories and Scientific Services, U.S. Customs and Border Protection, 4150 Interwood South Parkway, Houston, TX 77032, tel. 281–560–2900.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Camin Cargo Control, Inc., 1001 Shaw Avenue, Pasadena, TX 77506, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13.

Camin Cargo Control, Inc. (Pasadena, TX) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

| API chapter | Title |
|---|---|
| 3 | Tank Gauging. |
| 7 | Temperature Determination. |
| 8 | Sampling. |
| 11 | Physical Properties Data. |
| 12 | Calculation of Petroleum Quantities. |
| 17 | Marine Measurement. |

Camin Cargo Control, Inc. (Pasadena, TX), is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

| CBPL No. | ASTM | Title |
|---|---|---|
| 27–03 | D4006 | Standard Test Method for Water in Crude Oil by Distillation. |
| 27–04 | D95 | Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation. |
| 27–05 | D4928 | Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration. |
| 27–08 | D86 | Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure. |
| 27–11 | D445 | Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity). |
| 27–13 | D4294 | Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry. |
| 27–14 | D2622 | Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry. |
| 27–48 | D4052 | Standard Test Method for Density, Relative Density, and API Gravity of Liquids by Digital Density Meter. |

| CBPL No. | ASTM | Title |
|---|---|---|
| 27–50 | D93 | Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester. |
| 27–57 | D7039 | Standard Test Method for Sulfur in Gasoline and Diesel Fuel by Monochromatic Wavelength Dispersive X-Ray Fluorescence Spectrometry. |
| 27–58 | D5191 | Standard Test Method for Vapor Pressure of Petroleum Products and Liquid Fuels (Mini Method). |

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (281) 560–2900. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

**James D. Sweet,**

*Laboratory Director, Houston, Laboratories and Scientific Services.*

[FR Doc. 2024–14559 Filed 7–1–24; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Accreditation and Approval of Intertek USA, Inc. (Deer Park, TX) as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of Intertek USA, Inc. (Deer Park, TX) as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc. (Deer Park, TX), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of April 18, 2023.

**DATES:** Intertek USA, Inc. (Deer Park, TX) was approved and accredited as a commercial gauger and laboratory as of April 18, 2023. The next inspection date will be scheduled for April 2026.

**FOR FURTHER INFORMATION CONTACT:** Dr. Eugene Bondoc, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1501–A North, Washington, DC 20229, tel. 202–344–1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Intertek USA, Inc., 1114 Seaco Avenue, Deer Park, TX 77536, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13 as of April 18, 2023.

Intertek USA, Inc. (Deer Park, TX) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

| API chapters | Title |
|---|---|
| 3 | Tank Gauging. |
| 7 | Temperature Determination. |
| 8 | Sampling. |
| 12 | Calculations. |
| 17 | Maritime Measurement. |

Intertek USA, Inc. (Deer Park, TX) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

| CBPL No. | ASTM | Title |
|---|---|---|
| 27–01 | D 287 | Standard Test Method for API Gravity of Crude Petroleum and Petroleum Products (Hydrometer Method). |
| 27–02 | D 1298 | Standard Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products by Hydrometer Method. |
| 27–03 | D 4006 | Standard Test Method for Water in Crude Oil by Distillation. |
| 27–04 | D 95 | Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation. |
| 27–05 | D 4928 | Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration. |
| 27–06 | D 473 | Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method. |
| 27–07 | D 4807 | Standard Test Method for Sediment in Crude Oil by Membrane Filtration. |
| 27–08 | D 86 | Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure. |
| 27–13 | D 4294 | Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy-Dispersive X-ray Fluorescence Spectrometry. |
| 27–46 | D 5002 | Standard Test Method for Density, Relative Density, and API Gravity of Crude Oils by Digital Density Analyzer. |
| 27–48 | D 4052 | Standard Test Method for Density and Relative Density of Liquids by Digital Density Meter. |
| 27–54 | D 1796 | Standard Test Method for Water and Sediment in Fuel Oils by the Centrifuge Method. |

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please

reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

**James D. Sweet,**

*Laboratory Director, Houston, Laboratories and Scientific Services Directorate.*

[FR Doc. 2024–14560 Filed 7–1–24; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Accreditation and Approval of Camin Cargo Control, Inc. (Gonzales, LA) as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of Camin Cargo Control, Inc. (Gonzales, LA), as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Camin Cargo Control, Inc. (Gonzales, LA), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of May 24, 2023.

**DATES:** Camin Cargo Control, Inc. (Gonzales, LA) was approved and accredited as a commercial gauger and laboratory as of May 24, 2023. The next triennial inspection date will be scheduled for May 2026.

**FOR FURTHER INFORMATION CONTACT:** Robert P. Munivez, Laboratories and Scientific Services, U.S. Customs and Border Protection, 4150 Interwood South Parkway, Houston, TX 77032, tel. 281–560–2900.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that Camin Cargo Control, Inc., 2137 South Philippe Avenue, Gonzales, LA 70737, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13.

Camin Cargo Control, Inc. (Gonzales, LA) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

| API chapter | Title |
|---|---|
| 3 | Tank Gauging. |
| 7 | Temperature Determination. |
| 8 | Sampling. |
| 12 | Calculation of Petroleum Quantities. |
| 17 | Marine Measurement. |

Camin Cargo Control, Inc. (Gonzales, LA), is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

| CBPL No. | ASTM | Title |
|---|---|---|
| 27–03 | D4006 | Standard Test Method for Water in Crude Oil by Distillation. |
| 27–04 | D95 | Standard Test Method for Water in Petroleum Products and Bituminous Materials by Distillation. |
| 27–05 | D4928 | Standard Test Method for Water in Crude Oils by Coulometric Karl Fischer Titration. |
| 27–06 | D473 | Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method. |
| 27–08 | D86 | Standard Test Method for Distillation of Petroleum Products at Atmospheric Pressure. |
| 27–11 | D445 | Standard Test Method for Kinematic Viscosity of Transparent and Opaque Liquids (and Calculation of Dynamic Viscosity). |
| 27–14 | D2622 | Standard Test Method for Sulfur in Petroleum Products by Wavelength Dispersive X-Ray Fluorescence Spectrometry. |
| 27–46 | D5002 | Standard Test Method for Density, Relative Density, and API Gravity of Crude Oils by Digital Density Analyzer. |
| 27–48 | D4052 | Standard Test Method for Density, Relative Density, and API Gravity of Liquids by Digital Density Meter. |
| 27–50 | D93 | Standard Test Methods for Flash Point by Pensky-Martens Closed Cup Tester. |
| 27–53 | D2709 | Standard Test Method for Water and Sediment in Middle Distillate Fuels by Centrifuge. |
| 27–58 | D5191 | Standard Test Method for Vapor Pressure of Petroleum Products and Liquid Fuels (Mini Method). |
| N/A | D5453 | Standard Test Method for Determination of Total Sulfur in Light Hydrocarbons, Spark Ignition Engine Fuel, Diesel Engine Fuel, and Engine Oil by Ultraviolet Fluorescence. |
| N/A | D6377 | Standard Test Method for Determination of Vapor Pressure of Crude Oil: VPCRx (Expansion Method). |

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (281) 560–2900. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov*. Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories*.

**James D. Sweet,**

*Laboratory Director, Houston, Laboratories and Scientific Services.*

[FR Doc. 2024–14562 Filed 7–1–24; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Accreditation and Approval of Intertek USA, Inc. (Freeport, TX) as a Commercial Gauger

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of approval of Intertek USA, Inc. (Freeport, TX) as a commercial gauger.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that Intertek USA, Inc. (Freeport, TX), has been approved to gauge petroleum and certain petroleum products for customs purposes for the next three years as of April 20, 2023.

**DATES:** Intertek USA, Inc. (Freeport, TX) was approved as a commercial gauger as of April 20, 2023. The next inspection date will be scheduled for April 2026.

**FOR FURTHER INFORMATION CONTACT:** Dr. Eugene Bondoc, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1501–A North, Washington, DC 20229, tel. 202–344–1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.13, that Intertek USA, Inc., 214 North Gulf Blvd., Freeport, TX 77541, has been approved to gauge petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.13 as of April 20, 2023.

Intertek USA, Inc. (Freeport, TX) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

| API chapters | Title |
|---|---|
| 3 | Tank Gauging. |
| 7 | Temperature Determination. |
| 8 | Sampling. |
| 11 | Physical Properties Data. |
| 12 | Calculations. |
| 17 | Maritime Measurement. |

Anyone wishing to employ this entity to conduct gauger services should request and receive written assurances from the entity that it is approved by the U.S. Customs and Border Protection to conduct the gauger service requested. Alternatively, inquiries regarding the gauger service this entity is approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

**James D. Sweet,**

*Laboratory Director, Houston, Laboratories and Scientific Services Directorate.*

[FR Doc. 2024–14561 Filed 7–1–24; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### U.S. Customs and Border Protection

### Accreditation and Approval of AmSpec, LLC (St. James, LA) as a Commercial Gauger and Laboratory

**AGENCY:** U.S. Customs and Border Protection, Department of Homeland Security.

**ACTION:** Notice of accreditation and approval of AmSpec, LLC (St. James, LA) as a commercial gauger and laboratory.

**SUMMARY:** Notice is hereby given, pursuant to CBP regulations, that AmSpec, LLC (St. James, LA), has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes for the next three years as of May 10, 2023.

**DATES:** AmSpec, LLC (St. James, LA) was approved and accredited as a commercial gauger and laboratory as of May 10, 2023. The next inspection date will be scheduled for May 2026.

**FOR FURTHER INFORMATION CONTACT:** Dr. Eugene Bondoc, Laboratories and Scientific Services Directorate, U.S. Customs and Border Protection, 1300 Pennsylvania Avenue NW, Suite 1501–A North, Washington, DC 20229, tel. 202–344–1060.

**SUPPLEMENTARY INFORMATION:** Notice is hereby given pursuant to 19 CFR 151.12 and 19 CFR 151.13, that AmSpec, LLC, 5525 Highway 18, St. James, LA 70086, has been approved to gauge petroleum and certain petroleum products and accredited to test petroleum and certain petroleum products for customs purposes, in accordance with the provisions of 19 CFR 151.12 and 19 CFR 151.13 as of May 10, 2023.

AmSpec, LLC (St. James, LA) is approved for the following gauging procedures for petroleum and certain petroleum products from the American Petroleum Institute (API):

| API chapters | Title |
|---|---|
| 1 | Vocabulary. |
| 3 | Tank Gauging. |
| 7 | Temperature Determination. |
| 8 | Sampling. |
| 11 | Physical Properties Data. |
| 12 | Calculations. |
| 17 | Maritime Measurement. |

AmSpec, LLC (St. James, LA) is accredited for the following laboratory analysis procedures and methods for petroleum and certain petroleum products set forth by the U.S. Customs and Border Protection Laboratory Methods (CBPL) and American Society for Testing and Materials (ASTM):

| CBPL No. | ASTM | Title |
|---|---|---|
| 27–03 | D 4006 | Standard Test Method for Water in Crude Oil by Distillation. |
| 27–06 | D 473 | Standard Test Method for Sediment in Crude Oils and Fuel Oils by the Extraction Method. |
| 27–13 | D 4294 | Standard Test Method for Sulfur in Petroleum and Petroleum Products by Energy Dispersive X-ray Fluorescence Spectrometry. |
| 27–46 | D 5002 | Standard Test Method for Density, Relative Density, and API Gravity of Crude Oils by Digital Density Analyzer. |
| N/A | D 4007 | Standard Test Method For Water and Sediment in Crude Oil by the Centrifuge Method (Laboratory Procedure). |

Anyone wishing to employ this entity to conduct laboratory analyses and gauger services should request and receive written assurances from the entity that it is accredited or approved by the U.S. Customs and Border Protection to conduct the specific test or gauger service requested. Alternatively, inquiries regarding the specific test or gauger service this entity is accredited or approved to perform may be directed to the U.S. Customs and Border Protection by calling (202) 344–1060. The inquiry may also be sent to *CBPGaugersLabs@cbp.dhs.gov.* Please reference the website listed below for a complete listing of CBP approved gaugers and accredited laboratories. *http://www.cbp.gov/about/labs-scientific/commercial-gaugers-and-laboratories.*

**James D. Sweet,**

*Laboratory Director, Houston, Laboratories and Scientific Services Directorate.*

[FR Doc. 2024–14555 Filed 7–1–24; 8:45 am]

**BILLING CODE 9111–14–P**

## DEPARTMENT OF HOMELAND SECURITY

### Notice of Adoption of Department of Energy Categorical Exclusions Pursuant to Section 109 of the National Environmental Policy Act

**AGENCY:** Office of the Secretary, Department of Homeland Security.

**ACTION:** Notice of adoption of the Department of Energy's categorical exclusions pursuant to section 109 of the National Environmental Policy Act.

**SUMMARY:** The Department of Homeland Security (DHS) is adopting 18 Categorical Exclusions (CE) established by the Department of Energy (DOE) pursuant to the National Environmental Policy Act to use for proposed DHS actions. This notice describes the categories of proposed actions for which DHS intends to use DOE's CEs and details the consultation between the agencies.

**DATES:** This action is effective upon publication.

**FOR FURTHER INFORMATION CONTACT:** Jennifer DeHart Hass, Director, Environmental Planning and Historic Preservation, by phone at 202–834–4346, or by email at *jennifer.hass@hq.dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

### I. Background

*National Environmental Policy Act and Categorical Exclusions*

The National Environmental Policy Act, 42 U.S.C. 4321–4347 (NEPA), requires all Federal agencies to assess the environmental impacts of their actions. Congress enacted NEPA to encourage productive and enjoyable harmony between humans and the environment, recognizing the profound impact of human activity and the critical importance of restoring and maintaining environmental quality to the overall welfare of humankind. 42 U.S.C. 4321, 4331. NEPA's twin aims are to ensure agencies consider the environmental effects of their proposed actions in their decision-making processes and inform and involve the public in that process. 42 U.S.C. 4331. NEPA created the Council on Environmental Quality (CEQ), which promulgated NEPA implementing regulations, 40 CFR parts 1500 through 1508 (CEQ regulations).

To comply with NEPA, agencies determine the appropriate level of review—an environmental impact statement (EIS), environmental assessment (EA), or categorical exclusion. 42 U.S.C. 4336. If a proposed action is likely to have significant environmental effects, the agency must prepare an EIS and document its decision in a record of decision. *Id.* If the proposed action is not likely to have significant environmental effects or the effects are unknown, the agency may instead prepare an EA, which involves a more concise analysis and process than an EIS. *Id.* 42 U.S.C. 4336. Following the EA, the agency may conclude the process with a finding of no significant impact if the analysis shows that the action will have no significant effects. If the analysis in the EA finds that the action is likely to have significant effects, however, then an EIS is required.

Under NEPA and the CEQ regulations, a Federal agency may establish in its NEPA implementing procedures categorical exclusions, which are categories of actions the agency has determined normally do not significantly affect the quality of the human environment. 42 U.S.C. 4336e(1); 40 CFR 1501.4, 1507.3(e)(2)(ii), 1508.1(d). If an agency determines that a categorical exclusion covers a proposed action, it then evaluates the proposed action for extraordinary circumstances in which a normally excluded action may have a significant effect. 40 CFR 1501.4(b). If no extraordinary circumstances are present or if further analysis determines that the extraordinary circumstances do not involve the potential for significant environmental impacts, the agency may apply the categorical exclusion to the proposed action without preparing an EA or EIS. 42 U.S.C. 4336(a)(2). If the extraordinary circumstances have the potential to result in significant effects, the agency is required to prepare an EA or EIS.

Section 109 of NEPA, enacted as part of the Fiscal Responsibility Act of 2023, allows a Federal agency to adopt a categorical exclusion listed in another agency's NEPA procedures for a category of proposed agency actions for which the categorical exclusion was established. 42 U.S.C. 4336c. To adopt another agency's categorical exclusion under Section 109, an agency must identify the relevant categorical exclusion listed in that agency's (''establishing agency'') NEPA procedures that cover its category of proposed actions or related actions; consult with the establishing agency to ensure that the proposed adoption of the categorical exclusion to a category of actions is appropriate; identify to the public the categorical exclusion that the agency plans to use for its proposed actions; and document adoption of the categorical exclusion. *Id.*

This notice documents DHS's adoption of 18 DOE CEs under Section 109 of NEPA.

### II. Identification of the Categorical Exclusions

DOE NEPA implementing procedures are codified in 10 CFR part 1021. Appendix A of 10 CFR part 1021, subpart D, lists the categorical exclusions applicable to general DOE actions; Appendix B lists categorical exclusions applicable to specific DOE actions. DHS identifies below the 18 DOE CEs, listed in Appendix B that DHS is adopting. Each of these DOE CEs includes conditions on the scope or application of the CE within the text of the numbered paragraphs listed below and within the integral elements in DOE's regulations (10 CFR part 1021, subpart D, Appendix B (1)–(5)). Under each CE, DHS describes categories of proposed actions for which DHS and its agency components may use the CE. All DHS components will have access to, and intend to use, the adopted CEs. The identified categories of actions are those for which DHS contemplates using the CE at this time; DHS may expand use of one or more of the CEs identified below to other activities where appropriate and in accordance with applicable conditions for use of the CE.

1. B1.16 Asbestos Removal. *Removal of asbestos-containing materials from buildings in accordance with applicable requirements (such as 40 CFR part 61, ''National Emission Standards for Hazardous Air Pollutants''; 40 CFR part 763, ''Asbestos''; 29 CFR part 1910, subpart I, ''Personal Protective Equipment''; and 29 CFR part 1926, ''Safety and Health Regulations for Construction''; and appropriate state and local requirements, including certification of removal contractors and technicians).*

Potential application to DHS activities:

- Removal of asbestos-containing materials from buildings owned or controlled by DHS and its agency components; and
- Removal of asbestos-containing materials from structures during demolition and removal activities or resiliency projects funded through FEMA Federal assistance.

2. B1.32 Traffic Flow Adjustments. *Traffic flow adjustments to existing roads (including, but not limited to, stop sign or traffic light installation, adjusting direction of traffic flow, and adding turning lanes), and road adjustments (including, but not limited to, widening and realignment) that are within an existing right-of-way and*

*consistent with approved land use or transportation improvement plans.*

Potential application to DHS activities:

• U.S. Coast Guard (USCG) manages drawbridge timing through the regulatory process and is in the process of improving bases. The ability to perform these traffic flow adjustments would expand on existing DHS USCG CEs to address traffic flow needs off of USCG property; and

• Implementation of temporary or permanent traffic flow adjustments at DHS facilities, including ports of entry.

3. B3.1 Site characterization and environmental monitoring. *Site characterization and environmental monitoring (including, but not limited to, siting, construction, modification, operation, and dismantlement and removal or otherwise proper closure (such as of a well) of characterization and monitoring devices, and siting, construction, and associated operation of a small-scale laboratory building or renovation of a room in an existing building for sample analysis). Such activities would be designed in conformance with applicable requirements and use best management practices to limit the potential effects of any resultant ground disturbance. Covered activities include, but are not limited to, site characterization and environmental monitoring under CERCLA and RCRA. (This class of actions excludes activities in aquatic environments. See B3.16 for such activities.) Specific activities include, but are not limited to:*

*(a) Geological, geophysical (such as gravity, magnetic, electrical, seismic, radar, and temperature gradient), geochemical, and engineering surveys and mapping, and the establishment of survey marks. Seismic techniques would not include large-scale reflection or refraction testing;*

*(b) Installation and operation of field instruments (such as stream-gauging stations or flow-measuring devices, telemetry systems, geochemical monitoring tools, and geophysical exploration tools);*

*(c) Drilling of wells for sampling or monitoring of groundwater or the vadose (unsaturated) zone, well logging, and installation of water-level recording devices in wells;*

*(d) Aquifer and underground reservoir response testing;*

*(e) Installation and operation of ambient air monitoring equipment;*

*(f) Sampling and characterization of water, soil, rock, or contaminants (such as drilling using truck- or mobile-scale equipment, and modification, use, and plugging of boreholes);*

*(g) Sampling and characterization of water effluents, air emissions, or solid waste streams;*

*(h) Installation and operation of meteorological towers and associated activities (such as assessment of potential wind energy resources);*

*(i) Sampling of flora or fauna; and*

*(j) Archeological, historic, and cultural resource identification in compliance with 36 CFR part 800 and 43 CFR part 7.*

Potential application to DHS activities:

• DHS performs site characterization and environmental monitoring for research, development, testing, and evaluation activities and completes environmental baseline surveys and due diligence prior to property acquisitions and site development.

4. B3.2 Aviation activities. *Aviation activities for survey, monitoring, or security purposes that comply with Federal Aviation Administration regulations.*

*Potential application to DHS activities:*

• DHS Components use unmanned aircraft systems to support mission operations, such as to complete aerial surveys, security, and monitoring activities.

5. B3.6 Small-scale research and development, laboratory operations, and pilot projects. *Siting, construction, modification, operation, and decommissioning of facilities for small-scale research and development projects; conventional laboratory operations (such as preparation of chemical standards and sample analysis); and small-scale pilot projects (generally less than 2 years) frequently conducted to verify a concept before demonstration actions, provided that construction or modification would be within or contiguous to a previously disturbed or developed area (where active utilities and currently used roads are readily accessible). Not included in this category are demonstration actions, meaning actions that are undertaken at a scale to show whether a technology would be viable on a larger scale and suitable for commercial deployment.*

*Potential application to DHS activities:*

• Small-scale research and development, conventional laboratory operations, and pilot projects; and,

• USCG regularly needs to field test and conduct pilot projects to ensure that USCG continues to be properly equipped to meet mission requirements.

• This CE would address research, development, testing, and evaluation expansion to into field operations/pilot projects often supported by the DHS Science and Technology Directorate (S&T).

6. B3.11 Outdoor tests and experiments on materials and equipment components. *Outdoor tests and experiments for the development, quality assurance, or reliability of materials and equipment (including, but not limited to, weapon system components) under controlled conditions. Covered actions include, but are not limited to, burn tests (such as tests of electric cable fire resistance or the combustion characteristics of fuels), impact tests (such as pneumatic ejector tests using earthen embankments or concrete slabs designated and routinely used for that purpose), or drop, puncture, water-immersion, or thermal tests. Covered actions would not involve source, special nuclear, or byproduct materials, except encapsulated sources manufactured to applicable standards that contain source, special nuclear, or byproduct materials may be used for nondestructive actions such as detector/sensor development and testing and first responder field training.*

Potential application to DHS activities:

• DHS Components perform tests and evaluations of materials and equipment outdoors, including unmanned aircraft systems.

7. B3.16 Research activities in aquatic environments. *Small-scale, temporary surveying, site characterization, and research activities in aquatic environments, limited to:*

*(a) Acquisition of rights-of-way, easements, and temporary use permits;*

*(b) Installation, operation, and removal of passive scientific measurement devices, including, but not limited to, antennae, tide gauges, flow testing equipment for existing wells, weighted hydrophones, salinity measurement devices, and water quality measurement devices;*

*(c) Natural resource inventories, data and sample collection, environmental monitoring, and basic and applied research, excluding*

*(1) large-scale vibratory coring techniques and*

*(2) seismic activities other than passive techniques; and*

*(d) Surveying and mapping.*

Potential application to DHS activities:

• DHS Components perform small scale and temporary research, testing, and evaluation activities in aquatic environments.

8. B4.6 Additions and modifications to transmission facilities. *Additions or modifications to electric power transmission facilities within a previously disturbed or developed*

*facility area. Covered activities include, but are not limited to, switchyard rock grounding upgrades, secondary containment projects, paving projects, seismic upgrading, tower modifications, load shaping projects (such as reducing energy use during periods of peak demand), changing insulators, and replacement of poles, circuit breakers, conductors, transformers, and crossarms. (See B4.14 for energy storage systems.)*

Potential application to DHS activities:

• FEMA funds utility projects through its various grant programs, such as, but not limited to, the Hazard Mitigation Grant Program and Building Resilient Infrastructure and Communities program.

9. B4.7 Fiber optic cable. *Adding fiber optic cables to transmission facilities or burying fiber optic cable in existing powerline or pipeline rights-of-way. Covered actions may include associated vaults and pulling and tensioning sites outside of rights-of-way in nearby previously disturbed or developed areas.*

Potential application to DHS activities:

• DHS Components install fiber optic cables at DHS facilities to support mission operations; and

• FEMA funds disaster recovery and resiliency projects that can include installation of fiber optic cables.

10. B4.9 Multiple use of powerline rights-of-way. *Granting or denying requests for multiple uses of a transmission facility's rights-of-way (including, but not limited to, grazing permits and crossing agreements for electric lines, water lines, natural gas pipelines, communications cables, roads, and drainage culverts).*

Potential application to DHS activities:

• FEMA funds disaster recovery and resiliency projects that can involve powerline rights-of-way with multiple uses, such as crossing agreements for electric lines, water lines, natural gas pipelines, communications cables, roads, and drainage culverts.

11. B4.10 Removal of electric transmission facilities. *Deactivation, dismantling, and removal of electric transmission facilities (including, but not limited to, electric powerlines, substations, and switching stations) and abandonment and restoration of rights-of-way (including, but not limited to, associated access roads).*

Potential application to DHS activities:

• FEMA funds disaster recovery and resiliency projects that may involve deactivation, dismantling, and removal of electric transmission facilities.

12. B4.11 Electric power substations and interconnection facilities. *Construction or modification of electric power substations or interconnection facilities (including, but not limited to, switching stations and support facilities).*

Potential application to DHS activities:

• FEMA funds disaster recovery and resiliency projects that may involve construction or modification of electric power stations and interconnection facilities.

13. B4.12 Construction of powerlines. *Construction of electric powerlines approximately 10 miles in length or less, or approximately 20 miles in length or less within previously disturbed or developed powerline or pipeline rights-of-way.*

Potential application to DHS activities:

• FEMA funds disaster recovery and resiliency projects that may involve construction of electric powerlines within previously disturbed or developed powerline rights-of-way.

14. B4.13 Upgrading and rebuilding existing powerlines. *Upgrading or rebuilding existing electric powerlines, which may involve relocations of small segments of the powerlines within an existing powerline right-of-way or within otherwise previously disturbed or developed lands (as discussed at 10 CFR 1021.410(g)(1)*[1]*). Upgrading or rebuilding existing electric powerlines also may involve widening an existing powerline right-of-way to meet current electrical standards if the widening remains within previously disturbed or developed lands and only extends into a small area beyond such lands as needed to comply with applicable electrical standards. Covered actions would be in accordance with applicable requirements, including the integral elements listed at the start of appendix B of [10 CFR part 1021]; and would incorporate appropriate design and construction standards, control technologies, and best management practices. This categorical exclusion does not apply to underwater powerlines. As used in this categorical exclusion, ''small'' has the meaning discussed at 10 CFR 1021.410(g)(2).*[2]

Potential application to DHS activities:

• FEMA funds disaster recovery and resiliency projects that can involve relocation of powerlines and poles.

15. B4.14 Construction and operation of electrochemical-battery or flywheel energy storage systems. *Construction, operation, upgrade, or decommissioning of an electrochemical-battery or flywheel energy storage system within a previously disturbed or developed area or within a small (as discussed at 10 CFR 1021.410(g)(2)) area contiguous to a previously disturbed or developed area. Covered actions would be in accordance with applicable requirements (such as land use and zoning requirements) in the proposed project area and the integral elements listed at the start of appendix B of [10 CFR part 1021], and would incorporate appropriate safety standards (including the current National Fire Protection Association 855, Standard for the Installation of Energy Storage Systems), design and construction standards, control technologies, and best management practices.*

Potential application to DHS activities:

• FEMA funds disaster recovery and resiliency projects that could require construction and operation of electrochemical-battery or flywheel energy storage systems.

16. B5.15 Small-scale renewable energy research and development and pilot projects. *Small-scale renewable energy research and development projects and small-scale pilot projects, provided that the projects are located within a previously disturbed or developed area. Covered actions would be in accordance with applicable requirements (such as local land use and zoning requirements) in the proposed project area and would incorporate appropriate control technologies and best management practices.*

Potential application to DHS activities:

[1] 10 CFR 1021.410(g)(1). ''Previously disturbed or developed'' refers to land that has been changed such that its functioning ecological processes have been and remain altered by human activity. The phrase encompasses areas that have been transformed from natural cover to non-native species or a managed state, including, but not limited to, utility and electric power transmission corridors and rights-of-way, and other areas where active utilities and currently used roads are readily available.

[2] 10 CFR 1021.410(g)(2). [DHS] considers terms such as ''small'' and ''small-scale'' in the context of the particular proposal, including its proposed location. In assessing whether a proposed action is small, in addition to the actual magnitude of the proposal, [DHS] considers factors such as industry norms, the relationship of the proposed action to similar types of development in the vicinity of the proposed action, and expected outputs of emissions or waste. When considering the physical size of a proposed facility, for example, [DHS] would review the surrounding land uses, the scale of the proposed facility relative to existing development, and the capacity of existing roads and other infrastructure to support the proposed action. (Modified from CFR part 1021 to reflect DHS as the adopting agency.)

• DHS S&T, as well as other DHS components, conduct small-scale renewable energy research and development and pilot projects.

17. B5.16 Solar photovoltaic systems.

*(a) The installation, modification, operation, or decommissioning of commercially available solar photovoltaic systems:*

*(1) Located on a building or other structure (such as rooftop, parking lot or facility, or mounted to signage, lighting, gates, or fences); or*

*(2) Located within a previously disturbed or developed area.*

*(b) Covered actions would be in accordance with applicable requirements (such as land use and zoning requirements) in the proposed project area and the integral elements listed at the start of appendix B of [10 CFR part 1021], and would be consistent with applicable plans for the management of wildlife and habitat, including plans to maintain habitat connectivity, and incorporate appropriate control technologies and best management practices.*

Potential application to DHS activities:

• Several DHS Components are planning to install and operate photovoltaic energy systems at facilities for sustainable energy implementation. Photovoltaic systems are essentially solar panels that can reduce greenhouse gas emissions, are renewable and clean sources of energy, can lower electricity bills, and can power facilities. This approach is in line with a DHS's net zero approach for facility infrastructure projects.

18. B5.25 Small-scale renewable energy research and development and pilot projects in aquatic environments. *Small-scale renewable energy research and development projects and small-scale pilot projects located in aquatic environments. Activities would be in accordance with, where applicable, an approved spill prevention, control, and response plan, and would incorporate appropriate control technologies and best management practices. Covered actions would not occur (1) Within areas of hazardous natural bottom conditions or (2) within the boundary of an established marine sanctuary or wildlife refuge, a governmentally proposed marine sanctuary or wildlife refuge, or a governmentally recognized area of high biological sensitivity, unless authorized by the agency responsible for such refuge, sanctuary, or area (or after consultation with the responsible agency, if no authorization is required). If the proposed activities would occur outside such refuge, sanctuary, or area and if the activities would have the potential to cause impacts within such refuge, sanctuary, or area, then the responsible agency shall be consulted in order to determine whether authorization is required and whether such activities would have the potential to cause significant impacts on such refuge, sanctuary, or area. Areas of high biological sensitivity include, but are not limited to, areas of known ecological importance, whale and marine mammal mating and calving/pupping areas, and fish and invertebrate spawning and nursery areas recognized as being limited or unique and vulnerable to perturbation; these areas can occur in bays, estuaries, near shore, and far offshore, and may vary seasonally. No permanent facilities or devices would be constructed or installed. Covered actions do not include drilling of resource exploration or extraction wells, use of large-scale vibratory coring techniques, or seismic activities other than passive techniques.*

Potential application to DHS activities:

• DHS S&T, as well as other DHS components, conduct small-scale renewable energy research and development and pilot projects.

The DOE CEs include additional conditions, referred to as ''Integral Elements,'' which are listed in 10 CFR part 1021 Subpart D, Appendix B). In order to apply a DOE CE, the proposed action must be one that would not:

(1) Threaten a violation of applicable statutory, regulatory, or permit requirements for environment, safety, and health, or similar requirements of DHS [3] or Executive Orders;

(2) Require siting and construction or major expansion of waste storage, disposal, recovery, or treatment facilities (including incinerators), but the proposal may include categorically excluded waste storage, disposal, recovery, or treatment actions or facilities;

(3) Disturb hazardous substances, pollutants, contaminants, or CERCLA-excluded petroleum and natural gas products that preexist in the environment such that there would be uncontrolled or unpermitted releases;

(4) Have the potential to cause significant impacts on environmentally sensitive resources. An environmentally sensitive resource is typically a resource that has been identified as needing protection through Executive Order, statute, or regulation by Federal, state, or local government, or a federally recognized Indian tribe. An action may be categorically excluded if, although sensitive resources are present, the action would not have the potential to cause significant impacts on those resources (such as construction of a building with its foundation well above a sole-source aquifer or upland surface soil removal on a site that has wetlands). Environmentally sensitive resources include, but are not limited to:

(i) Property (such as sites, buildings, structures, and objects) of historic, archeological, or architectural significance designated by a Federal, state, or local government, federally recognized Indian tribe, or Native Hawaiian organization, or property determined to be eligible for listing on the National Register of Historic Places;

(ii) Federally listed threatened or endangered species or their habitat (including critical habitat) or Federally-proposed or candidate species or their habitat (Endangered Species Act); state-listed or state-proposed endangered or threatened species or their habitat; Federally-protected marine mammals and Essential Fish Habitat (Marine Mammal Protection Act; Magnuson-Stevens Fishery Conservation and Management Act); and otherwise Federally-protected species (such as the Bald and Golden Eagle Protection Act or the Migratory Bird Treaty Act);

(iii) Floodplains and wetlands

(iv) Areas having a special designation such as Federally- and state-designated wilderness areas, national parks, national monuments, national natural landmarks, wild and scenic rivers, state and Federal wildlife refuges, scenic areas (such as National Scenic and Historic Trails or National Scenic Areas), and marine sanctuaries;

(v) Prime or unique farmland, or other farmland of statewide or local importance, as defined at 7 CFR 658.2(a), ''Farmland Protection Policy Act: Definitions,'' or its successor;

(vi) Special sources of water (such as sole-source aquifers, wellhead protection areas, and other water sources that are vital in a region); and

(vii) Tundra, coral reefs, or rain forests; or

(5) Involve genetically engineered organisms, synthetic biology, governmentally designated noxious weeds, or invasive species, unless the proposed activity would be contained or confined in a manner designed and operated to prevent unauthorized release into the environment and conducted in accordance with applicable requirements, such as those of the Department of Agriculture, the Environmental Protection Agency, and the National Institutes of Health.

[3] Modified from CFR part 1021 Subpart D, App. B to reflect DHS as the adopting agency.

### III. Consideration of Extraordinary Circumstances

When applying these CEs, DHS will evaluate the proposed action to ensure evaluation of ''Integral Elements'' listed above. In addition, in considering extraordinary circumstances, DHS will consider whether the proposed action has the potential to result in significant effects as described in DOE's extraordinary circumstances listed at 10 CFR 1021.410(b)(2). DOE defines extraordinary circumstances as unique situations presented by specific proposals, including, but not limited to, scientific controversy about the environmental effects of the proposal; uncertain effects or effects involving ''unique or unknown risks; and unresolved conflicts concerning alternative uses of available resources.'' (10 CFR 1021.410(b)(2). Consistent with DHS Instruction Manual 023–01–001–01, *Implementing the National Environmental Policy Act* (DHS Instruction Manual), DHS will document each application of the above-listed CEs and its consideration of extraordinary circumstances within the DHS Environmental Planning and Historic Preservation Decision Support System.

### IV. Consultation With DOE and Determination of Appropriateness

DHS and DOE consulted on the appropriateness of DHS's adoption of the 18 CEs in April 2024. This consultation included a review of DOE's experience developing and applying the CEs and the types of actions for which DHS plans to utilize the CEs. Based on this consultation and review, DHS has determined that the types of projects it intends to undertake are substantially similar to such projects for which DOE has applied the CEs. Accordingly, the impacts of DHS projects will be substantially similar to the impacts of DOE projects, which are not significant, absent the existence of extraordinary circumstances. Therefore, DHS has determined that DHS's proposed use of the CEs, as described within this notice, is appropriate.

### V. Notice to the Public and Documentation of Adoption

This notice serves to identify to the public and document DHS's adoption of DOE's categorical exclusions and identifies the types of actions to which DHS contemplates applying the CEs at this time; DHS may expand use of one or more of the CEs identified above to other activities where appropriate, and in accordance with applicable conditions for use of the CE. Upon issuance of this notice, the CEs will be available to DHS and accessible at *www.dhs.gov/national-environmental-policy-act.*

**Kenneth Burgess,**

*Acting Deputy Chief Readiness Support Officer, Department of Homeland Security.*

[FR Doc. 2024–14568 Filed 7–1–24; 8:45 am]

**BILLING CODE 9112–FF–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NAGPRA–NPS0038200; PPWOCRADN0–PCU00RP14.R50000]**

### Notice of Inventory Completion: Field Museum, Chicago, IL

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** In accordance with the Native American Graves Protection and Repatriation Act (NAGPRA), the Field Museum has completed an inventory of human remains and has determined that there is a cultural affiliation between the human remains and Indian Tribes or Native Hawaiian organizations in this notice.

**DATES:** Repatriation of the human remains in this notice may occur on or after August 1, 2024.

**ADDRESSES:** June Carpenter, NAGPRA Director, Field Museum, 1400 S Lake Shore Drive, Chicago, IL 60605, telephone (312) 665–7820, email *jcarpenter@fieldmuseum.org.*

**SUPPLEMENTARY INFORMATION:** This notice is published as part of the National Park Service's administrative responsibilities under NAGPRA. The determinations in this notice are the sole responsibility of the Field Museum, and additional information on the determinations in this notice, including the results of consultation, can be found in its inventory or related records. The National Park Service is not responsible for the determinations in this notice.

### Abstract of Information Available

Human remains representing, at least, 10 individuals have been identified. No associated funerary objects are present. The human remains are hair clippings belonging to 10 individuals, identified with the tribal designation ''Cree'' (Field Museum catalog numbers 193207.3, 193207.4, 193208.2, 193208.4, 193208.6, 193210.10, 193211.2, 193212.10, 193212.6, and 193215.9). Field Museum staff believe they were collected under the direction of Franz Boas and Frederick Ward Putnam for the 1893 World's Columbian Exposition in Chicago. The hair clippings were accessioned into the Field Museum's collection in 1939. No information regarding the individual's name, sex, age, or geographic location has been found. There is no known presence of any potentially hazardous substances.

### Cultural Affiliation

Based on the information available and the results of consultation, cultural affiliation is clearly identified by the information available about the human remains.

### Determinations

The Field Museum has determined that:

- The human remains described in this notice represent the physical remains of 10 individuals of Native American ancestry.
- There is a connection between the human remains and described in this notice and the Little Shell Tribe of Chippewa Indians of Montana.

### Requests for Repatriation

Written requests for repatriation of the human remains in this notice must be sent to the authorized representative identified in this notice under **ADDRESSES**. Requests for repatriation may be submitted by:

1. Any one or more of the Indian Tribes or Native Hawaiian organizations identified in this notice.

2. Any lineal descendant, Indian Tribe, or Native Hawaiian organization not identified in this notice who shows, by a preponderance of the evidence, that the requestor is a lineal descendant or an Indian Tribe or Native Hawaiian organization with cultural affiliation.

Repatriation of the human remains described in this notice to a requestor may occur on or after August 1, 2024. If competing requests for repatriation are received, the Field Museum must determine the most appropriate requestor prior to repatriation. Requests for joint repatriation of the human remains are considered a single request and not competing requests. The Field Museum is responsible for sending a copy of this notice to the Indian Tribes and Native Hawaiian organizations identified in this notice.

*Authority:* Native American Graves Protection and Repatriation Act, 25 U.S.C. 3003, and the implementing regulations, 43 CFR 10.10.

Dated: June 26, 2024.

**Melanie O'Brien,**

*Manager, National NAGPRA Program.*

[FR Doc. 2024–14484 Filed 7–1–24; 8:45 am]

**BILLING CODE 4312–52–P**

## DEPARTMENT OF THE INTERIOR

### National Park Service

**[NPS–WASO–NRNHL–DTS#–38213; PPWOCRADI0, PCU00RP14.R50000]**

### National Register of Historic Places; Notification of Pending Nominations and Related Actions

**AGENCY:** National Park Service, Interior.

**ACTION:** Notice.

**SUMMARY:** The National Park Service is soliciting electronic comments on the significance of properties nominated before June 22, 2024, for listing or related actions in the National Register of Historic Places.

**DATES:** Comments should be submitted electronically by July 17, 2024.

**ADDRESSES:** Comments are encouraged to be submitted electronically to *National_Register_Submissions@nps.gov* with the subject line ''Public Comment on <property or proposed district name, (County) State>.'' If you have no access to email, you may send them via U.S. Postal Service and all other carriers to the National Register of Historic Places, National Park Service, 1849 C Street NW, MS 7228, Washington, DC 20240.

**FOR FURTHER INFORMATION CONTACT:** Sherry A. Frear, Chief, National Register of Historic Places/National Historic Landmarks Program, 1849 C Street NW, MS 7228, Washington, DC 20240, *sherry_frear@nps.gov,* 202–913–3763.

**SUPPLEMENTARY INFORMATION:** The properties listed in this notice are being considered for listing or related actions in the National Register of Historic Places. Nominations for their consideration were received by the National Park Service before June 22, 2024. Pursuant to section 60.13 of 36 CFR part 60, comments are being accepted concerning the significance of the nominated properties under the National Register criteria for evaluation.

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.

Nominations submitted by State or Tribal Historic Preservation Officers

*KEY:* State, County, Property Name, Multiple Name (if applicable), Address/Boundary, City, Vicinity, Reference Number.

**ALABAMA**

**Montgomery County**

Moore Building, (The Civil Rights Movement in Montgomery, Alabama, 1850–1984 MPS), 217 S Court St., Montgomery, MP100010582

**COLORADO**

**Denver County**

Fire Station No. 3, 2500 Washington Street, Denver, SG100010578

**Otero County**

Valley View-Hillcrest Cemetery, 37980 County Road 20, Rocky Ford, SG100010592

**KANSAS**

**Montgomery County**

Prairie Oil & Gas Building, 200 Arco Place (300 West Myrtle Street), Independence, SG100010595

**LOUISIANA**

**Caddo Parish**

Cross Lake Pumping and Filtration Plant, 3205 Blanchard Road, Shreveport, SG100010600

**East Baton Rouge Parish**

Old South Baton Rouge Historic District, Neighborhood roughly bound by Interstate 10 (north and east), West Roosevelt Street (south), Nicholson Drive (west), Baton Rouge, SG100010599

**MISSISSIPPI**

**Hinds County**

505–507–509 North Farish Street, 505–507–509 North Farish Street, Jackson, SG100010598

**PENNSYLVANIA**

**Allegheny County**

Clayton-Frick Art Museum Historic District, 7227 Reynolds Street, Pittsburgh, SG100010583

**Bucks County**

Otto Eisenlohr and Bros Cigar Factory, 35 Maple Ave., Sellersville, SG100010584

**Delaware County**

Sacred Heart General Hospital, 2600 W 9th Street, Chester, SG100010576

**Philadelphia County**

Keystone Mill, 201 Leverington Avenue, Philadelphia, SG100010575

Southwark Municipal Piers, 775 S Christopher Columbus Blvd., Philadelphia, SG100010585

**TEXAS**

**Lamar County**

Mt. Canaan Baptist Church, 60 Sycamore St., Paris, SG100010581

**WEST VIRGINIA**

**Cabell County**

14th Street West Historic District, Roughly bounded by Madison Ave, Virginia Avenue, 15th Street West, and 13th Street West, Huntington, SG100010590

Marshall University Memorial Fountain, 1 John Marshall Drive, Huntington, SG100010591

**Jefferson County**

Woodbyrne, 219 Ann Lewis Road, Charles Town, SG100010589

**Morgan County**

Paw Paw Black School, 149 North Amelia Street, Paw Paw, SG100010588

**WISCONSIN**

**Dane County**

Italian Workmen's Club, 914 Regent Street, Madison, SG100010597

Additional documentation has been received for the following resource(s):

**ALABAMA**

**Colbert County**

Memphis & Charleston Railroad Bridge (Additional Documentation), 2106 Ashe Boulevard, Sheffield, AD100010428

**COLORADO**

**Denver County**

Nurses' Home, 871 N Bellaire St., Denver, AD100009567

**DISTRICT OF COLUMBIA**

**District of Columbia**

Wheatley, Phillis, YWCA (Additional Documentation), 901 Rhode Island Ave. NW, Washington, AD83003532

**TENNESSEE**

**Davidson County**

Tulip Grove, 4744 Rachels Lane, Hermitage, AD70000607

**Grainger County**

Tate Springs Springhouse (Additional Documentation), 151 Kingswood Way, Bean Station vicinity, AD73001768

**Knox County**

Knox County Courthouse (Additional Documentation), 300 Main Street SW, Knoxville, AD73001803

**Maury County**

Mayes-Hutton House (Additional Documentation), 306 W 6th St., Columbia, AD70000614

St. John's Episcopal Church (Additional Documentation), 6497 Trotwood Avenue, Columbia vicinity, AD70000615

Athenaeum, The (Additional Documentation), 808 Athenaeum St., Columbia, AD73001809

Nomination(s) submitted by Federal Preservation Officers:

The State Historic Preservation Officer reviewed the following nomination(s) and responded to the Federal Preservation Officer within 45 days of receipt of the nomination(s) and supports listing the properties in the National Register of Historic Places.

**PENNSYLVANIA**

**Cambria County**

Johnstown Flood National Memorial, 733 Lake Road, Adams, SG100010579

*Authority:* Section 60.13 of 36 CFR part 60.

**Sherry A. Frear,**

*Chief, National Register of Historic Places/ National Historic Landmarks Program.*

[FR Doc. 2024–14506 Filed 7–1–24; 8:45 am]

**BILLING CODE 4312–52–P**

## INTERNATIONAL TRADE COMMISSION

### Notice of Receipt of Complaint; Solicitation of Comments Relating to the Public Interest

**AGENCY:** International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has received a complaint entitled *Certain Photodynamic Therapy Systems, Components Thereof, and Pharmaceutical Products Used in Combination with the Same, DN 3758;* 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 Sun Pharmaceutical Industries, Inc. on June 26, 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 photodynamic therapy systems, components thereof, and pharmaceutical products used in combination with the same. The complaint names as respondents: Biofrontera Inc. of Woburn, MA; Biofrontera Pharma GMBH of Germany; Biofrontera Bioscience GMBH of Germany; and Biofrontera AG of Germany. The complainant requests that the Commission issue a limited exclusion order, cease and desist orders, and impose a bond upon respondents' alleged infringing articles during the 60-day Presidential review period pursuant to 19 U.S.C. 1337(j).

Proposed respondents, other interested parties, members of the public, and interested government agencies 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. 3758'') in a prominent place on the cover page and/or the first page. (*See* Handbook for Electronic Filing Procedures, Electronic Filing Procedures [1]). Please note the Secretary's Office will accept only electronic filings during this time. Filings must be made through the Commission's Electronic Document Information System (EDIS, *https://edis.usitc.gov.*) No in-person paper-based filings or paper copies of any electronic filings will be accepted until further notice. Persons with questions regarding filing should contact the Secretary at *EDIS3Help@usitc.gov.*

Any person desiring to submit a document to the Commission in confidence must request confidential treatment. All such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why the Commission should grant such treatment. *See* 19 CFR 201.6. Documents for which confidential treatment by the Commission is properly sought will be treated accordingly. All information, including confidential business information and documents for which confidential treatment is properly sought, submitted to the Commission for purposes of this Investigation may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the

[1] Handbook for Electronic Filing Procedures: *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf.*

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 26, 2024.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2024–14523 Filed 7–1–24; 8:45 am]

**BILLING CODE 7020–02–P**

## INTERNATIONAL TRADE COMMISSION

**[Investigation No. 337–TA–1344]**

## Certain Bio-Layer Interferometers and Components Thereof; Notice of Commission Decision To Review in Part, and on Review To Affirm With Modification a Final Initial Determination Finding No Violation of Section 337; Termination of the Investigation

**AGENCY:** International Trade Commission.

**ACTION:** Notice.

**SUMMARY:** Notice is hereby given that the U.S. International Trade Commission has determined to review in part a final initial determination (''FID'') of the presiding Administrative Law Judge (''ALJ'') finding no violation of section 337, and on review, to affirm the FID with modification. Accordingly, the investigation is terminated with a finding of no violation of section 337.

**FOR FURTHER INFORMATION CONTACT:** Houda Morad, Office of the General Counsel, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone (202) 708–4716. Copies of non-confidential documents filed in connection with this investigation may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.* For help accessing EDIS, please email *EDIS3Help@usitc.gov.* General information concerning the Commission may also be obtained by accessing its internet server at *https://www.usitc.gov.* Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

**SUPPLEMENTARY INFORMATION:** On November 29, 2022, the Commission instituted this investigation under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337 (''section 337''), based on a complaint filed by Sartorius Bioanalytical Instruments, Inc. (''Sartorius'') of Bohemia, New York. *See* 87 FR 73329–30 (Nov. 29, 2022). The complaint, as supplemented, alleges a violation of section 337 based upon the importation into the United States, the sale for importation, and the sale within the United States after importation of certain bio-layer interferometers and components thereof by reason of the infringement of certain claims of U.S. Patent Nos. 7,445,887 (''the '887 patent''); 7,394,547 (''the '547 patent''); 7,728,982 (''the '982 patent); and 8,305,585 (''the '585 patent''). *See id.* The notice of investigation names Gator Bio, Inc. (''Gator Bio'') of Palo Alto, California as the sole respondent in the investigation. *Id.* The Office of Unfair Import Investigations (''OUII'') is also a party to the investigation. *Id.*

The Commission previously terminated the investigation as to the '547, '982, and '585 patents and claims 1–5, 7, 9–14, and 16–18 of the '887 patent based on the withdrawal of the complaint as to those patents and claims. *See* Order No. 14 (May 15, 2023), *unreviewed by* Comm'n Notice (June 9, 2023); Order No. 26 (June 29, 2023), *unreviewed by* Comm'n Notice (July 20, 2023); Order No. 37 (Oct. 26, 2023), *unreviewed by* Comm'n Notice (Nov. 27, 2023).

On March 8, 2024, the ALJ issued the FID finding no violation of section 337. Specifically, the FID finds that the accused products do not infringe claim 8 of the '887 patent, and that the domestic industry products do not practice that claim, thus finding that the technical prong of the domestic industry requirement is not satisfied. The FID also finds that claim 8 of the '887 patent is not invalid. The FID further finds, should the Commission find that the technical prong is satisfied, that the economic prong of the domestic industry requirement is satisfied with respect to the '887 patent.

On March 22, 2024, Sartorius petitioned for Commission review of the FID's finding of no violation of section 337. Specifically, Sartorius requests Commission review of certain findings of the FID including with respect to: (1) importation and *in rem* jurisdiction; (2) whether the accused instruments are ''articles that infringe''; (3) claim construction; (4) non-infringement; and (5) non-satisfaction of the technical prong of the domestic industry requirement. On the same day, Gator Bio filed a contingent petition for review requesting review of certain FID's findings including with respect to: (1) infringement; (2) invalidity; and (3) the domestic industry requirement (economic prong and technical prong). On April 3, 2024, the parties, including OUII, filed responses to the parties' petitions.

Having examined the record of this investigation, including the FID and the parties' submissions, the Commission has determined to review in part and on review, to affirm with modification the FID's determination of no violation of section 337. Specifically, as explained in the Commission Opinion filed concurrently herewith, the Commission has determined to review certain findings of the FID and, on review to: (1) take no position on the FID's findings of no importation with respect to Gator Bio's probes and kits; (2) vacate the FID's findings of no *in rem* jurisdiction with respect to Gator Bio's probes and kits; (3) find that Gator Bio's instruments are not ''articles that infringe'' because the accused products do not infringe the asserted claim; (4) modify the claim construction of the preamble of claim 8, ''assaying enzyme activity,'' and the claim term ''air gap''; (5) affirm with modification the FID's finding that the accused products do not infringe claim 8 of the '887 patent; (6) affirm with modification the FID's finding that the domestic industry products do not practice claim 8 of the '887 patent, and thus Sartorius does not satisfy the technical prong of the domestic industry requirement; and (7) take no position as to the FID's finding that Sartorius satisfies the economic prong of the domestic industry requirement. The Commission has determined not to review the remainder of the FID. Accordingly, the investigation is terminated with a finding of no violation of section 337.

The Commission's vote for this determination took place on June 26, 2024.

The authority for the Commission's determination is contained in section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and in part 210 of the Commission's Rules of Practice and Procedure (19 CFR part 210).

By order of the Commission.

[2] All contract personnel will sign appropriate nondisclosure agreements.

[3] Electronic Document Information System (EDIS): *https://edis.usitc.gov.*

Issued: June 26, 2024.

**Lisa Barton,**

*Secretary to the Commission.*

[FR Doc. 2024–14524 Filed 7–1–24; 8:45 am]

**BILLING CODE 7020–02–P**

## DEPARTMENT OF JUSTICE

**[OMB Number 1110–0045]**

### Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Previously Approved Collection: Customer Satisfaction Assessment

**AGENCY:** Federal Bureau of Investigation Laboratory, Department of Justice.

**ACTION:** 60-Day notice.

**SUMMARY:** The Federal Bureau of Investigation Laboratory, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until September 3, 2024.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Marsha Karas, 2501 Investigation Parkway, *mkaras@fbi.gov* or *Lab_Cust_Survey@fbi.gov,* 703–632–7023.

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Abstract:* This collection is a brief questionnaire regarding contributors' satisfaction with the services provided by the Federal Bureau of Investigation Laboratory. This collection is needed to evaluate the quality of services provided by the Federal Bureau of Investigation Laboratory. The Federal Bureau of Investigation Laboratory is accredited by the ANSI National Accreditation Board (ANAB). A requirement for maintaining accreditation is to evaluate the level of service provided by the Federal Bureau of Investigation Laboratory to our customers. To meet this requirement the Federal Bureau of Investigation Laboratory is requesting its customers to complete and return the *Customer Satisfaction Assessment.*

**Overview of This Information Collection**

1. *Type of Information Collection:* Revision of a currently approved collection.

2. *The Title of the Form/Collection:* Customer Satisfaction Assessment.

3. *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* The form number is FD–1000. The applicable component within the Department of Justice is the Federal Bureau of Investigation Laboratory Division (LD).

4. *Affected public who will be asked or required to respond, as well as the obligation to respond:* Affected Public: Respondents primarily include federal, state, tribal, and local law enforcement. Respondents also include the intelligence community, Department of Defense, and international police agencies personnel and/or crime laboratory personnel. The obligation to respond is voluntary.

5. The estimated number of respondents is 300/year. The time per response is 5 minutes to complete the form.

6. The estimated total annual burden associated with the collection is 25 hours.

7. An estimate of the total annual cost burden associated with the collection is $0.

TOTAL BURDEN HOURS

| Activity | Number of respondents | Frequency | Total annual responses | Time per response | Total annual burden (hours) |
|---|---|---|---|---|---|
| Ex: Survey (individuals or households) | 300 | 1/annually | 300 | 5 min | 25 |
| *Unduplicated Totals* | *300* | | *300* | | *25* |

*If additional information is required contact:* Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: June 24, 2024.

**Darwin Arceo,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2024–14534 Filed 7–1–24; 8:45 am]

**BILLING CODE 4410–02–P**

## DEPARTMENT OF JUSTICE

**[OMB Number 1110–0039]**

### Agency Information Collection Activities; Proposed eCollection; eComments Requested; Extension of a Currently Approved Collection; FBI Bioterrorism Preparedness Act Entity/Individual Information

**AGENCY:** Criminal Justice Information Services (CJIS) Division, Federal Bureau of Investigation (FBI), Department of Justice (DOJ).

**ACTION:** 30-Day notice.

**SUMMARY:** The Federal Bureau of Investigation (FBI), Criminal Justice Information Services (CJIS) Division, Department of Justice (DOJ), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 30 days until August 1, 2024.

**FOR FURTHER INFORMATION CONTACT:** If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact: Timothy R. Wiles, *trwiles@fbi.gov,* 304–625–4685, National Instant Criminal Background Check System Section (NICS), NICS External Service Unit, Federal Bureau of Investigation, CJIS Division, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306.

**SUPPLEMENTARY INFORMATION:** The proposed information collection was previously published in the **Federal Register** on May 7, 2024 allowing a 60-day comment period. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection or the OMB Control Number 1110–0039. This information collection request may be viewed at *www.reginfo.gov.* Follow the instructions to view Department of Justice, information collections currently under review by OMB.

DOJ seeks PRA authorization for this information collection for three (3) years. OMB authorization for an ICR cannot be for more than three (3) years without renewal. The DOJ notes that information collection requirements submitted to the OMB for existing ICRs receive a month-to-month extension while they undergo review.

**Overview of This Information Collection**

1. *Type of Information Collection:* Extension of a currently approved collection.

2. *Title of the Form/Collection:* Federal Bureau of Investigation Bioterrorism Preparedness Act: Entity/Individual Information.

3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Agency form number: FD–961. Sponsoring component: Criminal Justice Information Services (CJIS) Division, Federal Bureau of Investigation (FBI), Department of Justice (DOJ).

4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

*Primary:* Those individuals applying for access to biological select agents and toxins. This collection is needed for the FBI to conduct security risk assessments (SRAs) required by the Bioterrorism Act and to determine whether applicants should be denied access to or granted limited access to specific agents and toxins. That information is then used by the FBI in consultation with appropriate officials of the Department of Health and Human Services (HHS) and the Department of Agriculture (USDA) as to whether certain individuals specified in the provisions should be denied access to or granted limited access to specific agents.

5. *Obligation to Respond:* Individuals voluntarily provide the requested/collected information; however, providing such information is required to obtain approval for access to select agents and toxins. Total Estimated Number of Respondents: It is estimated that there are approximately 3,007 (FY 2003) respondents at 1 hour 30 minutes for the FD–961 form.

6. *Total Estimated Number of Respondents:* 3,007 total estimated respondents.

7. *Estimated Time per Respondent:* 1 hour and 30 minutes.

8. *Frequency:* The initial application and thereafter every 3 years for renewal.

9. *Total Estimated Annual Time Burden:* (90 minutes * 3,007 responses) = 270,630 minutes/60 minutes per hour = 4,510.5 hours.

10. *Total Estimated Annual Other Costs Burden:* It is estimated that respondents will incur approximately $3.07 for postage fees using U.S. Mail, to submit the FD–961 form and two completed fingerprint cards. It is estimated that the cost to the applicant to obtain a photograph that meets criteria specified in the instruction pages based on national averages would be $15. It is estimated that each applicant would travel approximately 3 miles one way and 6 miles round trip to a business to obtain a photo. This distance is estimated to take an amount of five minutes each way for a total of 10 minutes round trip. Also, to determine the travel cost to the respondent, Using the General Services Administration (GSA) reimbursement rate of $0.67 mile for privately owned automobiles (POA) use as of January 1, 2024, it is estimated that the travel cost per respondent is $4.02.

3,007 (number of respondents) × 6 (miles) × $0.67 (amount per mile) = $12,088.14

3,007 (number of respondents × $3.07 (postage) = $9,231.49

3,007 (number of respondents × $15.00 (picture at USPS) = $45,105

The total annual cost incurred by the FY2023 respondents is ($12,088.14 + $9,231.49 + $45,105) = $66,424.63 or $66,424.63/3,007 ($22.09 per person.)

*If additional information is required, contact:* Darwin Arceo, Department Clearance Officer, Policy and Planning Staff, Justice Management Division, United States Department of Justice, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC 20530.

Dated: June 27, 2024.

**Darwin Arceo,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2024–14557 Filed 7–1–24; 8:45 am]

**BILLING CODE 4410–02–P**

## DEPARTMENT OF JUSTICE

**[OMB 1140–0116]**

### Agency Information Collection Activities; Proposed eCollection eComments Requested; Revision of a Previously Approved Collection; Authorization To Release Consumer/ Credit Information—ATF Form 8620.26

**AGENCY:** Bureau of Alcohol, Tobacco, Firearms and Explosives, Department of Justice.

**ACTION:** 60-Day notice.

**SUMMARY:** The Department of Justice (DOJ), The Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), will be submitting the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995.

**DATES:** Comments are encouraged and will be accepted for 60 days until September 3, 2024.

**FOR FURTHER INFORMATION CONTACT:** If you have additional comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, contact: Niki Wiltshire/Gwen Cates, Personnel Security Division either by mail at U.S. Department of Justice, PSD—Room (1E–300), 99 New York Ave. NE, Washington, DC 20226, by email at *Niki.Wiltshire@atf.gov,* or telephone at 202–648–9260.

**SUPPLEMENTARY INFORMATION:** Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Bureau of Justice Statistics, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Evaluate whether and if so how the quality, utility, and clarity of the information to be collected can be enhanced; and

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*Abstract:* The Authorization for Release of Consumer/Credit Information (ATF F 8620.26) is used to determine if a candidate for Federal or Contractor employment at the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) meets the Federal personnel security requirements regarding financial obligations. The information collection (IC) OMB #1140–0116 is being revised to make minor material changes to the form, such as removing the declination statement, signature/date fields and making minor revisions to the Paperwork Reduction Act Notice.

**Overview of This Information Collection**

(1) *Type of Information Collection:* Revision of a previously approved collection.

(2) *The Title of the Form/Collection:* Authorization for Release of Consumer/ Credit Information.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form number: ATF Form 8620.26. Component: Bureau of Alcohol, Tobacco, Firearms and Explosives, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as the obligation to respond: Affected Public:* Individuals or households. The obligation to respond is voluntary.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* An estimated 2,000 respondents will provide information to complete this form, and it will take each respondent approximately 5 minutes to complete their responses.

(6) *An estimate of the total annual burden (in hours) associated with the collection:* The estimated annual public burden associated with this collection is 167 hours, which is equal to 2,000 (total respondents) * 1 (# of response per respondent) * 0.08 (5 minutes).

(7) *An estimate of the total annual cost burden associated with the collection, if applicable:* $0.

TOTAL BURDEN HOURS

| Number of respondents | Frequency | Total annual responses | Time per response (min.) | Total annual burden (hours) |
|---|---|---|---|---|
| 2,000 | 1 | 2,000 | 5 | 167 |

*If additional information is required contact:* Darwin Arceo, Department Clearance Officer, United States Department of Justice, Justice Management Division, Policy and Planning Staff, Two Constitution Square, 145 N Street NE, 4W–218, Washington, DC.

Dated: June 27, 2024.

**Darwin Arceo,**

*Department Clearance Officer for PRA, U.S. Department of Justice.*

[FR Doc. 2024–14558 Filed 7–1–24; 8:45 am]

**BILLING CODE 4410–FY–P**

## LEGAL SERVICES CORPORATION

### Sunshine Act Meeting

**TIME AND DATE:** The Finance and the Institutional Advancement Committees of the Legal Services Corporation Board of Directors will meet virtually on July 11, 2024. The Finance Committee meeting will begin at 10 a.m. EDT and will continue until the conclusion of the Committee's agenda. The Institutional Advancement Committee meeting will begin at 11 a.m. EDT and will continue until the conclusion of the Committee's agenda.

**PLACE:**

*Public Notice of Virtual Meeting.* LSC will conduct the July 11, 2024, meetings via Zoom.

*Public Observation:* Unless otherwise noted herein, the Finance and the Institutional Advancement Committees meeting will be open to public observation via Zoom. Members of the public who wish to participate remotely in the public proceedings may do so by following the directions provided below.

**Directions for Open Sessions**

*Thursday, July 11, 2024—Finance Committee Meeting*

To join the Zoom meeting by computer, please use this link.

- *https://lsc-gov.zoom.us/j/83918879636?pwd=AxtS86zbWFaTWsSa6zwUWbmnN0LbSR.1&from=addon*
  - *Meeting ID:* 839 1887 9636
  - *Passcode:* 71124

To join the Zoom meeting with one tap from your mobile phone, please click dial:

- +13017158592,,88527065662# US (Washington DC)
- +16468769923,,88527065662# US (New York)

To join the Zoom meeting by telephone, please dial one of the following numbers:

- +1 301 715 8592 US (Washington, DC)
- +1 646 876 9923 US (New York)
- +1 312 626 6799 US (Chicago)
- +1 346 248 7799 US (Houston)
- +1 408 638 0968 US (San Jose)
- +1 669 900 6833 US (San Jose)
- +1 253 215 8782 US (Tacoma)
- *ID:* 839 1887 9636
- *Passcode:* 71124

**Thursday, July 11, 2024—Institutional Advancement Committee Meeting**

To join the Zoom meeting by computer, please use this link.

- *https://lsc-gov.zoom.us/j/81390549743?pwd=6VoBIl3lD31lup2NkxEI6VDVNIGEWF.1&from=addon*
  - *Meeting ID:* 813 9054 9743
  - *Passcode:* 71124

To join the Zoom meeting with one tap from your mobile phone, please click dial:

- +13017158592,,88527065662# US (Washington DC)
- +16468769923,,88527065662# US (New York)

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- +1 346 248 7799 US (Houston)
- +1 408 638 0968 US (San Jose)
- +1 669 900 6833 US (San Jose)
- +1 253 215 8782 US (Tacoma)
- *ID:* 813 9054 9743
- *Passcode:* 71124

Once connected to Zoom, please immediately mute your computer or telephone. Members of the public are asked to keep their computers or telephones muted to eliminate background noise. To avoid disrupting the meetings, please refrain from placing the call on hold if doing so will trigger recorded music or other sound.

From time to time, the Finance or the Institutional Advancement Committee Chairs may solicit comments from the public. To participate in the meeting during public comment, use the 'raise your hand' or 'chat' functions in Zoom and wait to be recognized by the Chair before stating your questions and/or comments.

**MATTERS TO BE CONSIDERED:**

**Meeting Schedule**

*Thursday, July 11, 2024*

Start Time: 10 a.m. EDT

Finance Committee

Open to the Public

1. Approval of Meeting Agenda
2. Discussion and Public Comment Regarding LSC's Fiscal Year 2026 Budget Request
3. Consider and Act on Resolution #*2024–XXX: Adopting LSC's Budget Appropriation Request for Fiscal Year 2026*
4. Public Comment
5. Consider and Act on Other Business
6. Consider and Act on Adjournment of Meeting

*Thursday, July 11, 2024*

Start Time: 11 a.m. EDT

Institutional Advancement Committee

Open to the Public

1. Approval of Agenda
2. Approval of Minutes of the Institutional Advancement Committee's Open Session Meeting on April 3, 2024
3. Update on Leaders Council and Emerging Leaders Council
4. Development Report
5. Public Comment
6. Consider and Act on Other Business
7. Consider and Act on Motion to Adjourn the Open Session Meeting and Proceed to a Closed Session

Portions Closed to the Public

8. Approval of Minutes of the Institutional Advancement Committee's Closed Session Meeting on April 3, 2024
9. Approval of Minutes of the Institutional Advancement Committee's Closed Session Meeting on January 23, 2024
10. Development Report
11. Consider and Act on Motion to Approve Leaders Council and Emerging Leaders Council Invitees
12. Consider and Act on Other Business
13. Consider and Act on Motion to Adjourn the Meeting

**CONTACT PERSON FOR MORE INFORMATION:** Cheryl DuHart, Administrative Coordinator, at (202) 295–1621. Questions may also be sent by electronic mail to *duhartc@lsc.gov.*

*Non-Confidential Meeting Materials:* Non-confidential meeting materials will be made available in electronic format at least 24 hours in advance of the meeting on the LSC website, at *https://www.lsc.gov/about-lsc/board-meeting-materials.*

(Authority: 5 U.S.C. 552b.)

Dated: June 28, 2024.

**Stefanie Davis,**

*Deputy General Counsel, Legal Services Corporation.*

[FR Doc. 2024–14644 Filed 6–28–24; 4:15 pm]

**BILLING CODE 7050–01–P**

## NUCLEAR REGULATORY COMMISSION

**[NRC–2024–0101]**

## Applications for Amendments to Facility Operating Licenses Involving Proposed No Significant Hazards Consideration Determination and Containing Sensitive Unclassified Non-Safeguards Information and Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** License amendment request; notice of opportunity to comment, request a hearing, and petition for leave to intervene; order imposing procedures.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC) received and is considering approval of two amendment requests. The amendment requests are for Diablo Canyon Nuclear Power Plant, Units 1 and 2 and Edwin I. Hatch Nuclear Plant, Units 1 and 2. For each amendment request, the NRC proposes to determine that it involves no significant hazards consideration (NSHC). Because each amendment request contains sensitive unclassified non-safeguards information (SUNSI), an order imposes procedures to obtain access to SUNSI for contention preparation by persons who file a hearing request or petition for leave to intervene.

**DATES:** Comments must be received by August 1, 2024. A request for a hearing or petitions for leave to intervene must be filed by September 3, 2024. Any potential party as defined in section 2.4 of title 10 of the *Code of Federal*

*Regulations* (10 CFR) who believes access to SUNSI is necessary to respond to this notice must request document access by July 12, 2024.

**ADDRESSES:** You may submit comments by any of the following method; however, the NRC encourages electronic comment submission through the Federal rulemaking website.

- *Federal rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2024–0101. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *Mail comments to:* Office of Administration, Mail Stop: TWFN–7–A60M, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Program Management, Announcements and Editing Staff.

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

**FOR FURTHER INFORMATION CONTACT:** Paula Blechman, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–2242; email: *Paula.Blechman@nrc.gov.*

**SUPPLEMENTARY INFORMATION:**

## I. Obtaining Information and Submitting Comments

### *A. Obtaining Information*

Please refer to Docket ID NRC–2024–0101, facility name, unit number(s), docket number(s), application date, and subject when contacting the NRC about the availability of information for this action. You may obtain publicly available information related to this action by any of the following methods:

- *Federal Rulemaking website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2024–0101.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov.* The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in this document.
- *NRC's PDR:* The PDR, where you may examine and order copies of publicly available documents, is open by appointment. To make an appointment to visit the PDR, please send an email to *PDR.Resource@nrc.gov* or call 1–800–397–4209 or 301–415–4737, between 8 a.m. and 4 p.m. eastern time (ET), Monday through Friday, except Federal holidays.

### *B. Submitting Comments*

The NRC encourages electronic comment submission through the Federal rulemaking website (*https://www.regulations.gov*). Please include Docket ID NRC–2024–0101, facility name, unit number(s), docket number(s), application date, and subject, in your comment submission.

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

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

## II. Background

Pursuant to section 189a.(1)–(2) of the Atomic Energy Act of 1954, as amended (the Act), the NRC is publishing this notice. The Act requires the Commission to publish notice of any amendments issued or proposed to be issued and grants the Commission the authority to issue and make immediately effective any amendment to an operating license or combined license, as applicable, upon a determination by the Commission that such amendment involves NSHC, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This notice includes notices of amendments containing SUNSI.

## III. Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve NSHC. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown as follows.

The Commission is seeking public comments on these proposed determinations. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of 60 days after the date of publication of this notice. The Commission may issue any of these license amendments before expiration of the 60-day period provided that its final determination is that the amendments involve no significant hazards consideration. In addition, the Commission may issue any of these amendments prior to the expiration of the 30-day comment period if circumstances change during the 30-day comment period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility. If the Commission takes action on any of these amendments prior to the expiration of either the comment period or the notice period, it will publish a notice of issuance in the **Federal Register**. If the Commission makes a final no significant hazards consideration determination for any of these amendments, any hearing on those amendments will take place after issuance. The Commission expects that the need to take this action will occur very infrequently.

### *A. Opportunity To Request a Hearing and Petition for Leave To Intervene*

Within 60 days after the date of publication of this notice, any person (petitioner) whose interest may be affected by any of these actions may file a request for a hearing and petition for leave to intervene (petition) with respect

to that action. Petitions shall be filed in accordance with the Commission's ''Agency Rules of Practice and Procedure'' in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.309. If a petition is filed, the Commission or a presiding officer will rule on the petition and, if appropriate, a notice of a hearing will be issued.

Petitions must be filed no later than 60 days from the date of publication of this notice in accordance with the filing instructions in the ''Electronic Submissions (E-Filing)'' section of this document. Petitions and motions for leave to file new or amended contentions that are filed after the deadline will not be entertained absent a determination by the presiding officer that the filing demonstrates good cause by satisfying the three factors in 10 CFR 2.309(c)(1)(i) through (iii).

If a hearing is requested, and the Commission has not made a final determination on the issue of no significant hazards consideration but the Commission determines to grant the amendment, the Commission will make a final determination on whether the amendments involve no significant hazards consideration, which will serve to establish when the hearing is held. If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing would take place after issuance of the amendment. If the final determination is that the amendment request involves a significant hazards consideration, then any hearing held would take place before the issuance of the amendment unless the Commission finds an imminent danger to the health or safety of the public, in which case it will issue an appropriate order or rule under 10 CFR part 2.

A State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof, may submit a petition to the Commission to participate as a party under 10 CFR 2.309(h) no later than 60 days from the date of publication of this notice. Alternatively, a State, local governmental body, Federally recognized Indian Tribe, or agency thereof may participate as a non-party under 10 CFR 2.315(c).

For information about filing a petition and about participation by a person not a party under 10 CFR 2.315, see ADAMS Accession No. ML20340A053 (*https://adamswebsearch2.nrc.gov/webSearch2/main.jsp?AccessionNumber=ML20340A053*) and on the NRC's public website at *https://www.nrc.gov/about-nrc/regulatory/adjudicatory/hearing.html#participate.*

*B. Electronic Submissions (E-Filing)*

All documents filed in NRC adjudicatory proceedings, including documents filed by an interested State, local governmental body, Federally recognized Indian Tribe, or designated agency thereof that requests to participate under 10 CFR 2.315(c), must be filed in accordance with 10 CFR 2.302. The E-Filing process requires participants to submit and serve all adjudicatory documents over the internet, or in some cases, to mail copies on electronic storage media, unless an exemption permitting an alternative filing method, as further discussed, is granted. Detailed guidance on electronic submissions is located in the ''Guidance for Electronic Submissions to the NRC'' (ADAMS Accession No. ML13031A056) and on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html.*

To comply with the procedural requirements of E-Filing, at least 10 days prior to the filing deadline, the participant should contact the Office of the Secretary by email at *Hearing.Docket@nrc.gov,* or by telephone at 301–415–1677, to (1) request a digital identification (ID) certificate, which allows the participant (or its counsel or representative) to digitally sign submissions and access the E-Filing system for any proceeding in which it is participating; and (2) advise the Secretary that the participant will be submitting a petition or other adjudicatory document (even in instances in which the participant, or its counsel or representative, already holds an NRC-issued digital ID certificate). Based upon this information, the Secretary will establish an electronic docket for the proceeding if the Secretary has not already established an electronic docket.

Information about applying for a digital ID certificate is available on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals/getting-started.html.* After a digital ID certificate is obtained and a docket created, the participant must submit adjudicatory documents in Portable Document Format. Guidance on submissions is available on the NRC's public website at *https://www.nrc.gov/site-help/electronic-sub-ref-mat.html.* A filing is considered complete at the time the document is submitted through the NRC's E-Filing system. To be timely, an electronic filing must be submitted to the E-Filing system no later than 11:59 p.m. ET on the due date. Upon receipt of a transmission, the E-Filing system time-stamps the document and sends the submitter an email confirming receipt of the document. The E-Filing system also distributes an email that provides access to the document to the NRC's Office of the General Counsel and any others who have advised the Office of the Secretary that they wish to participate in the proceeding, so that the filer need not serve the document on those participants separately. Therefore, applicants and other participants (or their counsel or representative) must apply for and receive a digital ID certificate before adjudicatory documents are filed to obtain access to the documents via the E-Filing system.

A person filing electronically using the NRC's adjudicatory E-Filing system may seek assistance by contacting the NRC's Electronic Filing Help Desk through the ''Contact Us'' link located on the NRC's public website at *https://www.nrc.gov/site-help/e-submittals.html,* by email to *MSHD.Resource@nrc.gov,* or by a toll-free call at 1–866–672–7640. The NRC Electronic Filing Help Desk is available between 9 a.m. and 6 p.m., ET, Monday through Friday, except Federal holidays.

Participants who believe that they have good cause for not submitting documents electronically must file an exemption request, in accordance with 10 CFR 2.302(g), with their initial paper filing stating why there is good cause for not filing electronically and requesting authorization to continue to submit documents in paper format. Such filings must be submitted in accordance with 10 CFR 2.302(b)–(d). Participants filing adjudicatory documents in this manner are responsible for serving their documents on all other participants. Participants granted an exemption under 10 CFR 2.302(g)(2) must still meet the electronic formatting requirement in 10 CFR 2.302(g)(1), unless the participant also seeks and is granted an exemption from 10 CFR 2.302(g)(1).

Documents submitted in adjudicatory proceedings will appear in the NRC's electronic hearing docket, which is publicly available at *https://adams.nrc.gov/ehd,* unless excluded pursuant to an order of the presiding officer. If you do not have an NRC-issued digital ID certificate as previously described, click ''cancel'' when the link requests certificates and you will be automatically directed to the NRC's electronic hearing docket where you will be able to access any publicly available documents in a particular hearing docket. Participants are requested not to include personal privacy information such as social security numbers, home addresses, or

personal phone numbers in their filings unless an NRC regulation or other law requires submission of such information. With respect to copyrighted works, except for limited excerpts that serve the purpose of the adjudicatory filings and would constitute a Fair Use application, participants should not include copyrighted materials in their submission.

The following table provides the plant names, docket numbers, date of application, ADAMS accession number, and location in the application of the licensee's proposed NSHC determination. For further details with respect to these license amendment applications, see the applications for amendment, publicly available portions of which are available for public inspection in ADAMS. For additional direction on accessing information related to this document, see the ''Obtaining Information and Submitting Comments'' section of this document.

| **Pacific Gas and Electric Company; Diablo Canyon Nuclear Power Plant, Units 1 and 2; San Luis Obispo County, CA** | |
|---|---|
| Docket Nos | 50–275, 50–323. |
| Application Date | April 15, 2024. |
| ADAMS Accession No | ML24108A111 (Package). |
| Location in Application of NSHC | Pages 3–4 of the Enclosure. |
| Brief Description of Amendments | The amendments would approve alternative security measures for the implementation of the early warning system. |
| Proposed Determination | NSHC. |
| Name of Attorney for Licensee, Mailing Address | Jennifer Post, Esq., Pacific Gas and Electric Co., 77 Beale Street, Room 3065, Mail Code B30A, San Francisco, CA 94105. |
| NRC Project Manager, Telephone Number | Samson Lee, 301–415–3168. |
| **Southern Nuclear Operating Company, Inc.; Edwin I. Hatch Nuclear Plant, Units 1 and 2; Appling County, GA** | |
| Docket Nos | 50–321, 50–366. |
| Application Date | April 19, 2024. |
| ADAMS Accession No | ML24110A098. |
| Location in Application of NSHC | Pages E–6 to E–8 of Enclosure 1. |
| Brief Description of Amendments | The proposed amendments would revise Technical Specification Surveillance Requirement (SR) 3.4.3.1 to increase the nominal mechanical relief setpoints for all safety/relief valves (S/RVs) of the reactor coolant system nuclear pressure relief system. The proposed changes would reduce the potential for S/RV pilot leakage. As a result of the increased S/RV setpoints, the amendments also propose to change SR 3.1.7.7 to increase the minimum standby liquid control pump discharge pressure accordingly. |
| Proposed Determination | NSHC. |
| Name of Attorney for Licensee, Mailing Address | Millicent Ronnlund, Vice President and General Counsel, Southern Nuclear Operating Co., Inc., P.O. Box 1295, Birmingham, AL 35201–1295. |
| NRC Project Manager, Telephone Number | Dawnmathews Kalathiveettil, 301–415–5905. |

**Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation**

*Pacific Gas and Electric Company; Diablo Canyon Nuclear Power Plant, Units 1 and 2; San Luis Obispo, CA*

*Southern Nuclear Operating Company, Inc.; Edwin I. Hatch Nuclear Plant, Units 1 and 2; Appling County, GA*

A. This Order contains instructions regarding how potential parties to this proceeding may request access to documents containing Sensitive Unclassified Non-Safeguards Information (SUNSI).

B. Within 10 days after publication of this notice of hearing or opportunity for hearing, any potential party who believes access to SUNSI is necessary to respond to this notice may request access to SUNSI. A ''potential party'' is any person who intends to participate as a party by demonstrating standing and filing an admissible contention under 10 CFR 2.309. Requests for access to SUNSI submitted later than 10 days after publication of this notice will not be considered absent a showing of good cause for the late filing, addressing why the request could not have been filed earlier.

C. The requestor shall submit a letter requesting permission to access SUNSI to the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and provide a copy to the Deputy General Counsel for Licensing, Hearings, and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. The expedited delivery or courier mail address for both offices is: U.S. Nuclear Regulatory Commission, 11555 Rockville Pike, Rockville, Maryland 20852. The email addresses for the Office of the Secretary and the Office of the General Counsel are *Hearing.Docket@nrc.gov* and *RidsOgcMailCenter.Resource@nrc.gov,* respectively.[1] The request must include the following information:

(1) A description of the licensing action with a citation to this **Federal Register** notice;

(2) The name and address of the potential party and a description of the potential party's particularized interest that could be harmed by the action identified in C.(1); and

(3) The identity of the individual or entity requesting access to SUNSI and the requestor's basis for the need for the information in order to meaningfully participate in this adjudicatory proceeding. In particular, the request must explain why publicly available versions of the information requested would not be sufficient to provide the basis and specificity for a proffered contention.

[1] While a request for hearing or petition to intervene in this proceeding must comply with the filing requirements of the NRC's ''E-Filing Rule,'' the initial request to access SUNSI under these procedures should be submitted as described in this paragraph.

D. Based on an evaluation of the information submitted under paragraph C, the NRC staff will determine within 10 days of receipt of the request whether:

(1) There is a reasonable basis to believe the petitioner is likely to establish standing to participate in this NRC proceeding; and

(2) The requestor has established a legitimate need for access to SUNSI.

E. If the NRC staff determines that the requestor satisfies both D.(1) and D.(2), the NRC staff will notify the requestor in writing that access to SUNSI has been granted. The written notification will contain instructions on how the requestor may obtain copies of the requested documents, and any other conditions that may apply to access to those documents. These conditions may include, but are not limited to, the signing of a Non-Disclosure Agreement or Affidavit, or Protective Order [2] setting forth terms and conditions to prevent the unauthorized or inadvertent disclosure of SUNSI by each individual who will be granted access to SUNSI.

F. Filing of Contentions. Any contentions in these proceedings that are based upon the information received as a result of the request made for SUNSI must be filed by the requestor no later than 25 days after receipt of (or access to) that information. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline.

G. Review of Denials of Access.

(1) If the request for access to SUNSI is denied by the NRC staff after a determination on standing and requisite need, the NRC staff shall immediately notify the requestor in writing, briefly stating the reason or reasons for the denial.

(2) The requestor may challenge the NRC staff's adverse determination by filing a challenge within 5 days of receipt of that determination with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if this individual is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

(3) Further appeals of decisions under this paragraph must be made pursuant to 10 CFR 2.311.

H. Review of Grants of Access. A party other than the requestor may challenge an NRC staff determination granting access to SUNSI whose release would harm that party's interest independent of the proceeding. Such a challenge must be filed within 5 days of the notification by the NRC staff of its grant of access and must be filed with: (a) the presiding officer designated in this proceeding; (b) if no presiding officer has been appointed, the Chief Administrative Judge, or if this individual is unavailable, another administrative judge, or an Administrative Law Judge with jurisdiction pursuant to 10 CFR 2.318(a); or (c) if another officer has been designated to rule on information access issues, with that officer.

If challenges to the NRC staff determinations are filed, these procedures give way to the normal process for litigating disputes concerning access to information. The availability of interlocutory review by the Commission of orders ruling on such NRC staff determinations (whether granting or denying access) is governed by 10 CFR 2.311.[3]

I. The Commission expects that the NRC staff and presiding officers (and any other reviewing officers) will consider and resolve requests for access to SUNSI, and motions for protective orders, in a timely fashion in order to minimize any unnecessary delays in identifying those petitioners who have standing and who have propounded contentions meeting the specificity and basis requirements in 10 CFR part 2. The attachment to this Order summarizes the general target schedule for processing and resolving requests under these procedures.

*It is so ordered.*

Dated: June 11, 2024.

For the Nuclear Regulatory Commission.

**Carrie Safford,**

*Secretary of the Commission.*

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING

| Day | Event/activity |
|---|---|
| 0 | Publication of **Federal Register** notice of hearing or opportunity for hearing, including order with instructions for access requests. |
| 10 | Deadline for submitting requests for access to Sensitive Unclassified Non-Safeguards Information (SUNSI) with information: (i) supporting the standing of a potential party identified by name and address; and (ii) describing the need for the information in order for the potential party to participate meaningfully in an adjudicatory proceeding. |
| 60 | Deadline for submitting petition for intervention containing: (i) demonstration of standing; and (ii) all contentions whose formulation does not require access to SUNSI (+25 Answers to petition for intervention; +7 petitioner/requestor reply). |
| 20 | U.S. Nuclear Regulatory Commission (NRC) staff informs the requestor of the staff's determination whether the request for access provides a reasonable basis to believe standing can be established and shows need for SUNSI. (NRC staff also informs any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information.) If NRC staff makes the finding of need for SUNSI and likelihood of standing, NRC staff begins document processing (preparation of redactions or review of redacted documents). |
| 25 | If NRC staff finds no ''need'' or no likelihood of standing, the deadline for petitioner/requestor to file a motion seeking a ruling to reverse the NRC staff's denial of access; NRC staff files copy of access determination with the presiding officer (or Chief Administrative Judge or other designated officer, as appropriate). If NRC staff finds ''need'' for SUNSI, the deadline for any party to the proceeding whose interest independent of the proceeding would be harmed by the release of the information to file a motion seeking a ruling to reverse the NRC staff's grant of access. |
| 30 | Deadline for NRC staff reply to motions to reverse NRC staff determination(s). |

[2] Any motion for Protective Order or draft Non-Disclosure Affidavit or Agreement for SUNSI must be filed with the presiding officer or the Chief Administrative Judge if the presiding officer has not yet been designated, within 30 days of the deadline for the receipt of the written access request.

[3] Requestors should note that the filing requirements of the NRC's E-Filing Rule (72 FR 49139; August 28, 2007, as amended at 77 FR 46562; August 3, 2012, 78 FR 34247, June 7, 2013) apply to appeals of NRC staff determinations (because they must be served on a presiding officer or the Commission, as applicable), but not to the initial SUNSI request submitted to the NRC staff under these procedures.

ATTACHMENT 1—GENERAL TARGET SCHEDULE FOR PROCESSING AND RESOLVING REQUESTS FOR ACCESS TO SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION IN THIS PROCEEDING—Continued

| Day | Event/activity |
|---|---|
| 40 | (Receipt +30) If NRC staff finds standing and need for SUNSI, deadline for NRC staff to complete information processing and file motion for Protective Order and draft Non-Disclosure Agreement or Affidavit. Deadline for applicant/licensee to file Non-Disclosure Agreement or Affidavit for SUNSI. |
| A | If access granted: issuance of presiding officer or other designated officer decision on motion for protective order for access to sensitive information (including schedule for providing access and submission of contentions) or decision reversing a final adverse determination by the NRC staff. |
| A + 3 | Deadline for filing executed Non-Disclosure Agreements or Affidavits. Access provided to SUNSI consistent with decision issuing the protective order. |
| A + 28 | Deadline for submission of contentions whose development depends upon access to SUNSI. However, if more than 25 days remain between the petitioner's receipt of (or access to) the information and the deadline for filing all other contentions (as established in the notice of hearing or notice of opportunity for hearing), the petitioner may file its SUNSI contentions by that later deadline. |
| A + 53 | (Contention receipt +25) Answers to contentions whose development depends upon access to SUNSI. |
| A + 60 | (Answer receipt +7) Petitioner/Intervenor reply to answers. |
| >A + 60 | Decision on contention admission. |

[FR Doc. 2024–13223 Filed 7–1–24; 8:45 am]

**BILLING CODE 7590–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–100433; File No. SR–CboeEDGX–2024–038]**

## Self-Regulatory Organizations; Cboe EDGX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Clarify Its Certification Logical Port Fees

June 26, 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 June 13, 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, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGX Exchange, Inc. (the ''Exchange'' or ''EDGX'' or ''EDGX Equities'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/options/regulation/rule_filings/edgx/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its Fees Schedule to clarify its fees for Certification Logical Port fees.[3]

By way of background, the Exchange offers a variety of logical ports, which provide users with the ability within the Exchange's System to accomplish a specific function through a connection, such as order entry, data receipt or access to information. Specifically, the Exchange offers Logical Ports,[4] Purge Ports,[5] Multicast PITCH GRP Ports and Multicast PITCH Spin Server Ports.[6] For each type of the aforementioned logical ports that is used in the production environment, the Exchange also offers corresponding ports which provide Members and non-Members access to the Exchange's certification environment to test proprietary systems and applications (*i.e.,* ''Certification Logical Ports''). The certification environment facilitates testing using replicas of the Exchange's production environment process configurations which provide for a robust and realistic testing experience. For example, the certification environment allows unlimited firm-level testing of order types, order entry, order management, order throughput, acknowledgements, risk settings, mass cancelations, and purge requests. The Exchange currently provides free of charge one Certification Logical Port per port type offered in the production environment (*i.e.,* Logical Ports, Purge, Multicast PITCH GRP, and Multicast PITCH Spin Server Ports) and a monthly fee of $250 per Certification Logical Port for any additional Certification Logical Ports.[7]

The Exchange proposes to make clear in the notes section under the Logical

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed this proposed rule change on May 31, 2024 for June 3, 2024 effectiveness (SR–CboeEDGX–2024–029). On June 13, 2024, the Exchange withdrew that filing and submitted this filing.

[4] Logical Ports include FIX and BOE ports (used for order entry), drop logical port (which grants users the ability to receive and/or send drop copies) and ports that are used for receipt of certain market data feeds.

[5] Purge Ports are dedicated ports that permit a user to simultaneously cancel all or a subset of its orders in one or more symbols across multiple logical ports by requesting the Exchange to effect such cancellation.

[6] Spin Ports and GRP Ports are used to request and receive a retransmission of data from the Exchange's Multicast PITCH data feeds.

[7] For example, if a Member maintains 3 FIX Certification Logical Ports, 1 Purge Certification Logical Port, and 1 set of Multicast PITCH Spin Server Certification Logical Port, the Member will be assessed $500 per month for Certification Logical Port Fees (*i.e.,* 1 FIX, 1 Purge and 1 set of Multicast PITCH Spin Server Certification Logical Ports × $0 and 2 FIX Certification Logical Ports × $250).

Port Fees section of the Fees Schedule that the Certification Logical Port fees only apply if the corresponding logical port is also in the production environment. For example, if the Exchange intends to adopt a new port type that has not yet been launched in the live production environment, any certification port for that port type will be free until such time that the proposed new port is in the production environment. Once any new logical port type is in the live production environment, Members and Non-Members will only be entitled to one free certification logical port for that port type, and any additional certifications ports of that type will be assessed the regular monthly $250 per port charge.

The Exchange notes that purchasing additional Certification Logical Ports continues to be voluntary and not required in order to participate in the production environment, including live production trading on the Exchange. Additionally, Members and non-Members are not required to purchase any particular production logical port in order to receive a corresponding Certification Logical Port free of charge.[8] Further, the Exchange also notes that other exchanges similarly assess fees related to their respective testing environments.[9]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[10] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5) [11] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with section 6(b)(4) of the Act,[12] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

As noted above, the Exchange's certification environment provides a robust and realistic testing experience using a replica of the Exchange's production environment process configurations. This environment enables market participants to manage risk more effectively through testing software development changes in certification prior to implementing them in the live trading environment, thereby reducing the likelihood of a potentially disruptive system failure in the live trading environment, which has the potential to affect all market participants. The Exchange believes this is especially true when testing a new port type that has not yet launched in the production environment. As such, the Exchange believes it's reasonable to only assess the Certification Logical Port fee to ports that are also available in the production environment as to not discourage the testing of new ports ahead of any respective launch date. The Exchange also believes applying the Certification Logical Port fee is reasonable once such ports are available in the production environment because while such ports will no longer be completely free, Members and non-Members will continue to be entitled to receive free of charge one Certification Logical Port for such port. The Exchange continues to believe one Certification Logical Port per logical port type will be sufficient for most Members or Non-Members and indeed anticipates that the majority of users will not purchase additional Certification Logical Ports. For those who wish to obtain additional Certification Logical Ports based on their respective business needs, such as those wishing to test across various diverse systems within their own infrastructure, they are able to do so for a modest fee. Indeed, the decision to purchase additional ports is optional and no market participant is required or under any regulatory obligation to purchase excess Certification Logical Ports in order to access the Exchange's certification environment.[13] Further, the Exchange has observed that market participants that do choose to purchase additional Certification Logical Ports maintain significantly fewer Certification Logical Ports as compared to the corresponding logical ports they use in the production in environment.

The Exchange believes the proposal to make clear that the Certification Logical Port fee applies only to logical ports that are in the production environment is equitable and not unfairly discriminatory because it applies uniformly to all market participants that choose to obtain additional Certification Logical Ports and all market participants will have further clarity as to which certification ports are subject to the current fee. The Exchange also believes the proposed change is reasonable, equitable and not unfairly discriminatory because it is designed to encourage market participants to avail themselves of Certification Logical Ports for new port types before they launch to become acclimated with the new connectivity offering ahead of going live in the trading environment. The Exchange believes the proposal to add this language to the notes section in the Fees Schedule also provides clarity in the rules as to when the Certification Logical Port fee applies and reduces potential confusion.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition because as the proposed change applies uniformly to all market participants. Additionally, the Exchange does not believe that the proposed fee creates an undue burden on competition because the Exchange will continue to offer free of charge one Certification Logical Port per each logical port type once offered in the production environment. Also as discussed, the purchase of additional ports is optional and based on the business needs of each market participant. Moreover, such market participants will continue to benefit

[8] For example, a Member may obtain a Certification Purge Port free of charge, even if that Member has not otherwise purchased a Purge Port for the live production environment. Certification Logical Ports are not automatically enabled for each Member or Non-Member, but rather must be proactively requested by Members and Non-Members.

[9] *See e.g.,* Nasdaq Stock Market LLC, Equity 7, Pricing Schedule, Section 130. *See also* MIAX Options Exchange Fee Schedule, Section 4, Testing and Certification Fees.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(4).

[13] Although many Members and Non-Members use Certification Logical Ports on a daily basis, the Exchange notes frequency of use of Certification Logical Ports varies by user and depends on their respective business needs. To the extent a Member or Non-Member purchases additional Certification Logical Ports and their needs later change, or they determine they no longer wish to maintain excess Certification Logical Ports, the Member or Non-Member is free to cancel such ports for the following month(s).

from access to the certification environment, which the Exchange believes provides a robust and realistic testing experience via a replica of the production environment, which may be especially critical during the time leading up to the launch of a new port type in the production environment.

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies only to the Exchange's certification environment. Additionally, the Exchange notes that it operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 15 other equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, where competitive products are available for trading. Indeed, participants can readily choose to send their orders to other exchanges, and, additionally off-exchange venues, if they deem overall fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [14] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[15] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [16] and paragraph (f) of Rule 19b–4 [17] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeEDGX–2024–038 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–2024–038. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeEDGX–2024–038 and should be submitted on or before July 23, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024–14515 Filed 7–1–24; 8:45 am]

**BILLING CODE 8011–01–P**

[14] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[15] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f).

[18] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–100434; File No. SR–NASDAQ–2024–028]**

## Self-Regulatory Organizations; The Nasdaq Stock Market LLC; Notice of Filing of Proposed Rule Change To List and Trade Shares of the Hashdex Nasdaq Crypto Index US ETF Under Nasdaq Rule 5711(d)

June 26, 2024.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on June 17, 2024, The Nasdaq Stock Market LLC (''Nasdaq'' or ''Exchange'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') the proposed rule change as described in Items I, II, and III, below, which Items have been prepared by the Exchange. The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

## I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list and trade shares of the Hashdex Nasdaq Crypto Index US ETF (the ''Trust'') under Nasdaq Rule 5711(d). The units of the Trust are referred to herein as the ''Shares.''

## II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

### *A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to list and trade Shares of the Trust under Nasdaq Rule 5711(d), which governs the listing and trading of ''Commodity-Based Trust Shares.'' The Trust is managed and controlled by the Hashdex Asset Management Ltd. (''Sponsor'') and administered by Tidal ETF Services LLC (the ''Administrator''). The Shares will be registered with the SEC by means of the Trust's registration statement on Form S–1 (the ''Registration Statement'').[3]

Description of the Trust

The Shares will be issued by the Trust, a Delaware statutory trust to be established by the Sponsor. The Trust will operate pursuant to the rules and guidelines set forth in the Trust agreement (''Trust Agreement''). The Trust will issue Shares representing fractional undivided beneficial interests in its net assets. The assets of the Trust will consist of bitcoin and ether. Under limited circumstances, the Trust will hold cash to bear its expenses. The Trust will not be an investment company registered under the Investment Company Act of 1940, as amended (the ''1940 Act''), and will not be a commodity pool under the Commodity Exchange Act.

U.S. Bancorp Fund Services, LLC will be the sub-administrator, and transfer agent for the Trust (''Sub-Administrator'' or ''Transfer Agent''). U.S. Bank, N.A. will hold the Trust's cash and/or cash equivalents[4] (''Cash Custodian''). The Sponsor intends to enter into an agreement with Coinbase Custody Trust Company, LLC and BitGo Trust Company, Inc. (''Crypto Custodians'', and together with the Cash Custodian, the ''Custodians''). The Crypto Custodians will keep custody of all the Trust's bitcoin and ether.[5]

The Trust's Investment Objective

The investment objective of the Trust is to have the daily changes in the net asset value (''NAV'') of the Shares correspond to the daily changes in the price of the Nasdaq Crypto US Settlement Price Index,[6] NCIUSS (the ''NCIUSS'' or ''Index''), less expenses and liabilities from the Trust's operations, by investing in bitcoin and ether.

The Shares are designed to provide a straightforward means of obtaining investment exposure to bitcoin and ether through the public securities market, as opposed to direct acquisition, holding, and trading of spot crypto assets on a peer-to-peer or other basis or via a crypto asset platform. The Shares have been designed to remove the obstacles represented by the complexities and operational burdens involved in a direct investment in bitcoin and ether, while at the same time having an intrinsic value that reflects, at any given time, the investment exposure to the assets owned by the Trust at such time, less the Trust's expenses and liabilities. The Shares provide investors with an alternative method of achieving exposure to the crypto asset markets through the public securities market, which may be more familiar to them.

The Trust will gain exposure to crypto assets by buying spot bitcoin and spot ether. The Trust will maintain cash balances to the extent it is necessary for currently due Trust-payable expenses.

If there are no Share redemption orders or currently due Trust-payable expenses, the Trust's portfolio is expected to consist of bitcoin and ether. The Trust will not invest in any other spot crypto asset besides bitcoin and ether. The Trust will not invest in crypto securities, tokenized assets or stablecoins. As of May 27, 2024, the crypto asset constituents of the Index (''Index Constituents'') and their weightings[7] were as follows:

| Constituents | Weight (%) |
|---|---|
| Bitcoin (BTC) | 70.54 |
| Ether (ETH) | 29.46 |

The Sponsor will employ a passive investment strategy that is intended to track the changes in the Index regardless of whether the Index goes up or goes down, meaning that the Sponsor will not try to ''beat'' the Index. The Trust's passive investment strategy is designed to allow investors to purchase and sell the Shares for the purpose of investing in the Index, whether to hedge the risk of losses in their Index-related transactions or gain price exposure to the Index. The Trust's investments will be consistent with the Trust's investment objective and will not be used to enhance leverage. That is, given its passive investment strategy, the Trust's investments will not be used to seek performance that is the multiple or inverse multiple (*e.g.,* 2Xs, 3Xs, –2Xs, and –3Xs) of the Trust's Index.

None of the Trust, the Sponsor, any Crypto Custodian, or any other person associated with the Trust will, directly or indirectly, engage in action where any portion of the Trust's ether becomes subject to the Ethereum proof-of-stake validation or is used to earn additional ether or generate income or other earnings.

From time to time, the Trust may be entitled to or come into possession of rights to acquire, or otherwise establish dominion and control over, any crypto asset (for avoidance of doubt, other than bitcoin and ether) or other asset or right, which rights are incident to the Trust's ownership of bitcoin or ether and arise without any action of the Trust, or of the Sponsor (''Incidental Rights'') and/or crypto assets, or other assets or rights, acquired by the Trust through the exercise of any Incidental Right (''IR Virtual Currency'') by virtue of its

[3] The Registration Statement is not yet effective and the Shares will not trade on the Exchange until such time that the Registration Statement is effective.

[4] ''Cash equivalents'' include short-term treasury bills (90 days or less to maturity), money market funds, and demand deposit accounts. The Trust does not hold, invest in, or trade in crypto assets that are linked to any fiat currency (*i.e.,* stablecoins).

[5] The Trust may engage additional custodians for its crypto assets, each of whom may be referred to as a Crypto Custodian. The Trust may also remove or change current Crypto Custodians, provided that there is at least one Crypto Custodian at all times.

[6] *See https://indexes.nasdaqomx.com/docs/Methodology_NCIUS.pdf.*

[7] The Index Constituents will be weighted according to their relative free float market capitalizations, as described in the next section ''The Trust's Benchmark''.

ownership of bitcoin or ether, generally through a fork in the Bitcoin or Ethereum blockchain, an airdrop offered to holders of bitcoin or ether or other similar event.

With respect to a fork, airdrop or similar event, the Sponsor will cause the Trust to permanently and irrevocably abandon any such Incidental Rights and IR Virtual Currency and no such Incidental Right or IR Virtual Currency shall be taken into account for purposes of determining the NAV of the Trust.

In the event that any other crypto asset is included (other than bitcoin or ether), or is eligible for inclusion as an Index Constituent (as defined below), the Sponsor will transition the Trust's investment strategy from full replication [8] to sample replication,[9] with only bitcoin and ether in the same proportions determined by the Index, and determine whether a filing with the Commission under Rule 19b–4 of the Act will be required.

The Trust's Benchmark

The Trust will use the Index as a reference to track and measure its performance compared to the price performance of the markets for the Index Constituents and for valuation purposes when calculating the Trust's NAV.

The Index is designed to measure the performance of a portion of the overall crypto asset market. The Index does not track the overall performance of all crypto assets generally, nor the performance of any specific crypto assets. The Index is owned and administered by Nasdaq, Inc. (''Index Provider'') and is calculated by CF Benchmarks Limited (''Calculation Agent''), which is experienced in calculating and administering crypto assets indices. The Calculation Agent publishes daily the Index Constituents, the Index Constituents' weightings, the intraday value of the Index (under the ticker NCIUS), and the daily settlement value of the Index (under the ticker NCIUSS), which is effectively the Index's closing value.

The Index is derived from a rules-based methodology (''Index Rules''), which is overseen by the Nasdaq Cryptocurrency Index Oversight Committee (''NCIOC''). The NCIOC governs the Index and is responsible for its implementation, administration, and general oversight, including assessing crypto assets for eligibility, adjustments to account for regulatory changes and periodic methodology reviews. The Index Rules may only be changed by the Index Provider with the approval of the NCIOC. Neither the Trust, nor the Sponsor have control over the Index Rules or the Index administration. Changes to Index Rules may result in adverse effects to the Trust and/or in the ability of the Sponsor to implement the Trust's investment strategy.

Crypto assets are eligible for inclusion in the Index if they satisfy the criteria set forth under the Nasdaq Crypto US Index methodology, which includes being currently listed on a U.S.-regulated digital asset trading platform or serving as the underlying asset for a derivative instrument listed on a U.S.-regulated derivatives platform. The Index adjusts its constituents and weightings on a quarterly basis to reflect changes in the crypto asset markets.

Pursuant to the Index Rules, to be eligible for inclusion in the Index, crypto assets must meet the following criteria on a quarterly basis:

(1) Have active tradable markets listed on at least two Core Crypto Platforms (as defined below) for the entire period since the previous Index reconstitution;

(2) Be supported by at least one Core Custodian (as defined below) for the entire period since the previous Index reconstitution.

(3) To be considered for entry to the Index at any Index reconstitution, an asset must have a median daily trading volume in the USD pair conducted across all Core Crypto Platforms that is no less than 0.5% of the cryptocurrency asset that has the highest median daily trading volume.

(4) Be currently listed on a U.S.-regulated digital asset trading platform or serve as the underlying asset for a derivative instrument listed on a U.S.-regulated derivatives platform.

(5) Have free-floating pricing (*i.e.,* not be pegged to the value of any asset).

If a crypto asset meets requirements (1) through (5), it will be considered eligible for Index inclusion.

Notwithstanding inclusion in the eligible list, the NCIOC reserves the right to further exclude any additional assets based on one or more factors, including but not limited to its risk of being deemed a security by United States Securities laws along with its review of general reputational, fraud, manipulation, or security concerns connected to the asset. Assets that, in the sole discretion of the Nasdaq Crypto Index Oversight Committee, do not offer utility, do not facilitate novel use cases, or that do not exhibit technical, structural or cryptoeconomic innovation (*e.g.,* assets inspired by memes or internet jokes) may also be excluded.

The Index will assess any crypto assets resulting from a hard fork or an airdrop under the same criteria as established digital assets and will only include a new digital asset if it meets the eligibility criteria set forth above.

Moreover, notwithstanding the above, the Sponsor will not invest the Trust's assets in any other crypto assets (*i.e.,* other than bitcoin and ether), even if such other crypto assets are included in the Index pursuant to the Index Rules and the eligibility criteria above.

The Index Constituents will be weighted according to their relative free float market capitalizations. The free float market capitalization of an Index Constituent on any given day is defined as the product of an Index Constituent Settlement Price (as defined below) and its Circulating Supply [10] as set in the most recent reconstitution. Weights are calculated by dividing the free float market capitalization of a digital asset by the total free float market capitalization of all Index Constituents at the time of rebalancing.

As set forth in the Index methodology, a ''Core Crypto Platform'' is a crypto asset platform that, in the opinion of the NCIOC, exhibits at a minimum the following characteristics:

(1) Have strong forking controls;

(2) Have effective anti-money laundering controls;

[8] Full replication is an investment strategy where the fund invests in all the components of the index in their exact weights, providing precise tracking of the index performance.

[9] Sample replication is a strategy where the fund invests in a representative sample of the index components, which may not include all index components, to achieve similar performance. This approach is typically used to reduce costs or when full replication is impractical.

[10] The Index will utilize ''Circulating Supply'' of an Index Constituent for all calculations of free float market capitalization and the determination of constituent weights. Circulating Supply is defined as the total supply of all units of a digital asset issued outside of the codebase since the initial block on a digital asset's blockchain or since the point of inception of the digital asset on a cryptographic distributed ledger that can be ''spent'' or moved from one deposit address to another that is deemed to be likely to be available for trading as defined by the Calculation Agent and described by the methods in the CF Cryptocurrency Index Family Multi Asset Ground Rules (section 4.2.1 to 4.3.1.2.1). Circulating Supply data will be determined at the block height or ledger number which is the last confirmed block or ledger number at 16:00:00 UTC on the day that is eight (8) business days immediately preceding the relevant Reconstitution Date. Where the Calculation Agent cannot reliably determine any of the respective inputs for the calculation of the Circulating Supply for a given crypto asset that is an Index Constituent then its Circulating Supply shall be approximated. This will be done by applying the Median Free Float Factor (Circulating Supply/Total Supply) that has been determined for that reconstitution of all Index Constituents to the Total Supply (Circulating Supply = Total Supply X Median Free Float Factor). During reconstitution, updated Circulating Supply of crypto assets will be set and will remain fixed until the next reconstitution. The Index fixes Circulating Supply of Index Constituents between reconstitutions in order to preserve the investability property of the Index.

(3) Have a reliable and transparent application programming interface (API) that provides real-time and historical trading data;

(4) Charge fees for trading and structure trading incentives that do not interfere with the forces of supply and demand;

(5) Be licensed by a public independent governing body;

(6) Include surveillance for manipulative trading practices and erroneous transactions;

(7) Evidence a robust IT infrastructure;

(8) Demonstrate active capacity management; [11]

(9) Evidence cooperation with regulators and law enforcement; and

(10) Have a minimum market representation for trading volume.[12]

The list of existing Core Crypto Platforms will be recertified by the NCIOC at a minimum on an annual basis.

The Core Crypto Platforms as of May 27, 2024 are BitStamp, Coinbase, Gemini, itBit, and Kraken.

The Index methodology defines a ''Core Custodian'' to be a crypto assets custodian that, in the opinion of the NCIOC, exhibits the following characteristics:

(1) Provide custody accounts whose holders are the legal beneficiaries of the assets held in the account. In case of bankruptcy or insolvency of a Custodian, creditors or the estate should have no rights to the client's assets.

(2) Offer segregated individual accounts and store crypto assets in segregated individual accounts and not in omnibus accounts. Custodians must not allow securities lending against digital assets.

(3) Generate account-segregated private keys for digital assets using high entropy random number generation methods and employ advanced security practices.

(4) Utilize technology for storing private keys in offline digital vaults and apply secure processes, such as private key segmentation, multi-signature authorization, and geographic distribution of stored assets, to limit access to private keys. The Crypto Custodian will use security technology for storing private keys aiming to avoid theft or misappropriation of assets due to online attacks, collusion of agents managing the storage services, or any other threat.

(5) Offers redemption processes for timely and secure transfer of digital assets and allows account holders to set withdrawal authorization restrictions such as whitelisting and multi-user account controls.

(6) Must support the Index's forking policy and allow the split of assets to be reflected in the Index asset holdings.

(7) Have a comprehensive risk management policy and formalized framework for managing operational and custody risks, including a disaster recovery program that ensures continuity of operations in the event of a system failure. The Crypto Custodian must have a business continuity plan to help ensure continued customer access to the assets.

(8) Is licensed as a Custodian by a reputable and independent governing body (*e.g.,* the U.S. Securities and Exchange Commission, the New York State Department of Financial Services, or other state, national or international regulators), as can be ascertained by certain public data sources.

(9) Provides third-party audit reports at least annually on operational and security processes. This audit may be completed either by having a full SOC2 certification issued or the third-party auditor providing an attest report based off the full SOC2 methodology.

(10) Have an insurance policy that covers, at least partially, third-party theft of private keys, insider theft from internal employees, and loss of keys.

A Core Custodian might lose eligibility if it does not comply with the above requirements or with any other NCIOC requirements.

The NCIOC will review new Core Custodian candidates throughout the year and announce any new additions when approved. The list of existing Core Custodians will be recertified by the NCIOC at a minimum on an annual basis. Changes to the list of Core Custodians may be made by the approval of the NCIOC and announced accordingly in the case of exceptional events or in order to maintain the integrity of the Index.

The Core Custodians as of May 27, 2024 are BitGo, Coinbase, Fidelity and Gemini. The Trust's crypto assets must at all times be drawn only from the Core Custodians.

The Index will be reconstituted and rebalanced quarterly, on the first Business Day in March, June, September, and December (each a ''Reconstitution Date'').

The settlement price of each Index Constituent (''Index Constituent Settlement Price'') is calculated once every trading day by applying a publicly available rules-based pricing methodology (the ''Pricing Methodology'') to a diverse collection of pricing sources to provide an institutional-grade reference price for each constituent. The Pricing Methodology is designed to account for variances in price across a wide range of sources, each of which has been vetted according to criteria identified in the methodology. Specifically, the Index Constituent Settlement Price is the Time Weighted Average Price (''TWAP'') calculated across the volume weighted average prices (''VWAPs'') for each minute in the settlement price window, which is between 3:50:00 and 4:00:00 p.m. New York time, on all Core Crypto Platforms. Where there are no transactions observed in any given minute of the settlement price window, that minute is excluded from the calculation of the TWAP.

The Pricing Methodology also utilizes penalty factors to mitigate the impact of anomalous trading activity such as manipulation, illiquidity, large block trading, or operational issues that could compromise price representation. Three types of penalties are applied when three or more contributing Core Crypto Platforms contribute pricing for a constituent asset: abnormal price penalties, abnormal volatility penalties, and abnormal volume penalties. These penalties are defined as adjustment factors to the weight of information from each platform that contributes pricing information based on the deviation of a platform's price, volatility, or volume from the median across all exchanges. For example, if a Core Crypto Platform's price is 2.5 standard deviations away from the median price, its price penalty factor will be a 1/2.5 multiplier.

The Sponsor believes that the NCIUSS is a suitable Index for the Trust for several reasons. First, it would provide reliable pricing for purposes of tracking the actual performance of the crypto asset markets for the Index Constituents. Second, it is administered by a reputable index administrator that is not affiliated with the Sponsor or Trust,[13]

[11] According to the Index methodology, to demonstrate active capacity management, Core Crypto Platforms must demonstrate that their platform's technical infrastructure is designed in such a way that it is capable of accommodating a sudden, significant increase in trade volume without impacting system functionality.

[12] According to Index methodology, to compute an exchange's market size, the NCIOC sums the U.S. Dollar (''USD'') volume of all eligible crypto asset-USD pairs for the month of August each year. A Core Crypto Platform must have at least 0.05% of the total volume in eligible exchanges.

[13] Nasdaq, Inc. (''Nasdaq''), the Index Provider, adheres to the International Organization of Securities Commissions principles for benchmarks (the ''IOSCO Principles'') for many of its indexes via an internal control and governance framework that is audited by an external, independent auditor on an annual basis. Although NCIUSS is not currently one of the indexes that is required to

Continued

which provides assurances of accountability and independence. Finally, its Pricing Methodology is designed to resist potential price manipulation from unregulated crypto markets by applying the following safeguards:

(1) Requiring that constituents be listed on a U.S.-regulated crypto asset trading platform or serve as the underlying asset for a derivative instrument listed on a U.S.-regulated derivatives platform

(2) Strict eligibility criteria for the Core Crypto Platforms from which the Index data is drawn;

(3) A diverse collection of trustworthy pricing sources to provide an institutional-grade reference price for the Index Constituents; and

(4) The use of adjustment factors to mitigate against the impact of any anomalous trading activity on the Index Constituent Settlement Prices.

Custody of the Trust's Crypto Assets

An investment in the Shares is backed by assets held by the Trust, including the bitcoin and ether held by the Crypto Custodians on behalf of the Trust. The Crypto Custodians must qualify as Core Custodians by the NCIOC and, thus satisfy at least the requirements set forth by the NCIOC in the NCIUSS methodology.[14] The Trust may engage additional custodians for its crypto assets and may also remove or change current Crypto Custodians, provided that there is at least one Crypto Custodian at all times.

The Trust's Crypto Custodians will hold and be responsible for maintaining custody of the Trust's bitcoin and ether. The Sponsor will cause the Trust to maintain ownership and control of the Trust's bitcoin in a manner consistent with good delivery requirements for spot commodity transactions.

All of the Trust's crypto assets will be held in one or more accounts in the name of the Trust (each a ''Custody Account'' and together the ''Custody Accounts''), other than the Trust's assets which are temporarily maintained in a trading account under limited circumstances (''Trading Account''), *i.e.,* in connection with creation and redemption basket activity or sales of crypto assets deducted from the Trust's holdings in payment of Trust expenses or the Sponsor's fee (or, in extraordinary circumstances, upon liquidation of the Trust). The Custody Accounts include all the Trust's assets held at the Crypto Custodians but do not include the Trust's crypto temporarily maintained in the Trading Account from time to time. The hardware, software, systems, and procedures of the Crypto Custodians may not be available or cost-effective for many investors to access directly.

The Trust's bitcoin, ether and cash holdings from time to time may temporarily be maintained in the Trading Account. The Sponsor intends to execute an agreement so Coinbase Inc. can serve as the Trust's ''Prime Execution Agent'' (''Prime Execution Agent Agreement''). In this capacity, the Prime Execution Agent will facilitate the buying and selling of crypto assets by the Trust in response to cash creations and redemptions between the Trust and registered broker-dealers that are Depositary Trust Company (''DTC'') participants that enter into an authorized participant agreement with the Sponsor (''Authorized Participants''), and the sale of crypto assets to pay the Sponsor's fee, any other Trust expenses not assumed by the Sponsor, to the extent applicable, and in extraordinary circumstances, in connection with the liquidation of the Trust's assets.

Creation and Redemption of Shares

The Trust issues and redeems ''Baskets'' [15] on a continuous basis. Baskets are issued or redeemed only in exchange for an amount of cash determined by the Sponsor or the Administrator on each Business Day. No Shares are issued unless the Cash Custodian has allocated to the Trust's account the corresponding amount of cash. Baskets may be created or redeemed only by Authorized Participants. Each Authorized Participant must be registered as a broker-dealer under the Exchange Act and regulated by the FINRA, or exempt from being, or otherwise not required to be, so regulated or registered, and must be qualified to act as a broker or dealer in the states or other jurisdictions where the nature of its business so requires.

The Authorized Participants will deliver only cash to create Shares and will receive only cash when redeeming Shares. Further, Authorized Participants will not directly or indirectly purchase, hold, deliver, or receive a crypto asset as part of the creation or redemption process or otherwise direct the Trust or a third party with respect to purchasing, holding, delivering, or receiving crypto assets as part of the creation or redemption process.

The Trust will create Shares by receiving crypto assets from a third party that is not the Authorized Participant, and the Trust—not the Authorized Participant—is responsible for selecting the third party to deliver the assets. Further, the third party will not be acting as an agent of the Authorized Participant with respect to the delivery of the crypto assets to the Trust or acting at the direction of the Authorized Participant with respect to the delivery of the crypto assets to the Trust. The Trust will redeem Shares by delivering crypto assets to a third party that is not the Authorized Participant, and the Trust—not the Authorized Participant—is responsible for selecting the third party to receive the assets. Further, the third party will not be acting as an agent of the Authorized Participant with respect to the receipt of the crypto assets from the Trust or acting at the direction of the Authorized Participant with respect to the receipt of the crypto assets from the Trust. The third-party will be unaffiliated with the Trust and the Sponsor.

In connection with cash creations and cash redemptions, the Authorized Participants will submit orders to create or redeem Baskets [16] of Shares exclusively in exchange for cash. The Trust will engage in crypto transactions to convert cash into crypto assets (in association with creation orders) and crypto assets into cash (in association with redemption orders). The Trust will conduct its crypto asset purchase and sale transactions by, in its sole discretion, choosing to trade directly with designated third parties (each, a

comply with IOSCO Principles, as a reference rate index, it is administered in a manner that is generally consistent with both the IOSCO Principles and the elements of Nasdaq's internal control and governance framework pursuant to IOSCO Principles. NCIUSS is administered and governed by the NCIOC in accordance with the publicly available NCIUS methodology. The NCIOC oversees all aspects of the administration of the NCIUSS, including the defined processes and controls for the selection and monitoring of third parties such as the Core Crypto Platforms and Core Custodians, as well as the validation and reconciliation of Index calculations and pricing data. The NCIOC also oversees the identification and mitigation of any potential conflicts of interest, formal complaints, and updates or changes to the Index methodology consistent with the IOSCO Principles.

[14] *See https://indexes.nasdaqomx.com/docs/Methodology_NCIUS.pdf.*

[15] Baskets will be offered continuously at NAV per Share for 10,000 Shares. Therefore, a Basket of Shares would be valued at NAV per Share multiplied by the Basket size and the crypto asset required to be delivered in exchange for a creation of a Basket would equal the dollar value of the NAV per Share multiplied by the Basket size for such creations. The Trust may change the number of Shares in a Basket. Only Authorized Participants may purchase or redeem Baskets. Shares will be offered to the public from time to time at varying prices that will reflect the price of crypto assets and the trading price of the Shares on Nasdaq at the time of the offer.

[16] The Trust issues and redeems Shares only in blocks or ''Baskets'' of 10,000 or integral multiples thereof. These transactions take place in exchange for crypto assets.

''Crypto Trading Counterparty''), who are not registered broker-dealers pursuant to written agreements between each such Crypto Trading Counterparty and the Trust, or choosing to trade through the Prime Execution Agent acting in an agency capacity with third parties pursuant to the Prime Execution Agent Agreement. Crypto Trading Counterparties settle trades with the Trust using their own accounts at the Prime Execution Agent when trading with the Trust.

For a creation of a Basket of Shares, the Authorized Participant will be required to submit the creation order by an early order cutoff (''Creation Early Cutoff Time''). The Creation Early Cutoff Time will initially be 6:00 p.m. ET on the business day prior to trade date.

On the date of the Creation Early Cutoff Time for a creation order, the Trust will choose, in its sole discretion, to enter into a transaction with a Crypto Trading Counterparty (or the Prime Execution Agent) to buy crypto assets in exchange for the cash proceeds from such creation order. On the settlement date for a creation, the Trust will deliver Shares to the Authorized Participant in exchange for cash received from the Authorized Participant. Also, on or around the settlement date, the Crypto Trading Counterparty or Prime Execution Agent, as applicable, will deposit the required assets pursuant to its trade with the Trust into the Trust's Trading Account in exchange for cash. In the event the Trust has not been able to successfully execute and complete settlement of a crypto transaction by the settlement date of the creation order, the Authorized Participant will be given the option to (1) cancel the creation order, or (2) accept that the Trust will continue to attempt to complete the execution, which will delay the settlement date of the creation order. With respect to a creation order, as between the Trust and the Authorized Participant, the Authorized Participant is responsible for the dollar cost of the difference between the crypto asset price utilized in calculating NAV per Share on trade date and the price at which the Trust acquires the asset to the extent the price realized in buying the crypto asset is higher than the price utilized in the NAV. To the extent the price realized in buying the crypto asset is lower than the price utilized in the NAV, the Authorized Participant shall keep the dollar impact of any such difference.

Because the Trust's Trading Account may not be funded with cash on trade date for the purchase of crypto assets associated with a cash creation order, the Trust may borrow trade credits (''Trade Credits'') in the form of cash from the ''Trade Credit Lender'', under a trade financing agreement (''Trade Financing Agreement'') or may require the Authorized Participant to deliver the required cash for the creation order on trade date. The extension of Trade Credits on trade date allows the Trust to purchase crypto assets through the Prime Execution Agent on trade date, with such assets being deposited in the Trust's Trading Account. On settlement date for a creation order, the Trust delivers Shares to the Authorized Participant in exchange for cash received from the Authorized Participant. To the extent Trade Credits were utilized, the Trust uses the cash to repay the Trade Credits borrowed from the Trade Credit Lender. On settlement date for a creation order, the crypto assets purchased are swept from the Trust's Trading Account to the Custody Account pursuant to a regular end-of-day sweep process.

For a redemption of a Basket of Shares, the Authorized Participant will be required to submit a redemption order by an early order cutoff (the ''Redemption Early Cutoff Time''). The Redemption Early Cutoff Time will initially be 6:00 p.m. ET on the business day prior to trade date. On the date of the Redemption Early Cutoff Time for a redemption order, the Trust may choose, in its sole discretion, to enter into a transaction with a Crypto Trading Counterparty or the Prime Execution Agent, to sell crypto assets in exchange for cash. After the Redemption Early Cutoff Time, the Trust will instruct the Crypto Custodian to prepare to move the associated assets from the Trust's Custody Account to the Trading Account. On the settlement date for a redemption order, the Authorized Participant will deliver the necessary Shares to the Trust, and on or around settlement date, a Crypto Trading Counterparty or Prime Execution Agent, as applicable, will deliver the cash associated with the Trust's sale of crypto assets to the Trust in exchange for the Trust's crypto assets, and the Trust will deliver cash to the Authorized Participant. In the event the Trust has not been able to successfully execute and complete settlement of a crypto transaction by the settlement date, the Authorized Participant will be given the option to (1) cancel the redemption order, or (2) accept that the Trust will continue to attempt to complete the execution, which will delay the settlement date. With respect to a redemption order, between the Trust and the Authorized Participant, the Authorized Participant will be responsible for the dollar cost of the difference between the crypto asset price utilized in calculating the NAV per Share on trade date and the price realized in selling the crypto asset to raise the cash needed for the cash redemption order to the extent the price realized in selling the asset is lower than the price utilized in the NAV. To the extent the price realized in selling the crypto asset is higher than the price utilized in the NAV, the Authorized Participant will keep the dollar impact of any such difference.

The Trust may use financing in connection with a redemption order when crypto assets remain in the Custody Account at the point of intended execution of a sale of a crypto asset. In those circumstances, the Trust may borrow Trade Credits in the form of crypto assets from the Trade Credit Lender, which allows the Trust to sell crypto assets through the Prime Execution Agent on trade date, and the cash proceeds are deposited in the Trading Account. On settlement date for a redemption order, the Trust delivers cash to the Authorized Participant in exchange for Shares received from the Authorized Participant. In the event financing was used, the Trust will use the crypto assets moved from the Custody Account to the Trading Account to repay the Trade Credits borrowed from the Trade Credit Lender.

Net Asset Value

The Trust's NAV per Share will be calculated by taking the current market value of its total assets, subtracting any liabilities, and dividing that total by the number of Shares. The assets of the Trust will consist of bitcoin, ether, cash and cash equivalents. The Sponsor has the exclusive authority to determine the Trust's NAV, which it has delegated to the Administrator.

The Administrator of the Trust will calculate the NAV once each Business Day, as of the earlier of the close of the Nasdaq or 4:00 p.m. New York time. For purposes of making these calculations, a Business Day means any day other than a day when Nasdaq is closed for regular trading (''Business Day'').

In determining the Trust's bitcoin and ether holdings, the Administrator will value the Index Constituents held by the Trust based on the Index Constituent Settlement Price, unless the prices are not available or the Administrator, in its sole discretion, determines that the Index Constituent Settlement Price is unreliable (''Fair Value Event''). In the instance of a Fair Value Event, the Trust's holdings may be fair valued on a temporary basis in accordance with the fair value policies approved by the Administrator.

In the instance of a Fair Value Event and pursuant to the Administrator's fair valuation policies and procedures, VWAP or Volume Weighted Median Prices (''VWMP'') from another index administrator (''Secondary Index'') will be utilized.

If a Secondary Index is also not available or the Administrator in its sole discretion determines the Secondary Index is unreliable, the price set by the Trust's principal market as of 4:00 p.m. ET, on the valuation date will be utilized. In the event the principal market price is not available or the Administrator in its sole discretion determines the principal market valuation is unreliable, the Administrator will use its best judgment to determine a good faith estimate of fair value. The Administrator identifies and determines the Trust's principal market (or in the absence of a principal market, the most advantageous market) for crypto assets consistent with the application of fair value measurement framework in FASB ASC 820–10.[17] The principal market is the market where the reporting entity would normally enter into a transaction to sell the asset or transfer the liability. The principal market must be available to and be accessible by the reporting entity. The reporting entity is the Trust.

If the Index Constituent Settlement Price is not used to determine the Trust's crypto asset holdings, owners of the beneficial interests of Shares (the ''Shareholders'') will be notified in a prospectus supplement or on the Trust's website and, if this index change is on a permanent basis, a filing with the Commission under Rule 19b–4 of the Act will be required.

A Fair Value Event value determination will be based upon all available factors that the Sponsor or the Administrator deems relevant at the time of the determination and may be based on analytical values determined by the Sponsor or Administrator using third-party valuation models. Fair value policies approved by the Administrator will seek to determine the fair value price that the Trust might reasonably expect to receive from the current sale of that asset or liability in an arm's-length transaction on the date on which the asset or liability is being valued consistent with ''Relevant Transactions''.[18]

Indicative Trust Value

In order to provide updated information relating to the Trust for use by Shareholders and market professionals, the Sponsor will engage an independent calculator to calculate an updated Indicative Trust Value (''ITV'').[19] The ITV will be calculated by using the prior day's closing NAV per Share of the Trust as a base and will be updated throughout the regular market session of 9:30 a.m. E.T. to 4:00 p.m. E.T. (the ''Regular Market Session'') to reflect changes in the value of the Trust's holdings during the trading day. For purposes of calculating the ITV, the Trust's spot bitcoin and ether holdings will be priced using a real time version of the Index, the Nasdaq Crypto US Index (''NCIUS'').[20]

The ITV will be disseminated on a per Share basis every 15 seconds during the Exchange's Regular Market Session and be widely disseminated by one or more major market data vendors during the Regular Market Session.[21]

Background—Spot Crypto Asset ETFs

The Commission has recently permitted exchange-traded products (''ETPs'') to directly hold bitcoin and ether. The Exchange and the Sponsor applaud the Commission as these approvals mark a significant step forward in offering U.S. investors and traders transparent, exchange-listed products for expressing views on crypto assets.

The Exchange and the Sponsor believe that the proposed rule change does not introduce any elements that the Commission has not previously approved, and therefore, it will not impose any inappropriate consequences on the market. Although using previously approved crypto assets, the Trust employs a new strategy of investing in the crypto asset market, as it will hold both spot bitcoin and spot ether in accordance with the Index methodology, and its approval will add value to the U.S. market.

The Trust will hold spot bitcoin and spot ether, commodities for which proposals to list and trade ETPs have recently been approved by the Commission. As the Trust will invest in crypto assets for which proposals to list and trade ETPs have been recently approved by the Commission, and because the Exchange will utilize the same surveillance mechanisms that were deployed pursuant to the proposals to list and trade those approved ETPs, the Sponsor and the Exchange understand that the proposed rule change does not introduce any novel regulatory issues and believe that the Commission should approve this proposal.

Spot Bitcoin ETF

On January 10, 2024, the Commission issued an order granting approval for proposals to list bitcoin-based commodity trust and bitcoin-based trust units (''Spot Bitcoin ETPs'').[22] In considering the Spot Bitcoin ETPs, the Commission determined in the Spot Bitcoin ETP Approval Order that the Exchanges' comprehensive surveillance-sharing agreement with the Chicago Mercantile Exchange (''CME'')—a U.S. regulated market whose bitcoin futures market is consistently highly correlated to spot bitcoin—could be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the proposals. The exchanges have comprehensive surveillance-sharing agreements with the CME via their common membership in the Intermarket Surveillance Group (''ISG''), which facilitates the sharing of information that is available to the CME through its surveillance of its markets.

After reviewing the proposals for the Spot Bitcoin ETPs, the Commission found that they were consistent with the Act, including with section 6(b)(5), and rules and regulations thereunder applicable to a national securities exchange, including the Exchange. The abovementioned section 6(b)(5) requires, among other things, that the investment product is designed to

[17] *See* FASB (Financial Accounting Standards Board) Accounting standards codification (ASC) 820–10. For financial reporting purposes only, the Trustee has adopted a valuation policy that outlines the methodology for valuing the Trust's assets. The policy also outlines the methodology for determining the principal market (or in the absence of a principal market, the most advantageous market) in accordance with FASB ASC 820–10.

[18] A ''Relevant Transaction'' is any crypto asset versus U.S. dollar spot trade that occurs during the observation window between 3:00 p.m. and 4:00 p.m. ET on a ''Core Crypto Platform'' in the BTC/USD pair that is reported and disseminated by a Core Crypto Platform through its publicly available application programming interface and observed by the index administrator.

[19] The ITV is based on the prior day's closing NAV per Share and updated to reflect changes in the Trust's holdings value during the trading day.

[20] The Nasdaq Crypto US Index (Index symbol NCIUS) is calculated every second throughout a 24-hour trading day, seven days per week, using published, real-time bid and ask quotes for Index constituents observed on Core Crypto Platforms through the publicly available API. *See https://indexes.nasdaqomx.com/Index/Overview/NCIUS.*

[21] Several major market data vendors display and/or make widely available ITVs taken from the Consolidated Tape Association (''CTA'') or other data feeds.

[22] *See* Exchange Act Release No. 99306 (January 10, 2024), 89 FR 3008 (January 17, 2024) (Self-Regulatory Organizations; NYSE Arca, Inc.; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, To List and Trade Bitcoin-Based Commodity-Based Trust Shares and Trust Units) (the ''Spot Bitcoin ETP Approval Order'').

''prevent fraudulent and manipulative acts and practices'' and, ''in general, to protect investors and the public interest;'' and with section 11A(a)(1)(C)(iii) of the Act, which sets forth Congress' finding that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities.

The Commission's analysis [23] in the Spot Bitcoin ETP Approval Order also demonstrated that prices typically move in close, though not perfect, correlation [24] between the spot bitcoin market and the CME bitcoin futures market. Therefore, the Commission concluded that fraud or manipulation affecting spot bitcoin market prices would likely also impact CME bitcoin futures prices. Since the CME's surveillance can help detect these impacts on CME bitcoin futures prices, such surveillance can be reasonably expected to assist in monitoring for fraudulent and manipulative acts and practices in the specific context of the Spot Bitcoin ETPs proposals.

In the Spot Bitcoin ETP Approval Order, the Commission also stated that the Spot Bitcoin ETP proposals, similar to other spot commodity ETPs it has approved, are reasonably designed to ensure fair disclosure of information necessary for accurate share pricing, to prevent trading in the absence of sufficient transparency, to protect material nonpublic information related to the products' portfolios, and to maintain fair and orderly markets for the shares of the Spot Bitcoin ETPs.

Spot Ether ETF

A few months after the issuance of its Spot Bitcoin ETP Approval Order, the Commission issued on May 23, 2024 an approval order for proposals to list ether-based trusts (''Spot Ether ETPs'').[25] The Commission also concluded in the Spot Ether ETP Approval Order that the exchanges' comprehensive surveillance-sharing agreement with the CME, which is consistently highly correlated with spot ether, can be reasonably expected to prevent fraudulent and manipulative acts and practices within the context of the mentioned proposals.

As in the case of the Spot Bitcoin ETP Approval Order, in the Spot Ether ETP Approval Order, the Commission determined that the exchanges' comprehensive surveillance-sharing agreement with the CME ether futures market, which exhibits a consistent high correlation with spot ether, is likely to effectively deter fraudulent and manipulative practices within the framework of the Spot Ether ETP proposals. Therefore, based on similar reasons to the Spot Bitcoin ETP Approval, the Commission approved the Spot Ether ETPs, stating that the proposals to list and trade Spot Ether ETPs were also consistent with the requirements of the Act and the regulations applicable to a national securities exchange, in particular with section 6(b)(5) and section 11A(a)(1)(C)(iii) of the Act.

Availability of Information

The website for the Trust, which will be publicly accessible at no charge, will contain the following information: (a) the prior Business Day's NAV per Share; (b) the prior Business Day's Nasdaq official closing price; (c) calculation of the premium or discount of such Nasdaq official closing price against such NAV per Share; (d) data in chart form displaying the frequency distribution of discounts and premiums of the Nasdaq official closing price against the NAV per Share, within appropriate ranges for each of the four previous calendar quarters (or for the life of the Trust, if shorter); (e) the prospectus; and (f) other applicable quantitative information. The Administrator will also disseminate the Trust's holdings on a daily basis on the Trust's website. The NAV per Share for the Trust will be calculated by the Administrator once a day and will be disseminated daily to all market participants at the same time. Quotation and last sale information regarding the Shares will be disseminated through the facilities of the relevant securities information processor.

Also, an estimated value that reflects an estimated ITV will be disseminated. For more information on the ITV, including the calculation methodology, see ''Indicative Trust Value'' above. The ITV disseminated during the Regular Market Session should not be viewed as an actual real time update of the NAV per Share, which will be calculated only once at the end of each trading day. The ITV will be widely disseminated on a per Share basis every 15 seconds during the Regular Market Session by one or more major market data vendors. In addition, the ITV will be available through online information services.

Quotation and last sale information for crypto assets is widely disseminated through a variety of major market data vendors, including Bloomberg and Reuters. Information relating to trading, including price and volume information, is available from major market data vendors and from the platforms on which crypto assets are traded. Depth of book information is also available from crypto platforms. The normal trading hours for the crypto assets platforms are 24 hours per day, 365 days per year.

Information regarding market price and trading volume of the Shares will be continually available on a real-time basis throughout the day on brokers' computer screens and other electronic services. Information regarding the previous day's closing price and trading volume information for the Shares will be published daily in the financial section of newspapers.

Initial and Continued Listing

The Shares will be subject to Nasdaq Rule 5711(d)(vi), which sets forth the initial and continued listing criteria applicable to Commodity-Based Trust Shares. The Exchange will obtain a representation that the Trust's NAV per Share will be calculated daily and will be made available to all market participants at the same time. A minimum of 80,000 Shares, or the equivalent of eight Baskets, will be required to be outstanding at the time of commencement of trading on the Exchange. Upon termination of the Trust, the Shares will be removed from listing.

As required in Nasdaq Rule 5711(d)(viii), the Exchange notes that any registered market maker (''Market Maker'') in the Shares must file with the Exchange, in a manner prescribed by the Exchange, and keep current a list identifying all accounts for trading the underlying commodity, related futures or options on futures, or any other related derivatives, which the registered Market Maker may have or over which it may exercise investment discretion. No registered Market Maker in the

[23] The robustness of the Commission's correlation analysis rests on the pre-requisites of (1) the correlations being calculated with respect to bitcoin futures that trade on the CME, a U.S. market regulated by the CFTC, (2) the lengthy sample period of price returns for both the CME bitcoin futures market and the spot bitcoin market, (3) the frequent intra-day trading data in both the CME bitcoin futures market and the spot bitcoin market over that lengthy sample period, and (4) the consistency of the correlation results throughout the lengthy sample period.

[24] Correlation should not be interpreted as an indicator of a causal relationship or whether one variable leads or lags the other.

[25] *See* Exchange Act Release No. 100224 (May 23, 2024) (Self-Regulatory Organizations; NYSE Arca, Inc.; The Nasdaq Stock Market LLC; Cboe BZX Exchange, Inc.; Order Granting Accelerated Approval of Proposed Rule Changes, as Modified by Amendments Thereto, to List and Trade Shares of Ether-Based Exchange-Traded Products) (the ''Spot Ether ETP Approval Order'').

Shares shall trade in the underlying commodity, related futures or options on futures, or any other related derivatives, in an account in which a registered Market Maker, directly or indirectly, controls trading activities, or has a direct interest in the profits or losses thereof, which has not been reported to the Exchange as required by Nasdaq Rule 5711(d). In addition to the existing obligations under Exchange rules regarding the production of books and records, the registered Market Maker in the Shares shall make available to the Exchange such books, records or other information pertaining to transactions by such entity or any limited partner, officer or approved person thereof, registered or non-registered employee affiliated with such entity for its or their own accounts in the underlying commodity, related futures or options on futures, or any other related derivatives, as may be requested by the Exchange.

The Exchange is able to obtain information regarding trading in the Shares and the underlying bitcoin and ether, or any CME-traded crypto derivatives through members acting as registered Market Makers, in connection with their proprietary or customer trades.

As a general matter, the Exchange has regulatory jurisdiction over its members, and their associated persons. The Exchange also has regulatory jurisdiction over any person or entity controlling a member, as well as a subsidiary or affiliate of a member that is in the securities business. A subsidiary or affiliate of a member organization that does business only in commodities would not be subject to Exchange jurisdiction, but the Exchange could obtain information regarding the activities of such subsidiary or affiliate through surveillance sharing agreements with regulatory or self-regulatory organizations of which such subsidiary or affiliate is a member.

Trading Rules

The Exchange deems the Shares to be equity securities, thus rendering trading in the Shares subject to the Exchange's existing rules governing the trading of equity securities. The Exchange will allow trading in the Shares from 4:00 a.m. to 8:00 p.m. ET. The Exchange has appropriate rules to facilitate transactions in the Shares during all trading sessions. The Shares of the Trust will conform to the initial and continued listing criteria set forth in Nasdaq Rule 5711(d).

Trading Halts

With respect to trading halts, the Exchange may consider all relevant factors in exercising its discretion to halt or suspend trading in the Shares. The Exchange will halt trading in the Shares under the conditions specified in Nasdaq Rules 4120 and 4121, including without limitation the conditions specified in Nasdaq Rule 4120(a)(9) and (10) and the trading pauses under Nasdaq Rules 4120(a)(11) and (12).

Trading may be halted because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include: (1) the extent to which trading is not occurring in the Index Constituents underlying the Shares; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

If the ITV or the value of the Index is not being disseminated as required, the Exchange may halt trading during the day in which the interruption to the dissemination of the ITV or the value of the Index occurs. If the interruption to the dissemination of the ITV or the value of the Index persists past the trading day in which it occurred, the Exchange will halt trading no later than the beginning of the trading day following the interruption.

In addition, if the Exchange becomes aware that the NAV per Share with respect to the Shares is not disseminated to all market participants at the same time, it will halt trading in the Shares until such time as the NAV per Share is available to all market participants.

Surveillance

The Exchange believes that its surveillance procedures are adequate to properly monitor the trading of the Shares on the Exchange during all trading sessions and to deter and detect violations of Exchange rules and the applicable federal securities laws. The surveillance program includes real-time patterns for price and volume movements and post-trade surveillance patterns (*e.g.,* spoofing, marking the close, pinging, phishing). In addition to the Exchange's existing surveillance, a new pattern will be added to surveil for significant deviation in the Shares' price from the underlying asset's price. The Exchange will use the trade data from an external vendor that consolidates the real-time data from multiple crypto assets platforms.

Trading of Shares on the Exchange will be subject to the Exchange's surveillance program for derivative products, as well as cross-market surveillances administered by FINRA, on behalf of the Exchange pursuant to a regulatory services agreement, which are also designed to detect violations of Exchange rules and applicable federal securities laws. The Exchange is responsible for FINRA's performance under this regulatory services agreement.

The Exchange will require the Trust to represent to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements, and, pursuant to its obligations under section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series. In addition, the Exchange also has a general policy prohibiting the distribution of material, non-public information by its employees.

The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares with other markets and other entities that are members of the ISG,[26] and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares from such markets and other entities. The Exchange also may obtain information regarding trading in the Shares and listed crypto asset derivatives via the ISG, from other exchanges who are members or affiliates of the ISG, or with which the Exchange has entered into a comprehensive surveillance sharing agreement.

The Exchange's current trading surveillance focuses on detecting securities trading outside their normal patterns. When such situations are detected, surveillance analysis follows and investigations are opened, where appropriate, to review the behavior of all relevant parties for all relevant trading violations. The Exchange is able to obtain information regarding trading in the Shares, the physical commodities included in, or options, futures or options on futures on, Shares through Equity Trading Permit Holders (''ETP Holders''), in connection with such ETP Holders' proprietary or customer trades which they effect on any relevant market. The Exchange can obtain market surveillance information, including customer identity information, with respect to transactions occurring on the exchanges that are members of the ISG.

[26] For a list of the current members and affiliate members of ISG, see *https://www.isgportal.com/.*

The Exchange represents that these procedures are adequate to properly monitor Exchange trading of the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

Information Circular

Prior to the commencement of trading, the Exchange will inform its members in an information circular (''Information Circular'') of the special characteristics and risks associated with trading the Shares. Specifically, the Information Circular will discuss the following: (1) the procedures for creations and redemptions of Shares in Baskets (and that Shares are not individually redeemable); (2) Section 10 of Nasdaq General Rule 9, which imposes suitability obligations on Nasdaq members with respect to recommending transactions in the Shares to customers; (3) how information regarding the ITV is disseminated; (4) the risks involved in trading the Shares during the pre-market and postmarket sessions when an updated ITV will not be calculated or publicly disseminated; (5) the requirement that members deliver a prospectus to investors purchasing newly issued Shares prior to or concurrently with the confirmation of a transaction; and (6) trading information. The Information Circular will also discuss any exemptive, no action and interpretive relief granted by the Commission from any rules under the Act.

The Information Circular will also reference the fact that there is no regulated source of last sale information regarding crypto assets, that the Commission has no jurisdiction over the trading of the Index Constituents as a commodity.

Additionally, the Information Circular will reference that the Trust is subject to various fees and expenses described in the Registration Statement. The Information Circular will also disclose the trading hours of the Shares. The Information Circular will disclose that information about the Shares will be publicly available on the Trust's website.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5)[27] that an exchange has rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest in that the Shares will be listed and traded on the Exchange pursuant to the initial and continued listing criteria set forth in Nasdaq Rule 5711(d). The Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws. The Exchange or FINRA, on behalf of the Exchange, or both, will communicate as needed regarding trading in the Shares and the Trust's holdings with other markets and other entities that are members of the ISG, and the Exchange or FINRA, on behalf of the Exchange, or both, may obtain trading information regarding trading in the Shares and the Trust's holdings from such markets and other entities. In addition, the Exchange may obtain information regarding trading in the Shares and the Trust's holdings from markets and other entities that are members of ISG or with which the Exchange has in place a CSSA. The Exchange is also able to obtain information regarding trading in the Shares and the Trust's holdings through ETP Holders, in connection with such ETP Holders' proprietary or customer trades which they effect through ETP Holders on any relevant market. The Exchange will require the Trust to represent to the Exchange that it will advise the Exchange of any failure by the Trust to comply with the continued listing requirements, and, pursuant to its obligations under section 19(g)(1) of the Exchange Act, the Exchange will surveil for compliance with the continued listing requirements. If the Trust is not in compliance with the applicable listing requirements, the Exchange will commence delisting procedures under the Nasdaq 5800 Series.

Trading in Shares of the Trust will be halted if the circuit breaker parameters have been reached or because of market conditions or for reasons that, in the view of the Exchange, make trading in the Shares inadvisable. These may include unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market.

The proposed rule change is designed to perfect the mechanism of a free and open market and, in general, to protect investors and the public interest in that it will facilitate the listing and trading of Shares that will enhance competition among market participants, to the benefit of investors and the marketplace. As noted above, the Exchange has in place surveillance procedures that are adequate to properly monitor trading in the Shares in all trading sessions and to deter and detect violations of Exchange rules and applicable federal securities laws.

The Commission has approved numerous spot-based crypto asset products to be listed on U.S. national securities exchanges.[28] In order for any proposed rule change from an exchange to be approved, the Commission must determine that, among other things, the proposal is consistent with the requirements of section 6(b)(5) of the Act, specifically including: (i) the requirement that a national securities exchange's rules are designed to prevent fraudulent and manipulative acts and practices; and (ii) the requirement that an exchange proposal be designed, in general, to protect investors and the public interest. The Exchange believes that this proposal is consistent with the requirements of section 6(b)(5) of the Act because this filing sufficiently demonstrates that the applicable standard that has previously been articulated by the Commission with respect to proposals to list and trade units of commodity-based trusts has been met as outlined below.

To list and trade the commodity-trust ETPs, the Commission requires a comprehensive surveillance-sharing agreement with a regulated market of significant size. The Exchange and CME are members of the ISG, meeting this requirement. The remaining issue is whether the CME constitutes a regulated market of significant size in relation to bitcoin futures and ether futures in the context of the proposed ETP, which the Exchange believes it does. The Commission has provided an illustrative definition for ''market of significant size'' to include a market (or group of markets) as to which (a) there is a reasonable likelihood that a person attempting to manipulate the ETP would also have to trade on that market to successfully manipulate the ETP, so that a surveillance-sharing agreement would assist in detecting and deterring misconduct, and (b) it is unlikely that trading in the ETP would be the predominant influence on prices in that market.[29] In the Spot Bitcoin ETP

[27] 15 U.S.C. 78f(b)(5).

[28] *See* ''Background—Spot Crypto Asset ETFs'' above.

[29] *See* Order Setting Aside Action by Delegated Authority and Disapproving a Proposed Rule

Continued

Approval Order and the Spot Ether ETP Approval Order, the Commission concluded that CME was indeed a market of significant size with respect to bitcoin futures and ether futures.

In the Spot Bitcoin ETP Approval Order and the Spot Ether Approval Order, the Commission also concluded that the proposing exchanges' comprehensive surveillance-sharing agreement with the CME—a U.S. regulated market—whose bitcoin and ether futures market is consistently highly correlated to spot bitcoin and spot ether, respectively—could be reasonably expected to assist in surveilling for fraudulent and manipulative acts and practices in the specific context of the proposals.

Consequently, this Trust, which invests solely in bitcoin and ether, is similar to these approved products, since its only holdings are bitcoin, ether, and cash. As such, by analogy, in this specific context, the CME can also be considered the market of significant size in relation to bitcoin futures and ether futures. This market of significant size is highly, though not perfectly correlated with the spot bitcoin market and the spot ether market respectively, so that surveillance of the bitcoin futures market and the ether futures market can be reasonably expected to assist in monitoring for fraudulent and manipulative acts and practices in the spot bitcoin market and the spot ether market, respectively.

For all the above reasons, the Exchange believes that the proposed rule change is consistent with the requirements of section 6(b)(5) of the Act.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purpose of the Act. The Exchange notes that the proposed rule change will facilitate the listing and trading of the Shares, which are Commodity-Based Trust Shares and that will enhance competition among market participants, to the benefit of investors and the marketplace.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

No written comments were either solicited or received.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period up to 90 days (i) as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission shall: (a) by order approve or disapprove such proposed rule change, or (b) institute proceedings to determine whether the proposed rule change should be disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–NASDAQ–2024–028 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–NASDAQ–2024–028. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–NASDAQ–2024–028 and should be submitted on or before July 23, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[30]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024–14516 Filed 7–1–24; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–100435; File No. SR–MEMX–2024–25]**

## Self-Regulatory Organizations; MEMX LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend the Exchange's Fee Schedule Regarding Options Market Data Products

June 26, 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 June 14, 2024, MEMX LLC (''MEMX'' or the ''Exchange'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

**I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change**

The Exchange is filing with the Commission a proposed rule change to amend the Market Data section of its fee schedule applicable to its equity options platform (''MEMX Options'') to adopt fees for certain of its market data products, which are currently offered

Change, as Modified by Amendments No. 1 and 2, To List and Trade Shares of the Winklevoss Bitcoin Trust, Securities Exchange Act Release No. 83723 (July 26, 2018), 83 FR 37579, 37594 (Aug. 1, 2018) (SR–BatsBZX–2016–30).

[30] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

free of charge, pursuant to MEMX Rules 15.1(a) and (c). The Exchange proposes to implement the changes to the Fee Schedule pursuant to this proposal immediately. The text of the proposed rule change is provided in Exhibit 5.

**II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change**

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed rule change is to amend the Market Data section of the Exchange's fee schedule applicable to MEMX Options (''MEMX Options Fee Schedule'') to adopt fees for certain of its options market data products which are currently offered free of charge, namely MEMOIR Options Depth and MEMOIR Options Top (collectively, the ''Options Data Feeds''). As set forth below, the Exchange believes that the proposed fees are fair and reasonable and has based its proposal on a detailed cost analysis, as well as other factors including a comparison to competitor pricing. The Exchange is proposing to implement the proposed fees immediately. The Exchange previously filed this proposal on March 28, 2024 (SR–MEMX–2024–11) (the ''Initial Proposal''). On April 15, 2024, the Exchange withdrew the Initial Proposal and replaced it with SR–MEMX–2024–14 (the ''Second Proposal''). Now, the Exchange is withdrawing the Second Proposal and is replacing it with the current filing.

Before setting forth the additional details regarding the proposal as well as the cost analysis conducted by the Exchange, immediately below is a description of the proposed fees.

Proposed Market Data Pricing

MEMX Options offers two separate data feeds to subscribers—MEMOIR Options Depth and MEMOIR Options Top. The Exchange notes that there is no requirement that any subscribing entity (''Firm'') subscribe to a particular Options Data Feed or any Options Data Feed whatsoever, but instead, a Firm may choose to maintain subscriptions to those Options Data Feeds they deem appropriate based on their business model. The proposed fee will not apply differently based upon the size or type of Firm, but rather based upon the subscriptions a Firm has to Options Data Feeds. The proposed pricing for each of the Options Data Feeds is set forth below.

MEMOIR Options Depth

The MEMOIR Options Depth feed is a MEMX-only market data feed that contains depth of book quotations and execution information based on options orders entered in the System.[3] For the receipt of access to the MEMOIR Options Depth feed, the Exchange proposes to charge $1,500 per month. This proposed access fee would be charged to any data recipient that receives a data feed of the MEMOIR Options Depth feed for purposes of internal distribution (*i.e.,* an ''Internal Distributor''), for external redistribution (*i.e.,* an ''External Distributor''), or both. The Exchange proposes to define an Internal Distributor as ''a Distributor that receives an Exchange Data product and then distributes that data to one or more data recipients within the Distributor's own organization,'' [4] and an External Distributor as ''a Distributor that receives an Exchange Data product and then distributes that data to a third party or one or more data recipients outside the Distributor's own organization.'' [5] The proposed access fee will be charged only once per month per Firm regardless of whether the Firm uses the MEMOIR Options Depth feed for internal distribution, external distribution, or both.[6]

MEMOIR Options Top

The MEMOIR Options Top feed is a MEMX-only market data feed that contains top of book quotations and executions based on options orders entered into the System.[7] For the receipt of access to the MEMOIR Options Top feed, the Exchange proposes to charge $750 per month. This proposed access fee would be charged to any data recipient that receives a data feed of the MEMOIR Options Top feed for purposes of internal distribution (*i.e.,* an Internal Distributor), external redistribution (*i.e.,* an External Distributor), or both. The proposed access fee for internal and external distribution will be charged only once per month per Firm regardless of whether the Firm uses the MEMOIR Options Top feed for internal distribution, external distribution, or both.

Billing Process

The Exchange proposes to bill for the Options Data Feeds in the same manner as it does for the market data products it provides for its equities Exchange, (the ''Equities Data Feeds''), and to make this clear on the Fee Schedule. Specifically, the Fee Schedule would state that ''[f]ees for Market Data products are assessed based on each active product at the close of business on the first day of each month,'' and that ''[i]f a product is cancelled by a subscriber's submission of a written request or via the MEMX User Portal prior to such fee being assessed, then the subscriber will not be obligated to pay the applicable product fee. MEMX does not return pro rated fees if a product is not used for an entire month.'' The Exchange believes that this billing methodology has been efficient with respect to the Equities Data Feeds and is well understood by market participants.

Additional Discussion—Background

The Exchange launched MEMX Options on September 27, 2023. As a new entrant in the equity options trading space, MEMX did not begin charging fees for options market data until April 1, 2024. The objective of this approach was to eliminate any fee-based barriers for Members to join the Exchange, which the Exchange believes was helpful in its ability to attract order flow as a new options exchange. Further, the Exchange did not initially charge for options market data because MEMX believes that any exchange should first deliver meaningful value to Members and other market participants before charging fees for its products and services.

The Exchange also did not begin charging for the Equities Data Feeds until 2022, nearly two years after it launched as a national securities exchange in 2020. In connection with the adoption of fees for the Equities Data Feeds, the Exchange conducted an extensive cost analysis (the ''2022 Cost

[3] *See* MEMX Rule 21.15(b)(1).

[4] *See* Market Data Definitions under the proposed MEMX Options Fee Schedule. The Exchange also proposes to adopt a definition for ''Distributor'', which would mean any entity that receives an Exchange Data product directly from the Exchange or indirectly through another entity and then distributes internally or externally to a third party.

[5] *See* Market Data Definitions under the proposed MEMX Options Fee Schedule.

[6] The proposed definitions of Internal Distributor and External Distributor are the same definitions used in the Exchange's Equities Fee Schedule.

[7] *See* MEMX Rule 21.15(b)(2).

Analysis''),[8] and the Exchange's Initial and Second Proposal to adopt fees for Options Data Feeds stemmed from the same cost analysis, which it reviewed and updated for 2024 (the ''2024 Cost Analysis''). The 2024 Cost Analysis combined costs for providing market data for both its equities and options trading platforms (the ''Exchange Data Feeds'') due to the fact that in general, the Exchange did not add a significant amount of marginal costs for the provision of options market data, and as such, costs associated with the provision of Equities Data Feeds became shared costs for the provision of Options Data Feeds. For example, the Exchange did not hire additional staff specifically to sell or otherwise manage options market data, rather, the existing team absorbed the additional workload. Nevertheless, as discussed more fully below, the Exchange has revised its cost analysis in this proposal by focusing solely on the marginal costs associated with the addition of providing the Options Data Feeds, and allocating those costs according to the same principles utilized in the 2024 Cost Analysis (the ''Options Market Data Cost Analysis''). Pursuant to the Options Market Data Analysis, the Exchange calculated the total marginal costs for providing the Options Data Feeds in 2024 at approximately $307,001. In order to establish fees that are designed to recover the marginal costs of providing the Options Data Feeds with a reasonable profit margin, the Exchange is proposing to modify its Fee Schedule, as described above. In addition to the Options Market Data Cost Analysis, described below, the Exchange believes that its proposed approach to market data fees is in line with that of its competitors.

Additional Discussion—Comparison With Other Exchanges

The proposed fee structure for the Options Data Feeds is not novel but is instead comparable to the fee structure currently in place for the options exchanges operated by MIAX, in particular, MIAX Pearl Options (''MIAX Pearl''),[9] and the options exchanges operated by Nasdaq, in particular, Nasdaq BX Options (''BX Options'').[10] The Exchange is proposing fees for its Options Data Feeds that are similar in structure to MIAX Pearl and BX Options and rates that are equal to, or lower than, than the rates data recipients pay for comparable data feeds from those exchanges, in a more simplified fashion.[11] The Exchange notes that other competitors maintain fees applicable to options market data that are considerably higher than those proposed by the Exchange, including Cboe BZX Options (''BZX Options''), NYSE Arca Options and NYSE American Options.[12] However, the Exchange has focused its comparison on MIAX Pearl and BX Options because their similar market data products are offered at prices lower than several other incumbent exchanges, which is a similar approach to that proposed by the Exchange.[13]

The fees for the MIAX Pearl Liquidity Feed—which like the MEMOIR Options Depth feed, includes top of book, depth of book, trades, and administrative messages—consist of an internal distributor access fee of $1,250 per month and an external distributor access fee of $1,500 per month. As such, the Exchange's proposed rate for all uses of $1,500 per month is equal to what MIAX Pearl charges for external distribution, and $250 higher than what it charges for internal distribution only.[14]

The fees for the MIAX Pearl Top of Market Feed—which is the comparable product to MEMOIR Options Top, consist of an internal distributor access fee of $500 per month and an external distributor access fee of $750. Again, the Exchange's proposed rate for all uses of $750 per month is identical to what MIAX Pearl charges for external distribution, and $250 higher than what it charges for internal distribution.

While the Exchange's proposed fee is slightly higher than what MIAX Pearl charges for internal distribution of its similar products, the Exchange believes that the simplicity of a single fee is preferable, specifically by reducing audit risk and simplifying reporting, both for the Exchange and its customers. Further, to the extent MIAX Pearl assesses both fees for both uses, it would cost more overall to receive and provide both internal and external distribution of MIAX Pearl's comparable options data feeds than it does to receive and provide both internal and external distribution of the Exchange's Options Data Feeds.

As an additional cost comparison, the fees for both Nasdaq BX Options Depth of Market Feed (''BX Depth'') and Top of Market Feed (''BX Top'') are $1,500 per month for internal distribution and $2,000 for external distribution, with an added $2,500 fee for a non-Display Enterprise License.[15] While one distributor fee allows access to both BX Top and BX Depth, (for example, $1,500 per month would allow a BX Options customer internal distribution of both BX Top and BX Depth) if a BX Options Customer wanted the same access provided under the Exchange's proposed fees, (*i.e.,* for all uses) it would need to pay an additional $2,000 for external distribution and $2,500 per

[8] *See* Securities Exchange Act Release No. 97130 (March 13, 2023), 88 FR 16491 (March 17, 2023) (SR–MEMX–2023–04).

[9] See MIAX Pearl Options Fee Schedule, available at: *https://www.miaxglobal.com/markets/us-options/pearl-options/fees* (the ''MIAX Pearl Fee Schedule'').

[10] See the Nasdaq BX Options Fee Schedule, available at: *https://listingcenter.nasdaq.com/rulebook/bx/rules/bx-options-7.*

[11] As noted below, based on its review of MIAX Pearl's Fee Schedule, the Exchange believes that MIAX Pearl charges separate fees for Internal and External Distribution of its options data feeds, and while its External Distribution fees are identical to the Exchange's proposed flat fee for all uses for both comparable products, its Internal Distribution Fees are slightly lower than what the Exchange is proposing for access to the Exchange's Options Data Feeds. Nevertheless, given that the Exchange allows both Internal and External Distribution for a single fee for a single data feed, the Exchange believes its proposed fees remain comparable and competitive with MIAX Pearl.

[12] Fees for BZX Options Depth, which is the comparable product to MEMOIR Options Depth, are $3,000 for internal distribution and $2,000 for external distribution compared to the Exchange's proposed fee of $1,500 for all uses. In addition, BZX Options charges professional user fees of $30 per month and non-professional user fees of $1.00 per month for each entity to which it distributes the feed (alternatively, it offers distributors an option to purchase a monthly Enterprise Fee of $3,500 to distribute to an unlimited number of users), which the Exchange is not proposing to charge. Fees for BZX Options Top, which is the comparable product to MEMOIR Options Top, are $3,000 for internal distribution, $2,000 for external distribution, with Professional User Fees of $5 per month, Non-Professional Fees of $0.10 per month per user, or an Enterprise Fee ranging anywhere from $20,000 to $60,000 per month depending on the number of users to which the distributer plans to distribute the feed. Again, the Exchange is not proposing any additional User Fees for MEMOIR Options Top, but rather, a flat fee of $750 for all uses. *See* the BZX Options Fee Schedule, available at: *https://www.cboe.com/us/options/membership/fee_schedule/bzx/.* Fees for NYSE Arca Options Deep and NYSE American Options Deep, which are the comparable products to MEMOIR Options Depth, are $3,000 for access (internal use) and $2,000 for redistribution (external distribution), and $5,000 for non-display use, compared to the Exchange's proposed fee of $1,500 for all uses. NYSE Arca Options and NYSE American Options also charge professional user fees of $50 per User, and Non-Professional User Fees of $1.00 per user, capped at $5,000 per month. Again, the Exchange does not require any counting of users and has instead proposed a flat fee of $1,500 for all uses. Fees for the NYSE Arca Options Top and NYSE American Options Top, which are the comparable products to MEMOIR Options Top are the same as above ($3,000 for internal, $2,000 for external and $5,000 for non-display, with the additional Professional and Non-Professional User Fees), compared to the Exchange's proposed fee of $750 for all uses. *See* NYSE Proprietary Market Data Pricing Guide, available at: *https://www.nyse.com/publicdocs/nyse/data/NYSE_Market_Data_Pricing.pdf.*

[13] *See supra* notes 9–10.

[14] *See* MIAX Pearl Options Fee Schedule, *supra* note 9.

[15] *See* Nasdaq BX Options Fee Schedule, *supra* note 10.

month for a non-display enterprise license fee. In addition, BX Options charges monthly per subscriber fees for professional or non-professional use [16] which the Exchange will not charge for its similar market data products.

Additional Discussion—Options Market Data Cost Analysis

In general, the Exchange believes that exchanges, in setting fees of all types, should meet very high standards of transparency to demonstrate why each new fee or fee increase meets the Exchange Act requirements that fees be reasonable, equitably allocated, not unfairly discriminatory, and not create an undue burden on competition among members and markets. In particular, the Exchange believes that each exchange should take extra care to be able to demonstrate that these fees are based on its costs and reasonable business needs. Accordingly, in proposing to charge fees for Options Data Feeds, the Exchange has sought to be especially diligent in assessing those fees in a transparent way against its own aggregate costs of providing the related service, and also carefully and transparently assessing the impact on Members—both generally and in relation to other Members, *i.e.,* to assure the fee will not create a financial burden on any participant and will not have an undue impact in particular on smaller Members and competition among Members in general. The Exchange does not believe it needs to otherwise address questions about market competition in the context of this filing because the proposed fees are so clearly consistent with the Act based on its Options Market Data Cost Analysis. The Exchange also believes that this level of diligence and transparency is called for by the requirements of section 19(b)(1) under the Act,[17] and Rule 19b–4 thereunder,[18] with respect to the types of information self-regulatory organizations (''SROs'') should provide when filing fee changes, and section 6(b) of the Act,[19] which requires, among other things, that exchange fees be reasonable and equitably allocated,[20] not designed to permit unfair discrimination,[21] and that they not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act.[22] This rule change proposal addresses those requirements, and the analysis and data in this section are designed to clearly and comprehensively show how they are met.[23]

As noted above, MEMX recently conducted a study of its aggregate costs to produce the Exchange Data Feeds—the 2024 Cost Analysis, and it used the 2024 Cost Analysis as the foundation of the Options Market Data Cost Analysis, which ultimately went a step further in subtracting the marginal costs associated with the provision of the Options Data Feeds from the total aggregate costs originally allocated towards the provision of the Exchange Data Feeds (*i.e.,* both the Equities and Options Data Feeds) and allocating those marginal costs towards the provision of the Options Data Feeds.

Prior to discussing how the Exchange allocated applicable costs under the Options Market Data Cost Analysis, the Exchange believes it is first necessary to set forth its process in conducting the 2024 Cost Analysis. The 2024 Cost Analysis required a detailed analysis of MEMX's aggregate baseline costs, including a determination and allocation of costs for core services provided by the Exchange—transaction execution, market data, membership services and trading permits, regulatory services, physical connectivity, and application sessions (which provide order entry, cancellation and modification functionality, risk functionality, ability to receive drop copies, and other functionality). MEMX separately divided its costs between those costs necessary to deliver each of these core services, including infrastructure, software, human resources (*i.e.,* personnel), and certain general and administrative expenses (''cost drivers''). Next, MEMX adopted an allocation methodology with various principles to guide how much of a particular cost should be allocated to each core service. For instance, fixed costs that are not driven by client activity (*e.g.,* message rates), such as data center costs, were allocated more heavily to the provision of physical connectivity (80%), with smaller allocations to logical ports (11%), and the remainder to the provision of transaction execution, regulatory services, and market data services (9%). The allocation methodology was decided through conversations with senior management familiar with each area of the Exchange's operations. After adopting this allocation methodology, the Exchange then applied an estimated allocation of each cost driver to each core service, resulting in the cost allocations described below.

By allocating segmented costs to each core service, MEMX was able to estimate by core service the potential margin it might earn based on different fee models. The Exchange notes that as a non-listing venue it has four primary sources of revenue that it can potentially use to fund its operations: transaction fees, fees for connectivity services, membership and regulatory fees, and market data fees. Accordingly, the Exchange generally must cover its expenses from these four primary sources of revenue.

Through the Exchange's extensive 2024 Cost Analysis, the Exchange analyzed every expense item in the Exchange's general expense ledger to determine whether each such expense relates to the provision of the Exchange Data Feeds, and, if such expense did so relate, what portion (or percentage) of such expense actually supports the provision of the Exchange Data Feeds, and thus bears a relationship that is, ''in nature and closeness,'' directly related to the Exchange Data Feeds. Based on its analysis, MEMX calculated its aggregate annual costs for providing the Exchange Data Feeds at $3,683,375.

The following chart details the individual line-item (annual) costs considered by MEMX to be related to offering the Exchange Data Feeds to its Members and other customers as well as a percentage of the Exchange's overall costs that such costs represent for such area (*e.g.,* as set forth below, the Exchange allocated approximately 8% of its overall Human Resources cost to offering Exchange Data Feeds).

| Cost driver | Costs | % of all |
|---|---|---|
| Human Resources | $2,606,282 | 8 |

[16] *Id.*

[17] 15 U.S.C. 78s(b)(1).

[18] 17 CFR 240.19b–4.

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78f(b)(4).

[21] 15 U.S.C. 78f(b)(5).

[22] 15 U.S.C. 78f(b)(8).

[23] In 2019, Commission staff published guidance suggesting the types of information that SROs may use to demonstrate that their fee filings comply with the standards of the Exchange Act (''Fee Guidance''). While MEMX understands that the Fee Guidance does not create new legal obligations on SROs, the Fee Guidance is consistent with MEMX's view about the type and level of transparency that exchanges should meet to demonstrate compliance with their existing obligations when they seek to charge new fees. *See* Staff Guidance on SRO Rule Filings Relating to Fees (May 21, 2019) available at *https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees.*

| Cost driver | Costs | % of all |
|---|---|---|
| Data Center | 69,340 | 2 |
| Technology (Hardware, Software Licenses, etc.) | 287,141 | 7 |
| Depreciation | 397,471 | 5 |
| Allocated Shared Expenses | 323,141 | 4 |
| Total | 3,683,375 | 5.8 |

Options Market Data Cost Analysis

As noted above, the 2024 Cost Analysis estimated aggregate annual costs for providing the Exchange Data Feeds at $3,683,375. Based on the limited number of additional resources specifically devoted to providing and administering the Options Data Feeds, the Exchange determined it was appropriate to conduct an allocation of only marginal costs related to the provision of the Options Data Feeds. In conducting this analysis, the Exchange adopted an allocation model for four of the five categories (all but Human Resources, as described more fully below) that was proportionally based upon the number of products sold in equities and options, and given the fact that the Exchange offers more data feeds and charges for Professional and Non-Professional User Fees in equities, the resulting allocation was 95.1% towards equities, and 4.9% towards options. The following chart details the individual line-item costs considered by MEMX to be related to offering the Options Data Feeds to its Members and other customers as a well as the percentage of the Exchange's overall Exchange Data Feed costs that such costs represent for such area (*e.g.,* as set for the below, the Exchange allocated approximately 9.8% of the Human Resources costs allocated to the provision of the Exchange Data Feeds to the Options Data Feeds, or $254,331 annually).[24]

| Cost driver | Costs | % of market data total |
|---|---|---|
| Human Resources | $254,331 | 9.8 |
| Data Center | 3,391 | 4.9 |
| Technology (Hardware, Software Licenses, etc.) | 14,041 | 4.9 |
| Depreciation | 19,436 | 4.9 |
| Allocated Shared Expenses | 15,802 | 4.9 |
| Total | 307,001 | |

Human Resources

In allocating personnel (Human Resources) costs, the Exchange considered the amount of employee time for employees whose functions include directly providing services necessary to offer the Options Data Feeds, including performance thereof, as well as personnel with ancillary functions related to establishing and providing such services (such as information security and finance personnel). The Exchange notes that it has fewer than 100 employees and each department leader has direct knowledge of the time spent by each employee with respect to the various tasks necessary to operate the Exchange. The estimates of Human Resources cost were therefore determined by consulting with such department leaders, determining which employees are involved in tasks related to providing the Options Data Feeds, and confirming that the proposed allocation was reasonable based on an understanding of the percentage of their time such employees devote to tasks related to providing the Options Data Feeds. The Human Resources cost was calculated using a blended rate of compensation reflecting salary, equity and bonus compensation, benefits, payroll taxes, and 401(k) matching contributions. The results of that review found that of the original Human Resources cost originally allocated towards the provision of the Exchange Data Feeds, 9.8%, or $254,331, should be allocated towards the provision of Options Market Data. The Exchange believes that this allocation is reasonable given the limited amount of additional employee time that it takes to provide and administer the Options Data Feeds as compared to the Equities Data Feeds.

Data Center

Data Center costs includes an allocation of the costs the Exchange incurs to provide the Exchange Data Feeds in the third-party data centers where the Exchange maintains its equipment as well as related costs (the Exchange does not own the Primary Data Center or the Secondary Data Center, but instead, leases space in data centers operated by third parties). Based on the allocation model utilized in the Options Market Data Cost Analysis described above, the Exchange allocated $3,391 of its Data Center costs (*i.e.,* 4.9% of the costs allocated towards the Exchange Data Feeds in the 2024 Cost Analysis) towards the provision of the Options Data Feeds.

Technology

The Technology category includes the Exchange's network infrastructure, other hardware, software, and software licenses used to operate and monitor physical assets necessary to provide the Exchange Data Feeds. Of note, certain of these costs were included in separate Network Infrastructure and Hardware and Software Licenses categories in the 2022 Cost Analysis; however, in order to align more closely with the Exchange's audited financial statements, these costs were combined into the broader Technology category. Based on the allocation model utilized in the Options Market Data Cost Analysis described above, the Exchange allocated approximately $14,041 of its

[24] It follows that the remaining percentage of costs allocated to the Exchange Data Feeds in the 2024 Cost Analysis were allocated to the provision of the Equities Data feeds in the Options Market Data Cost Analysis. For example, the 2024 Cost Analysis allocated $2,606,282 of Human Resources costs to the provision of the Exchange Data feeds. In the Options Market Data Cost Analysis, the Exchange then allocated $254,331, or 9.8% of that total to the provision of Options Data Feeds, and thus the remaining $2,351,951 (or 90.2%) to the provision of the Equities Data Feeds.

Technology costs to the Options Data Feeds in 2024.

Depreciation

The vast majority of the software the Exchange uses with respect to its operations, including the software used to generate and disseminate the Options Data Feeds has been developed in-house and the cost of such development is depreciated over time. Accordingly, the Exchange included Depreciation costs related to depreciated software used to generate and disseminate the Options Data Feeds. The Exchange also included in the Depreciation costs certain budgeted improvements that the Exchange intends to capitalize and depreciate with respect to the Options Data Feeds in the near-term, as well as the servers used at the Exchange's primary and back-up data centers specifically used for the Options Data Feeds. Based on the allocation model utilized in the Options Market Data Cost Analysis described above, the Exchange allocated approximately $19,346 of its Depreciation costs towards the provision of the Options Data Feeds.

Allocated Shared Expenses

Finally, a limited portion of general shared expenses were allocated to the Options Data Feeds. The costs included in general shared expenses allocated to the Options Data Feeds include office space and office expenses (*e.g.,* occupancy and overhead expenses), utilities, recruiting and training, marketing and advertising costs, professional fees for legal, tax and accounting services (including external and internal audit expenses), and telecommunications costs. The cost of paying individuals to serve on the Exchange's Board of Directors or any committee was not allocated to providing Options Data Feeds. Based on the allocation model utilized in the Options Market Data Cost Analysis described above, the Exchange allocated $15,802 of its Allocated Shared Expenses to the Options Data Feeds in 2024.

Cost Analysis—Additional Discussion

Based on the current number of subscribers to the Options Data Feeds,[25] the Exchange anticipates annual 2024 revenue for Options Data Feeds of $342,000. The proposed fees for the Options Data Feeds are designed to permit the Exchange to cover the marginal costs allocated to providing the Options Data Feeds with a profit margin that the Exchange believes is modest (approximately 10%),[26] which the Exchange believes is fair and reasonable after taking into account the costs related to creating, generating, and disseminating the Options Data Feeds and the fact that the Exchange will need to fund future expenditures (increased costs, improvements, etc.).

The Exchange like other exchanges is, after all, a for-profit business. Accordingly, while the Exchange believes in transparency around costs and potential margins, as well as periodic review of revenues and applicable costs (as discussed below), the Exchange does not believe that these estimates should form the sole basis of whether or not a proposed fee is reasonable or can be adopted. Instead, the Exchange believes that the information should be used solely to confirm that an Exchange is not earning supra-competitive profits, and the Exchange believes its Cost Analysis and related projections demonstrate this fact.

As a general matter, the Exchange believes that its costs will remain relatively similar in future years. It is possible however that such costs will either decrease or increase. To the extent the Exchange sees growth in use of Options Data Feeds it will receive additional revenue to offset future cost increases. However, if use of Options Data Feeds is static or decreases, the Exchange might not realize the revenue that it anticipates or needs in order to cover applicable costs. Accordingly, the Exchange is committing to conduct a one-year review after implementation of these fees. The Exchange expects that it may propose to adjust fees at that time, to increase fees in the event that revenues fail to cover costs with a reasonable profit margin.[27] Similarly, the Exchange expects that it would propose to decrease fees in the event that revenue materially exceeds current projections. In addition, the Exchange will periodically conduct a review to inform its decision making on whether a fee change is appropriate (*e.g.,* to monitor for costs increasing/decreasing or subscribers increasing/decreasing, etc. in ways that suggest the then-current fees are becoming dislocated from the prior cost-based analysis) and expects that it would propose to increase fees in the event that revenues fail to cover its costs and a reasonable margin, or decrease fees in the event that revenue or the profit margin materially exceeds current projections. In the event that the Exchange determines to propose a fee change, the results of a timely review, including an updated cost estimate, will be included in the rule filing proposing the fee change. More generally, the Exchange believes that it is appropriate for an exchange to refresh and update information about its relevant costs and revenues in seeking any future changes to fees, and the Exchange commits to do so.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b)[28] of the Act in general, and furthers the objectives of section 6(b)(4)[29] of the Act, in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities. Additionally, the Exchange believes that the proposed fees are consistent with the objectives of section 6(b)(5)[30] of the Act in that they are designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to a free and open market and national market system, and, in general, to protect investors and the public interest, and, particularly, are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange notes prior to addressing the specific reasons the Exchange believes the proposed fees and fee structure are reasonable, equitably allocated and not unreasonably discriminatory, that the proposed definitions and fee structure described above are consistent with the definitions and fee structure used by most U.S. options exchanges, MIAX Pearl and BX Options in particular. As such, the Exchange believes it is adopting a model that is easily understood by Members and non-Members, most of which also subscribe to market data products from other

[25] In the Initial and Second Filings, the Exchange's revenue projections anticipated a drop in subscriptions once the Exchange began charging for the Options Data Feeds, which did indeed occur. Specifically, of the nineteen (19) customers receiving the Options Data Feeds free of charge, four (4) requested removal once the Exchange began charging in April 2024.

[26] The Exchange calculated this profit margin by dividing the annual projected profit of $34,999 by the annual projected revenue of $342,000 and multiplying by 100.

[27] The Exchange notes that it does not believe that a 10% profit margin is necessarily competitive, and instead that this is likely significantly below the mark-up many businesses place on their products and services.

[28] 15 U.S.C. 78f.

[29] 15 U.S.C. 78f(b)(4).

[30] 15 U.S.C. 78f(b)(5).

exchanges. For this reason, the Exchange believes that the proposed definitions and fee structure described above are consistent with the Act generally, and section 6(b)(5) [31] of the Act in particular.

One of the primary objectives of MEMX is to provide competition and to reduce fixed costs imposed upon the industry. Consistent with this objective, the Exchange believes that this proposal reflects a simple, competitive, reasonable, and equitable pricing structure, with fees that are discounted when compared to comparable data products and services offered by competitors.[32]

Reasonableness

*Overall.* With regard to reasonableness, the Exchange understands that the Commission has traditionally taken a market-based approach to examine whether the SRO making the fee proposal was subject to significant competitive forces in setting the terms of the proposal. The Exchange understands that in general the analysis considers whether the SRO has demonstrated in its filing that (i) there are reasonable substitutes for the product or service; (ii) ''platform'' competition constrains the ability to set the fee; and/or (iii) revenue and cost analysis shows the fee would not result in the SRO taking supra-competitive profits. If the SRO demonstrates that the fee is subject to significant competitive forces, the Exchange understands that in general the analysis will next consider whether there is any substantial countervailing basis to suggest the fee's terms fail to meet one or more standards under the Exchange Act. The Exchange further understands that if the filing fails to demonstrate that the fee is constrained by competitive forces, the SRO must provide a substantial basis, other than competition, to show that it is consistent with the Exchange Act, which may include production of relevant revenue and cost data pertaining to the product or service.

The Exchange has not determined its proposed overall market data fees based on assumptions about market competition, instead relying upon a cost-plus model to determine a reasonable fee structure that is informed by the Exchange's understanding of different uses of the products by different types of participants. In this context, the Exchange believes the proposed fees overall are fair and reasonable as a form of cost recovery plus the possibility of a reasonable return for the Exchange's marginal costs of offering the Options Data Feeds. The Exchange believes the proposed fees are reasonable because they are designed to generate annual revenue to recoup some or all of Exchange's annual marginal costs of providing market data in options with a reasonable profit margin. The Exchange also believes that performing the Options Market Data Cost Analysis utilizing the marginal costs related to the Options Data Feeds is reasonable because as a new entrant in the equity options space, the Exchange simply cannot charge more at this time based on what its competitors charge and what other options are available to market participants for the receipt of options market data. If the Exchange chose to allocate the average cost of providing market data to options and equities via a 50/50 split, then based on its proposed pricing and the revenues projected, the analysis would result in a negative profit margin of 265%. Alternatively, the Exchange would need to significantly increase the fees charged for the Options Data Feeds, which in turn, the Exchange believes would result in customers canceling their access to such Options Data Feeds and potentially participating less on the Exchange. Accordingly, the Exchange believes it is reasonable to seek to recover only the marginal costs associated with the Options Data Feeds in this proposal. As discussed in the Purpose section, the Exchange estimates that the Options Data Feed fees proposed herein will result in annual revenue of approximately $342,000, representing a profit margin of approximately 10% for the provision of Options Market Data. As such, the Exchange believes that this fee methodology is reasonable because it allows the Exchange to recoup some or all of its marginal expenses for providing options market data (with any additional revenue representing no more than what the Exchange believes to be a reasonable rate of return). The Exchange also believes that the proposed fees are reasonable because they are generally less than the fees charged by competing options exchanges for comparable market data products, notwithstanding that the competing exchanges may have different system architectures that may result in different cost structures for the provision of market data.

The Exchange believes the proposed fees for the Options Data Feeds are reasonable when compared to fees for comparable products, such as the MIAX Pearl Top of Market Feed, the MIAX Pearl Liquidity Feed, and the BX Options Top and Depth Feeds, compared to which the Exchange's proposed fees are equivalent or lower, as well as other comparable data feeds priced significantly higher than the Exchange's proposed fees for the Options Data Feeds.[33] Additionally, the Exchange's single flat fee for each of its Options Data Feeds, regardless of use type, offers a more simplistic approach to market data pricing. Specifically with respect to the MEMOIR Options Depth feed, the Exchange believes that the proposed fee for such feed is reasonable because it represents not only the value of the data available from the MEMOIR Options Top feed, which has a lower proposed fee, but also the value of receiving the depth-of-book data on an order-by-order basis. The Exchange believes it is reasonable to have pricing based, in part, upon the amount of information contained in each data feed, which may have additional value to market participants. The MEMOIR Options Top feed, as described above, can be utilized to trade on the Exchange but contains less information than that is available on the MEMOIR Options Depth feed. Thus, the Exchange believes it reasonable for the products to be priced as proposed, with MEMOIR Options Depth having a higher price than MEMOIR Options Top.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the Options Data Feeds are reasonable.

Equitable Allocation

*Overall.* The Exchange believes that its proposed fees are reasonable, fair, and equitable, and not unfairly discriminatory because they are designed to align fees with services provided. The Exchange believes that the proposed fees are equitably allocated because they will apply uniformly to all data recipients that choose to subscribe to the Options Data Feeds. Any Firm that chooses to subscribe to one or both of the Options Data Feeds is subject to the same Fee Schedule, regardless of what type of business they operate, and the decision to subscribe to one or both of the Options Data Feeds is based on objective differences in usage of Options Data Feeds among different Firms, which are still ultimately in the control of any particular Firm. The Exchange believes the proposed pricing between Options Data Feeds is equitably allocated because it is based, in part, upon the amount of information contained in each data feed, which may have additional value to market

[31] 15 U.S.C. 78f(b)(5).

[32] *See supra* note 12.

[33] *Id.*

participants. The MEMOIR Options Top feed, as described above, can be utilized to trade on the Exchange but contains less information than that is available on the MEMOIR Options Depth feed. Thus, the Exchange believes it is an equitable allocation of fees for the products to be priced as proposed, with MEMOIR Options Top having the lower price of the two Options Data Feeds.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the Exchange Data Feeds are equitably allocated.

The Proposed Fees Are Not Unfairly Discriminatory

The Exchange believes the proposed fees for the Options Data Feeds are not unfairly discriminatory because any differences in the application of the fees are based on meaningful distinctions between the feeds themselves.

*Overall.* The Exchange believes that the proposed fees are not unfairly discriminatory because they would apply to all data recipients that choose to subscribe to the same Options Data Feed(s). Any Firm that chooses to subscribe to the Options Data Feeds is subject to the same Fee Schedule, regardless of what type of business they operate. Because the proposed fee for MEMOIR Options Depth is higher, Firms seeking lower cost options may instead choose to receive data through the MEMOIR Options Top feed for a lower cost. Alternatively, Firms can choose to receive data solely from the Options Price Reporting Authority (''OPRA'') for a lower cost. The Exchange notes that Firms can also choose to subscribe to a combination of data feeds for redundancy purposes or to use different feeds for different purposes. In sum, each Firm has the ability to choose the best business solution for itself. The Exchange does not believe it is unfairly discriminatory to base pricing upon the amount of information contained in each data feed, which may have additional value to a market participant. As described above, the MEMOIR Options Top feed can be utilized to trade on the Exchange but contains less information than that is available on the MEMOIR Options Depth feed. Thus, the Exchange believes it is not unfairly discriminatory for the products to be priced as proposed, with MEMOIR Options Top having a lower price than MEMOIR Options Depth.

For all of the foregoing reasons, the Exchange believes that the proposed fees for the Exchange Data Feeds are not unfairly discriminatory.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

In accordance with section 6(b)(8) of the Act,[34] the Exchange does not believe that the proposed rule change would impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

Intra-Market Competition

The Exchange does not believe that the proposed fees for Options Data Feeds place certain market participants at a relative disadvantage to other market participants because, as noted above, the proposed fees are associated with usage of Options Data Feeds by each market participant based on the type of business they operate, and the decision to subscribe to one or both Options Data Feeds is based on objective differences in usage of Options Data Feeds among different Firms, which are still ultimately in the control of any particular Firm, and such fees do not impose a barrier to entry to smaller participants. Accordingly, the proposed fees for Options Data Feeds do not favor certain categories of market participants in a manner that would impose a burden on competition; rather, the allocation of the proposed fees reflects the types of Options Data Feeds consumed by various market participants.

Inter-Market Competition

The Exchange does not believe the proposed fees place an undue burden on competition on other SROs that is not necessary or appropriate. In particular, market participants are not regulatorily required to subscribe to any of the Options Data Feeds, as described above. Additionally, other exchanges have similar market data fees in place for their participants, but with comparable and in many cases higher rates for options market data feeds.[35] The proposed fees are based on actual costs and are designed to enable the Exchange to recoup its applicable costs with the possibility of a reasonable profit on its investment as described in the Purpose and Statutory Basis sections. Competing options exchanges are free to adopt comparable fee structures subject to the SEC rule filing process.

*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.

[34] 15 U.S.C. 78f(b)(8).

[35] *See supra* note 12.

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(ii) of the Act[36] and Rule 19b–4(f)(2)[37] thereunder.

At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission shall institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–MEMX–2024–25 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–MEMX–2024–25. 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

[36] 15 U.S.C. 78s(b)(3)(A)(ii).

[37] 17 CFR 240.19b–4(f)(2).

printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–MEMX–2024–25 and should be submitted on or before July 23, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[38]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024–14517 Filed 7–1–24; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–100438; File No. SR–ISE–2024–12]**

## Self-Regulatory Organizations; Nasdaq ISE, LLC; Order Instituting Proceedings To Determine Whether To Approve or Disapprove a Proposed Rule Change To Adopt Rules To List and Trade FLEX Options

June 26, 2024.

### I. Introduction

On March 11, 2024, Nasdaq ISE, LLC (''ISE'' or the ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt rules that will govern the listing and trading of flexible exchange options (''FLEX Options''). The proposed rule change was published for comment in the **Federal Register** on March 21, 2024.[3] On May 9, 2024, pursuant to section 19(b)(2) of the Act,[4] the Commission designated a longer period within which to approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether to disapprove the proposed rule change.[5] The Commission has received no comment letters on the proposed rule change. The Commission is instituting proceedings pursuant to section 19(b)(2)(B) of the Act[6] to determine whether to approve or disapprove the proposed rule change.

### II. Description of the Proposed Rule Change[7]

The Exchange has proposed to adopt rules in new Options 3A that will govern the listing and trading of FLEX Options on the Exchange's electronic market.[8] The proposed electronic trading of FLEX Options will allow investors to tailor certain contract terms of exchange-listed equity and index options, and, as stated by the Exchange, are designed to provide investors with greater flexibility in selecting the terms of options within the parameters of the Exchange's proposed rules.[9]

The Exchange states in its proposal that it will allow for the trading of FLEX Options on its electronic market in a substantially similar manner as Cboe Exchange, Inc.'s (''Cboe'') electronic trading of FLEX Options[10] with certain intended differences to align its proposal with its current electronic system (''System'')[11] and auction behavior, as well as to provide increased consistency for members trading FLEX Options and non-FLEX Options on the Exchange and to account for differences in the proposed scope and operation of FLEX trading on the Exchange as compared to Cboe FLEX options trading.[12]

The Exchange states that to provide investors with the flexibility to designate certain of the terms of the options, and to accommodate other distinct features of FLEX Options and the way in which they are traded, the Exchange has proposed new rules Options 3A, Sections 1 through 19 that will only be applicable to the trading of FLEX Options.[13] The proposed rules also make clear that unless otherwise provided in Options 3A, the trading of FLEX Options will also be subject to all other Exchange rules applicable to the trading of options on the Exchange.[14] The Exchange states that proposed Options 3A, Section 1(a) setting forth the applicability of Exchange Rules will make clear that unless otherwise provided in proposed Options 3A, the Exchange's existing rules will continue to apply to FLEX Options, and this will provide consistency for Members[15] trading both FLEX Options and non-FLEX Options on the Exchange.[16] Proposed Options 3A, Section 1(b) also contains the definitions that will apply to the proposed FLEX Option rules.[17]

Proposed Options 3A, Section 2 sets forth the trading hours for FLEX Options, which will be the same as the trading hours for corresponding non-FLEX Options, as set forth in Options 3, Section 1, except the Exchange may determine to narrow or otherwise restrict the trading hours for FLEX Options.[18] As such, the Exchange states that the trading hours for FLEX Options would be 9:30 a.m. to 4:00 p.m. Eastern time (''ET''), except for FLEX Options on fund shares, index-linked securities and certain broad based indexes, as each are defined under Exchange rules, that will be able to trade until 4:15 p.m. ET.[19] The Exchange states that specifying the trading hours for FLEX Options in proposed Options 3A, Section 2(a) will provide increased

[38] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 99825 (March 21, 2024), 89 FR 22294 (March 29, 2024) (SR–ISE–2024–12) (Notice of Filing of Proposed Rule Change To Adopt Rules to List and Trade FLEX Options) (''Notice'').

[4] 15 U.S.C. 78s(b)(2).

[5] *See* Securities Exchange Act Release No. 100086, 86 FR 42528 (May 15, 2024). The Commission designated June 27, 2024, as the date by which the Commission shall approve or disapprove, or institute proceedings to determine whether to approve or disapprove, the proposed rule change.

[6] 15 U.S.C. 78s(b)(2)(B).

[7] For a complete description of the Exchange's proposal, *see* the Notice, *supra* note 3.

[8] *See* note 3, *supra.*

[9] *Id.*

[10] Cboe offers both electronic and open outcry FLEX Options. *See* Notice, 89 FR at 22295.

[11] The term ''System'' under the Exchange rules is defined as the electronic system operated by the Exchange that receives and disseminates quotes, executes orders, and reports transactions. *See* Options 1, Section 1(a)(50).

[12] *See* Cboe Rules 4.20–4.22 and 5.70–5.75. As described in more detail in the Notice, the Commission first approved trading of FLEX Options based on the Standard and Poor's Corporation 500 and 100 Stock Indexes on Cboe's predecessor, the Chicago Board Options Exchange, Inc., in February 1993. *See* Notice, 89 FR at 22294, *see also* Securities Exchange Act Release No. 31920 (February 24, 1993), 58 FR 12280 (March 3, 1993) (SR–CBOE–92–17) (Order Approving and Notice of Filing and Order Granting Accelerated Approval to Amendment Nos. 1, 2, 3, and 4 to Proposed Rule Changes by the Chicago Board Options Exchange, Inc., Relating to FLEX Options) (''FLEX Options Approval Order''). In 1996, the Commission approved the trading of additional FLEX Options on specified equity securities. *See* Notice, 89 FR at 22294, *see also* Securities Exchange Act Release No. 36841 (February 14, 1996), 61 FR 6666 (February 21, 1996) (SR–CBOE–95–43) (SR–PSE–95–24) (Order Approving Proposed Rule Changes and Notice of Filing and Order Granting Accelerated Approval of Amendments by the Chicago Board Options Exchange, Inc. and the Pacific Stock Exchange, Inc., Relating to the Listing of Flexible Exchange Options on Specified Equity Securities).

[13] *See* Notice, 89 FR at 22295.

[14] *See* Notice, 89 FR at 22295.

[15] *See* ISE General 1, Section 1(a)(13) (defining ''Member'' as ''an organization that has been approved to exercise trading rights associated with Exchange Rights.'').

[16] *See* Notice, 89 FR at 22314.

[17] *See* Notice, 89 FR at 22295.

[18] *See id.*

[19] *See id.*

clarity that the trading hours for FLEX Options will generally be the same as the trading hours for corresponding non-FLEX Options as set forth in Options 3, Section 1.[20]

As set forth more fully in the Notice, proposed Options 3A, Section 3 provides the classes, permissible series, terms, and fungibility of a FLEX Option on the Exchange.[21] Specifically, the Exchange sets forth provisions that would allow it to authorize for trading a FLEX Option class on any equity security or index if the Exchange may authorize for trading a non-FLEX Option class on that equity security or index, even if the Exchange does not list that non-FLEX Option class.[22] Additionally, the Exchange may approve a FLEX Option series for trading in any such authorized FLEX Option class.[23] However, the following stipulations would apply: (1) the Exchange will only permit trading in a put or call FLEX Option series that does not have the same exercise style, same expiration date, and same exercise price as a non-FLEX Option series on the same underlying security or index that is already available for trading; and (2) a FLEX Order for a FLEX Option series may be submitted on any trading day prior to the expiration date.[24]

Proposed Options 3A, Section 3(c) further specifies the terms that must be included in a FLEX Order: (1) underlying equity security or index, as applicable (the index multiplier for FLEX Index Options is 100; (2) type of option (*i.e.,* put or call); (3) exercise style, which may be American-style or European-style; (4) expiration date, which may be any business day (specified to the day, month, and year) no more than 15 years from the date on which a Member submits a FLEX Order to the System; (5) settlement type for the FLEX Equity Option [25] or FLEX Index Option, as applicable; and (6) exercise price, which may be in increments no smaller than $0.01.[26]

As described in more detail in the notice, the Exchange is also proposing to allow for cash settlement of certain qualifying FLEX Equity Options with an underlying security that is an ETF.[27] The Exchange states that cash-settled FLEX ETF Options will be subject to the same trading rules and procedures that govern the trading of other FLEX Options on the Exchange and that both NYSE American LLC (''NYSE American'') and Cboe allow for cash-settled ETF Options.[28] The Exchange states that introducing cash-settled FLEX ETF Options will increase order flow to the Exchange, increase the variety of options products available for trading, and provide a valuable tool for investors to manage risk.[29] Additionally, the Exchange is proposing to allow for FLEX Index Options to be settled in U.S. dollars, and may be either a.m.-settled (with exercise settlement value determined by reference to the reported level of the index derived from the reported opening prices of the component securities) or p.m.-settled (with exercise settlement value determined by reference to the reported level of the index derived from the reported closing prices of the component securities).[30]

Furthermore, proposed Options 3A, Section 3(d) covers fungibility of FLEX Options and provides that if the Exchange lists for trading a non-FLEX Option series with identical terms as a FLEX Option series, all existing open positions established under the FLEX trading procedures will become fully fungible with transactions in the identical non-FLEX Options series and the FLEX Option would from then on trade under the non-FLEX Option rules and procedures.[31] The Exchange states that it believes these provisions will provide greater transparency around the Exchange's listing standards for FLEX Option classes and FLEX Option series, and remain consistent with the Act by preventing new FLEX Option positions from being opened when a non-FLEX Option with the same terms is listed for trading.[32] However, the Exchange, unlike Cboe, will not permit intraday additions of a non-FLEX Options series with identical terms to that of an already-listed FLEX Options series for the remainder of the trading day.[33] The Exchange notes, in its proposal, that the non-FLEX Options series could be added overnight and begin trading the next trading day at which time all identical FLEX Options would become fully fungible with the non-FLEX Option and any further trading would be under non-FLEX Option trading rules.[34]

As proposed, bids and offers for FLEX Options must be expressed in U.S. dollars and decimals in the minimum increments as set forth in proposed Options 3A, Section 5.[35] Proposed Options 3A, Section 5 provides that the Exchange will determine the minimum increment for bids and offers on FLEX Options on a class-by-class basis, which may not be smaller than $0.01.[36] The Exchange states this requirement will provide clear, transparent language regarding how bids and offers for FLEX Options must be expressed and will provide clarity to market participants regarding how the Exchange will determine the minimum increments for bids and offers on FLEX Options.[37]

As described in more detail in the Notice and in proposed Options 3A, Section 6(a), the Exchange may determine to make the order types and times-in-force, respectively, in Options 3, Section 7 available on a class or System basis for FLEX Orders.[38] This would provide the Exchange with the authority to make certain order types and times-in-force available on a class or System basis for FLEX Options, similar to its ability to do so for non-FLEX Options pursuant to Options 3, Section 7.[39] Additionally, the following order and quote protocols will be available for FLEX Orders, FLEX auction notifications, and FLEX auction responses: Financial Information

[20] *See* Notice, 89 FR at 22314.

[21] *See* Notice, 89 FR at 22295–22296.

[22] *See* Notice, 89 FR at 22295. *See also* proposed Options 3A, Section 3(a).

[23] *See* Notice, 89 FR at 22295. *See also* proposed Options 3A, Section 3(b).

[24] *See* Notice, 89 FR at 22295. *See also* proposed Options 3A, Section 3(b). The Exchange also clarifies that FLEX Options series are not pre-established. *See* Notice, 89 FR at 22295.

[25] As proposed, FLEX Equity Options can only be physically settled except for a small subset of FLEX Equity Options with an underlying security that is an exchange trade fund (''ETF'') that meets certain criteria and can also be cash settled. *See* proposed Options 3A, Section 3(c)(5)(A)(ii). *See also* notes 27–29, *infra* and accompanying text.

[26] *See* Notice, 89 FR at 22295, 22296. *See also* proposed Options 3A, Section 3(c).

[27] *See* Notice, 89 FR at 22296, 22309–22313, and proposed Options 3A, Section 3(c)(5)(A)(ii).

[28] *See* Notice, 89 FR at 22309. *See* NYSE American Rule 903G and Cboe Rule 4.21(b)(5)(A). Proposed Options 3A, Section 3(c)(5)(A)(i) provides that other than as allowed under proposed Options 3A, Section 3(c)(5)(A)(ii) and (iii), FLEX Options are settled with physical delivery of the underlying security.

[29] *See* Notice, 88 FR at 22320.

[30] *See* Notice, 89 FR at 22296 and proposed Options 3A, Section 3(c)(5)(B). The Exchange notes that Cboe recently received approval of a pilot program to list p.m.-settled FLEX Index Options whose exercise settlement value is derived from closing prices on the last trading day prior to expiration that expire on or within two business days of a third Friday-of-the-month expiration day for a non-FLEX Option (''FLEX PM Third Friday Options''), and the Exchange is proposing to do the same. *See also* Securities Exchange Act Release No. 99222 (December 21, 2023), 88 FR 89771 (December 28, 2023) (SR–CBOE–2023–018).

[31] *See* Notice, 89 FR at 22296. *See also* proposed Options 3A, Section 3(d).

[32] *See* Notice, 89 FR at 22314.

[33] *See* Notice, 89 FR at 22296. *See also* proposed Options 3A, Section 3(d)(2).

[34] *See* Notice, 89 FR at 22296 n.38.

[35] *See* Notice, 89 FR at 22297. *See also* proposed Options 3A, Section 4.

[36] *See* Notice, 89 FR at 22297. *See also* proposed Options 3A, Section 5.

[37] *See* Notice, 89 FR at 22315.

[38] *See* Notice, 89 FR at 22297. *See also* proposed Options 3A, Section 6(a).

[39] *See* Notice, 89 FR at 22297.

eXchange (''FIX''),[40] Ouch to Trade Options (''OTTO''),[41] and Specialized Quote Feed (''SQF'').[42] The Exchange states that this is consistent with the Exchange's existing authority to designate the availability of order types and times-in-force for non-FLEX Orders and will provide greater transparency as to which existing order and quote protocols would be available for FLEX Orders, FLEX auction notifications, and FLEX auction responses.[43]

Regarding complex orders for FLEX Options, proposed Options 3A, Section 7 provides the Exchange with the ability to make complex orders, including a Complex Options Order, Stock-Options Order, and Stock-Complex Orders available for FLEX trading.[44] The Exchange further notes that it is not proposing to change the complex ratio requirements for non-FLEX complex orders; instead, it is proposing to offer this feature only for complex FLEX Orders so that Members may submit complex FLEX Orders with any ratio.[45] The Exchange states it believes this proposed rule will provide investors with additional transparency regarding order entry requirements for complex FLEX Options.[46] The Exchange also believes that allowing the submission of complex FLEX Orders with any ratio will remove impediments to and perfect the mechanism of a free and open market and benefit investors, because it will provide Members with additional flexibility and precision in their investment strategies.[47]

In lieu of an Opening Process in FLEX Options, Members may begin submitting FLEX Orders into an electronic FLEX Auction pursuant to proposed Options 3A, Section 11(b), a FLEX Price Improvement Mechanism (''FLEX PIM'') pursuant to proposed Options 3A, Section 12, or a FLEX Solicitated Order Mechanism (''FLEX SOM'') pursuant to proposed Options 3A, Section 13 when the underlying security is open for trading.[48] The Exchange states that since FLEX Options are created with terms unique to individual investment objectives, and these individually defined FLEX Options are customized for each investor, the opening process for non-FLEX Options, which is designed in part to determine a single opening price based on orders and quotes from multiple members, may not be useful for FLEX Options investors.[49] The Exchange states that this proposed rule change will provide clarity to market participants regarding the mechanisms available for FLEX trading.[50] The Exchange also believes that allowing Member to begin submitting FLEX Orders once the underlying security is open is appropriate, since the Exchange believes it will benefit investors for FLEX Options trading to not be available until information regarding transaction prices of underlying securities or the values of underlying indexes has begun to be disseminated in the market.[51]

The Exchange proposes to halt trading in a FLEX Option class pursuant to Options 3A, Section 9, and to always halts trading in a FLEX Option class when trading in a non-FLEX Options class with the same underlying equity security or index is halted on the Exchange.[52] The System will not accept a FLEX Order for a FLEX Option series while trading in a FLEX Option class is halted.[53] The Exchange states that proposed Options 3A, Section 9 will provide clarity as to when the Exchange would halt trading in FLEX Options.[54] Proposed Options 3A, Section 9 also provides the Exchange with authority to halt trading in a FLEX Option pursuant to Options 3, Section 9 even if trading in a non-FLEX Option with the same underlying is not halted. The Exchange states while such a situation would be rare there may be unusual situations that would cause it to halt trading in a FLEX Option.[55] Additionally, the Exchange's simple and complex order books will not be available for transactions in FLEX Options, and accordingly, FLEX Options may only be traded on the Exchange by submitting FLEX Orders into a FLEX Electronic Auction, FLEX PIM, and FLEX SOM.[56] The Exchange states that it believes this proposed rule will make clear what mechanisms would and would not be available for FLEX trading: FLEX Orders may only be submitted into a FLEX Auction, FLEX PIM, or FLEX SOM.[57]

As explained in more detail in the Notice, proposed Options 3A, Section 11 specifies the requirements and describes the procedures for submitting FLEX Orders for trading on the Exchange for simple and complex FLEX Orders and for the electronic FLEX Auction.[58] Specifically, a FLEX Option series will only be eligible for trading if a Member submits a FLEX Order for that series into an electronic FLEX Auction or submits the FLEX Order to a FLEX PIM or FLEX SOM Auction.[59] Among other things, the provisions of Options 3A, Section 11 state that the System will not accept a FLEX Order with identical terms as a non-FLEX Option series that is already listed. Similarly, for complex FLEX orders the System will not accept a FLEX complex strategy if any leg in the FLEX Order has identical terms as a non-FLEX Option series that is listed for trading. The Exchange states that the features of this proposed rule are harmonized with the Exchange's current auction functionality for non-FLEX Orders, including PIM and SOM, so the Exchange believes this will promote consistency for Members participating across different auctions on ISE.[60]

Additionally, in proposed Options 3A, Section 12, the Exchange proposes to establish PIM auction functionality for FLEX Options and sets forth the FLEX PIM auction eligibility requirements.[61] Pursuant to proposed Options 3A, Section 12, a Member may electronically submit for execution an

[40] *See* Notice, 89 FR at 22297 n.44 (describing the FIX interface).

[41] *See* Notice, 89 FR at 22297 n.45 (describe the OTTO interface).

[42] *See* Notice, 89 FR at 22297 n.46 (describing the SQF interface).

[43] *See* Notice, 89 FR at 22316.

[44] *See* Notice, 89 FR at 22297. *See also* proposed Options 3A, Section 7.

[45] *See* Notice, 89 FR at 22297. The Exchange also notes that Cboe currently permits complex FLEX Orders to be submitted with any ratio. *See* Cboe US Options Complex Book Process, Section 2.1 (Ratios) and Section 3 (Complex FLEX Order Functionality), available at *https://cdn.cboe.com/resources/membership/US-Options-Complex-Book-Process.pdf.*

[46] *See* Notice, 89 FR at 22316.

[47] *See id.*

[48] *See* Notice, 89 FR at 22297. *See also* proposed Options 3A, Section 8.

[49] *See* Notice, 89 FR at 22298.

[50] *See* Notice, 89 FR at 22316. The Exchange also notes that Cboe likewise does not hold an opening trading rotation in FLEX Options. *See* Cboe Rule 5.71.

[51] *See* Notice, 89 FR at 22316.

[52] *See* Notice, 89 FR at 22298. *See also* proposed Options 3A, Section 9.

[53] *See* Notice, 89 FR at 22298.

[54] *See* Notice, 89 FR at 22316.

[55] *See id.*

[56] *See* Notice, 89 FR at 22298. *See also* proposed Options 3A, Section 10. The Exchange also notes that its proposal is in line with other options exchanges' FLEX rules that do not contemplate the interaction of their respective order books with FLEX transactions.

[57] *See* Notice, 89 FR at 22316.

[58] *See* Notice, 89 FR at 22298. *See also* proposed Options 3A, Section 11. Proposed Options 3A, Section 11(b)(1)(F) also provides that an exposure must be between three seconds to five minutes for electronic FLEX auctions. The Exchange notes that a submitting Member must designate the length of the exposure interval and there is no default setting to the FLEX Auction exposure interval. *See* Notice, 89 FR at 22298 and n.67. FLEX PIM and FLEX SOM have the same auction periods as FLEX Auctions. *See* proposed Options 3A, Section 12(c)(3) (for FLEX PIM) and Section 13(c)(3).

[59] *See* Notice, 89 FR at 22298.

[60] *See* Notice, 89 FR at 22316.

[61] *See* Notice, 89 FR at 22302. The Exchange notes that the proposed FLEX PIM auction eligibility requirements will be substantially similar to Cboe's FLEX AIM eligibility requirements in Cboe Rule 5.73, except for certain intended differences. *See* Cboe Rule 5.73.

order (which may be a simple or complex order) it represents as agent against principal interest or a solicited order(s) (except, if such order is a simple order, for an order for the account of any FLEX Market Maker with an appointment in the applicable FLEX Option class on the Exchange), provided it submits such order for electronic execution into a FLEX PIM auction pursuant to this proposed rule.[62] Similarly, in proposed Options 3A, Section 13, the Exchange proposes to establish SOM auction functionality for FLEX Options.[63] Pursuant to proposed Options 3A, Section 13, a Member may electronically submit for execution an order (which may be a simple or complex order) it represents as agent against a solicited order if it submits such order for electronic execution into a FLEX SOM auction pursuant to this proposed rule.[64] The Exchange states that it believes the proposed FLEX PIM and FLEX SOM Auctions will remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest, by offering market participants with auction mechanisms for the execution of FLEX Options at potentially improved prices.[65] The Exchange also states that it will align certain aspects of the proposed FLEX PIM allocation methodology with its current non-FLEX PIM allocation methodology.[66]

The Exchange proposes to apply the Market Wide Risk Protection and Size Limitation as simple order risk protections[67] and Strategy Protection and Size Limitation as complex order risk protections.[68] The Exchange states that it believes that specifying the risk protections will benefit investors with additional transparency regarding which of the Exchange's risk protections would apply to FLEX trading.[69] The Exchange also believes that applying these risk protections to FLEX Options will protect investors and the public interest, and maintain fair and orderly markets, by providing market participants with more tools to manage their risk.[70] In addition, the Exchange believes that applying these risk protections has the potential to promote just and equitable principles of trade by providing Members with more tools for managing risk facilitates transactions in FLEX Options.[71]

Proposed Options 3A, Section 15, specified the data feeds the Exchange will disseminate auction notifications for simple and complex FLEX Orders.[72] Specifically, auction notifications for simple FLEX orders will be disseminated through the Nasdaq ISE Order Feed,[73] and the Nasdaq ISE Spread Feed for complex FLEX orders.[74] The Exchange states that specifying the data feeds will benefit investors with additional transparency regarding which data fees it will disseminate auction notifications for simple and complex FLEX Orders.[75]

Pursuant to proposed Options 3A, Section 16, which governs FLEX Market Makers on the Exchange, a FLEX Market Maker will automatically receive an appointment in the same FLEX option class(es) as its non-FLEX class appointments selected pursuant to Options 2, Section 3.[76] In addition, each FLEX Market Maker would be required to fulfill all the obligations of a Market Maker under Options 2 and comply with the applicable provisions, except FLEX Market Makers would not need to provide continuous quotes in FLEX Options.[77] The Exchange states that the proposed FLEX Market Maker provisions will provide clarity and transparency as to how FLEX Market Makers are appointed and their related obligations.[78] Additionally, proposed Options 3A, Section 17 sets forth the requirement that, in order to a FLEX Market Maker to effect any transaction in FLEX Options, one or more effective Letter(s) of Guarantee must be issued by a Clearing Member and filed with the Exchange accepting financial responsibility for all FLEX transactions made by the FLEX Market Maker pursuant to Options 6, Section 4.[79] The Exchange states that it believes that the existing Letter of Guarantee continues to protect investors and the public interest because it signifies that the clearing member has accepted financial responsibility for transactions in all options entered into by the Market Maker, which will protect the counterparties of those trades and such protections will flow to other clearing members and ultimately to the OCC as the central counterparty and guarantor of both FLEX and non-FLEX Option transactions.[80]

Proposed Options 3A, Section 18, provides detail on the position limits for FLEX Options, including for FLEX Index Options and for FLEX Equity Options.[81] Additionally, proposed Options 3A, Section 19 details the exercise limits for FLEX Options, which shall be equivalent to the FLEX position limits prescribed in proposed Options 3A, Section 18 above.[82] The Exchange states that it believes these proposed position and exercise limits are reasonably designed to prevent a Member from using FLEX Index Options to evade the position limits applicable to comparable non-FLEX Index Options.[83] Additionally, by establishing the proposed position and exercise limits for FLEX Index Options and, importantly, aggregating such positions in the manner described in the proposal,[84] the Exchange believes that

[62] *See* Notice, 89 FR at 22302.

[63] *See* Notice, 89 FR at 22304. The Exchange notes that the proposed FLEX SOM auction eligibility requirements will be substantially similar to Cboe's FLEX SAM eligibility requirements in Cboe Rule 5.74, except for certain intended differences. *See* Cboe Rule 5.74.

[64] *See* Notice, 89 FR at 22301.

[65] *See* Notice, 89 FR at 22317. The Exchange states that there are certain intended differences with CBOE rules ''to align to current [ ] auction functionality'' in order to allow the proposed FLEX Auction ''to fit more seamlessly into the Exchange's market . . . [f]or instance, the Exchange will not allow prices to be expressed as percentages in [the electronic FLEX Auction] as it does not have this capability today.'' *Id.*

[66] *See* Notice, 89 FR at 22318.

[67] *See* Notice, 89 FR at 22306 and proposed Options 3A, Section 14(a).

[68] *See* Notice, 89 FR at 22307 and proposed Options 3A, Section 14(b). Proposed Options 3A, Section 14(c) provide that the optional risk protections from Options 3, Section 28, are available to FLEX Options also.

[69] *See* Notice, 89 FR at 22319.

[70] *See id.*

[71] *See id.*

[72] *See* Notice, 89 FR at 22307.

[73] *See id.* and proposed Options 3A, Section 15(a).

[74] *See* Notice, 89 FR at 22307 and proposed Options 3A, Section 15(b).

[75] *See* Notice, 89 FR at 22319.

[76] *See* Notice, 89 FR at 22307.

[77] *See id. See also* proposed Options 3A, Section 16(b).

[78] *See* Notice, 89 FR at 22319. The Exchange also notes that these provisions are substantially similar to other options exchanges, notably Cboe and Nasdaq PHLX LLC (''Phlx''). *See* Cboe Rules 3.58(c) and 5.57 and Phlx Options 8, Section 34(d)(1) for materially identical provisions.

[79] *See* Notice, 89 FR at 22307.

[80] *See* Notice, 89 FR at 22319.

[81] *See* Notice, 89 FR at 22307. The Exchange also notes that proposed Options 3A, Section 18 will be based on the FLEX Options position limit rules on Cboe and Phlx.

[82] *See* Notice, 89 FR at 22308. The Exchange also notes that proposed Options 3A, Section 18 will be based on the FLEX Options exercise limit rules on Cboe and Phlx.

[83] *See* Notice, 89 FR at 22319. The Exchange also notes that proposed position and exercise limits are consistent with the rules of other options exchanges that offer FLEX Index Options, and therefore, from their perspective, should raise no novel issues for the Commission.

[84] *See* Notice, 89 FR at 22308. Proposed Options 3A, Section 18(c) governs the aggregation of FLEX positions and provides that for purposes of the position limits and reporting requirements for FLEX Options, FLEX Option positions will not be aggregated with positions in non-FLEX Options other than in specific circumstances. One such circumstances is that commencing at the close of trading two business days prior to the last trading day of the calendar quarter, positions in P.M.-settled FLEX Index Options shall be aggregated with positions in Quarterly Options Series on the same index with the same expiration and shall be

Continued

the position and exercise limit requirements for FLEX Index Options should help to ensure that the trading of FLEX Index Options would not increase the potential for manipulation or market disruption and could help to minimize such incentives.[85]

Further, the Exchange noted that it has analyzed its capacity and represents that it believes the Exchange and the Options Price Reporting Authority (''OPRA'') has the necessary systems capacity to handle the additional message traffic associated with the listing of new series that may result from the introduction of FLEX Options.[86] The Exchange stated, in its proposal, that, it believes any additional traffic that would be generated from the introduction of cash-settled FLEX ETF Options would be manageable, and it expects members will not have a capacity issue as a result of this proposed rule change.[87] In addition, the Exchange stated that it will monitor the trading volume associated with the additional options series listed as a result of the proposed rule change and the effect (if any) of these additional series on market fragmentation and on the capacity of the Exchange's automated systems.[88]

The Exchange also intends to integrate FLEX Option products and their respective symbols into the Exchange's existing surveillance system architecture, within which they will be subject to the relevant surveillance processes.[89] The Exchange stated, in its proposal, that it implements procedures to detect potential market manipulation and unusual activity, and that it also works with other SROs and exchanges on intermarket surveillance related issues.[90]

## III. Proceedings To Determine Whether To Approve or Disapprove SR–ISE–2024–12 and Grounds for Disapproval Under Consideration

The Commission is instituting proceedings pursuant to section 19(b)(2)(B) of the Act [91] to determine whether the proposed rule change should be approved or disapproved. Institution of such proceedings is appropriate at this time in view of the legal and policy issues raised by the proposed rule change. Institution of proceedings does not indicate that the Commission has reached any conclusions with respect to any of the issues involved. Rather, as described below, the Commission seeks and encourages interested persons to provide additional comment on the proposed rule change to inform the Commission's analysis of whether to approve or disapprove the proposed rule change.

Pursuant to section 19(b)(2)(B) of the Act,[92] the Commission is providing notice of the grounds for disapproval under consideration. As described above, the Exchange has proposed to adopt rules that will govern the listing and trading of FLEX Options. The Commission is instituting proceedings to allow for additional analysis of, and input from commenters with respect to, the proposed rule change's consistency with the Act, and in particular, section 6(b)(5) of the Act, which requires, among other things, that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, 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.[93]

Under the Commission's Rules of Practice, the ''burden to demonstrate that a proposed rule change is consistent with the Exchange Act and the rules and regulations issued thereunder . . . is on the self-regulatory organization ['SRO'] that proposed the rule change.'' [94] The description of a proposed rule change, its purpose and operation, its effect, and a legal analysis of its consistency with applicable requirements must all be sufficiently detailed and specific to support an affirmative Commission finding,[95] and any failure of an SRO to provide this information may result in the Commission not having a sufficient basis to make an affirmative finding that a proposed rule change is consistent with the Exchange Act and the applicable rules and regulations.[96]

For these reasons, the Commission believes it is appropriate to institute proceedings pursuant to section 19(b)(2)(B) of the Exchange Act [97] to determine whether the proposal should be approved or disapproved.

## IV. Procedure: Request for Written Comments

The Commission requests that interested persons provide written submissions of their data, views, and arguments with respect to the issues identified above, as well as any other concerns they may have with the proposal. In particular, the Commission invites the written views of interested persons concerning whether the proposed rule change is consistent with section 6(b)(5) of the Act [98] or any other provision of the Act, or the rules and regulations thereunder. Although there do not appear to be any issues relevant to approval or disapproval that would be facilitated by an oral presentation of data, views, and arguments, the Commission will consider, pursuant to Rule 19b–4 under the Act,[99] any request for an opportunity to make an oral presentation.[100]

Interested persons are invited to submit written data, views, and arguments regarding whether the proposed rule change should be approved or disapproved by July 23, 2024. Any person who wishes to file a rebuttal to any other person's

subject to the position limits set forth in Options 4A, Section 6 or Section 7, as applicable. *See* proposed Options 3A, Section 18(c)(1). Additionally, commencing at the close of trading two business days prior to the last trading day of the week, positions in FLEX Index Options that are cash settled shall be aggregated with positions in Short Term Option Series on the same underlying (*e.g.,* same underlying index as a FLEX Index Option) with the same means for determining exercise settlement value (*e.g.,* opening or closing prices of the underlying index) and same expiration, and shall be subject to the position limits set forth in Options 4A, Section 6 or Section 7, as applicable. *See* proposed Options 3A, Section 18(c)(2). Finally, as long as the options positions remain open, positions in FLEX Options that expire on a third Friday-of-the-month expiration day shall be aggregated with positions in non-FLEX Options on the same underlying, and shall be subject to the position limits set forth in Options 4A, Section 6, Options 4A, Section 7, or Options 9, Section 13, as applicable, and the exercise limits set forth in Options 9, Section 15, as applicable. *See* proposed Options 3A, Section 18(c)(3). Cash-settled ETF FLEX Options would be subject to the aggregated with positions in physically settled options on the same underlying ETF for the purpose of calculating the position limits set forth in Options 9, Section 13 and the exercise limits set forth in Options 9, Section 15. *See* proposed Options 3A, Section 18(b)(1)(B). Furthermore, FLEX Index Options on a given index shall not be aggregated with options on any stocks included in the index or with FLEX Index Option positions on another index. *See* proposed Options 3A, Section 18(a).

[85] *See* Notice, 89 FR at 22319.

[86] *See* Notice, 88 FR at 22308.

[87] *See* Notice, 88 FR at 22312.

[88] *See* Notice, 88 FR at 22312.

[89] *See* Notice, 88 FR at 22308.

[90] *See* Notice, 88 FR at 22320.

[91] 15 U.S.C. 78s(b)(2)(B).

[92] *Id.*

[93] 15 U.S.C. 78f(b)(5).

[94] Rule 700(b)(3), Commission Rules of Practice, 17 CFR 201.700(b)(3).

[95] *Id.*

[96] *Id.*

[97] 15 U.S.C. 78s(b)(2)(B).

[98] 15 U.S.C. 78f(b)(5).

[99] 17 CFR 240.19b–4.

[100] Section 19(b)(2) of the Act, as amended by the Securities Acts Amendments of 1975, Public Law 94–29 (June 4, 1975), grants to the Commission flexibility to determine what type of proceeding—either oral or notice and opportunity for written comments—is appropriate for consideration of a particular proposal by a self-regulatory organization. *See* Securities Acts Amendments of 1975, Senate Comm. on Banking, Housing & Urban Affairs, S. Rep. No. 75, 94th Cong., 1st Sess. 30 (1975).

submission must file that rebuttal by August 6, 2024. The Commission asks that commenters address the sufficiency of the Exchange's statements in support of the proposal, in addition to any other comments they may wish to submit about the proposed rule change. 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–ISE–2024–12 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–ISE–2024–12. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–ISE–2024–12 and should be submitted on or before July 23, 2024. Rebuttal comments should be submitted by August 6, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[101]

**Sherry R. Haywood,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–100432; File No. SR–CboeEDGA–2024–025]**

## Self-Regulatory Organizations; Cboe EDGA Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Clarify Its Certification Port Fees

June 26, 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 June 13, 2024, Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe EDGA Exchange, Inc. (the ''Exchange'' or ''EDGA'' or ''EDGA Equities'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/edga/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its Fees Schedule to clarify its fees for Certification Logical Port fees.[3]

By way of background, the Exchange offers a variety of logical ports, which provide users with the ability within the Exchange's System to accomplish a specific function through a connection, such as order entry, data receipt or access to information. Specifically, the Exchange offers Logical Ports,[4] Purge Ports,[5] Multicast PITCH GRP Ports and Multicast PITCH Spin Server Ports.[6] For each type of the aforementioned logical ports that is used in the production environment, the Exchange also offers corresponding ports which provide Members and non-Members access to the Exchange's certification environment to test proprietary systems and applications (*i.e.,* ''Certification Logical Ports''). The certification environment facilitates testing using replicas of the Exchange's production environment process configurations which provide for a robust and realistic testing experience. For example, the certification environment allows unlimited firm-level testing of order types, order entry, order management, order throughput, acknowledgements, risk settings, mass cancelations, and purge requests. The Exchange currently provides free of charge one Certification Logical Port per port type offered in the production environment (*i.e.,* Logical Ports, Purge, Multicast PITCH GRP, and Multicast PITCH Spin Server Ports) and a monthly fee of $250 per Certification

[101] 17 CFR 200.30–3(a)(57).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed this proposed rule change on May 31, 2024 for June 3, 2024 effectiveness (SR–CboeEDGA–2024–018). On June 13, 2024, the Exchange withdrew that filing and submitted this filing.

[4] Logical Ports include FIX and BOE ports (used for order entry), drop logical port (which grants users the ability to receive and/or send drop copies) and ports that are used for receipt of certain market data feeds.

[5] Purge Ports are dedicated ports that permit a user to simultaneously cancel all or a subset of its orders in one or more symbols across multiple logical ports by requesting the Exchange to effect such cancellation.

[6] Spin Ports and GRP Ports are used to request and receive a retransmission of data from the Exchange's Multicast PITCH data feeds.

Logical Port for any additional Certification Logical Ports.[7]

The Exchange proposes to make clear in the notes section under the Logical Port Fees section of the Fees Schedule that the Certification Logical Port fees only apply if the corresponding logical port is also in the production environment. For example, if the Exchange intends to adopt a new port type that has not yet been launched in the live production environment, any certification port for that port type will be free until such time that the proposed new port is in the production environment. Once any new logical port type is in the live production environment, Members and Non-Members will only be entitled to one free certification logical port for that port type, and any additional certifications ports of that type will be assessed the regular monthly $250 per port charge.

The Exchange notes that purchasing additional Certification Logical Ports continues to be voluntary and not required in order to participate in the production environment, including live production trading on the Exchange. Additionally, Members and non-Members are not required to purchase any particular production logical port in order to receive a corresponding Certification Logical Port free of charge.[8] Further, the Exchange also notes that other exchanges similarly assess fees related to their respective testing environments.[9]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[10] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)[11] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with section 6(b)(4) of the Act,[12] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

As noted above, the Exchange's certification environment provides a robust and realistic testing experience using a replica of the Exchange's production environment process configurations. This environment enables market participants to manage risk more effectively through testing software development changes in certification prior to implementing them in the live trading environment, thereby reducing the likelihood of a potentially disruptive system failure in the live trading environment, which has the potential to affect all market participants. The Exchange believes this is especially true when testing a new port type that has not yet launched in the production environment. As such, the Exchange believes it's reasonable to only assess the Certification Logical Port fee to ports that are also available in the production environment as to not discourage the testing of new ports ahead of any respective launch date. The Exchange also believes applying the Certification Logical Port fee is reasonable once such ports are available in the production environment because while such ports will no longer be completely free, Members and non-Members will continue to be entitled to receive free of charge one Certification Logical Port for such port. The Exchange continues to believe one Certification Logical Port per logical port type will be sufficient for most Members or Non-Members and indeed anticipates that the majority of users will not purchase additional Certification Logical Ports. For those who wish to obtain additional Certification Logical Ports based on their respective business needs, they are able to do so for a modest fee. Indeed, the decision to purchase additional ports is optional and no market participant is required or under any regulatory obligation to purchase excess Certification Logical Ports in order to access the Exchange's certification environment.[13] Further, the Exchange has observed that market participants that do choose to purchase additional Certification Logical Ports maintain significantly fewer Certification Logical Ports as compared to the corresponding logical ports they use in the production in environment.

The Exchange believes the proposal to make clear that the Certification Logical Port fee applies only to logical ports that are in the production environment is equitable and not unfairly discriminatory because it applies uniformly to all market participants that choose to obtain additional Certification Logical Ports and all market participants will have further clarity as to which certification ports are subject to the current fee. The Exchange also believes the proposed change is reasonable, equitable and not unfairly discriminatory because it is designed to encourage market participants to avail themselves of Certification Logical Ports for new port types before they launch to become acclimated with the new connectivity offering ahead of going live in the trading environment. The Exchange believes the proposal to add this language to the notes section in the Fees Schedule also provides clarity in the rules as to when the Certification Logical Port fee applies and reduces potential confusion.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition because as the proposed change applies uniformly to all market participants. Additionally, the Exchange does not believe that the proposed fee creates an undue burden on competition because the Exchange will continue to offer free

[7] For example, if a Member maintains 3 FIX Certification Logical Ports, 1 Purge Certification Logical Port, and 1 set of Multicast PITCH Spin Server Certification Logical Port, the Member will be assessed $500 per month for Certification Logical Port Fees (*i.e.,* 1 FIX, 1 Purge and 1 set of Multicast PITCH Spin Server Certification Logical Ports × $0 and 2 FIX Certification Logical Ports × $250).

[8] For example, a Member may obtain a Certification Purge Port free of charge, even if that Member has not otherwise purchased a Purge Port for the live production environment. Certification Logical Ports are not automatically enabled for each Member or Non-Member, but rather must be proactively requested by Members and Non-Members.

[9] *See e.g.,* Nasdaq Stock Market LLC, Equity 7, Pricing Schedule, Section 130. *See also* MIAX Options Exchange Fee Schedule, Section 4, Testing and Certification Fees.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(4).

[13] Although many Members and Non-Members use Certification Logical Ports on a daily basis, the Exchange notes frequency of use of Certification Logical Ports varies by user and depends on their respective business needs. To the extent a Member or Non-Member purchases additional Certification Logical Ports and their needs later change, or they determines they no longer wish to maintain excess Certification Logical Ports, the Member or Non-Member is free to cancel such ports for the following month(s).

of charge one Certification Logical Port per each logical port type once offered in the production environment. Also as discussed, the purchase of additional ports is optional and based on the business needs of each market participant. Moreover, such market participants will continue to benefit from access to the certification environment, which the Exchange believes provides a robust and realistic testing experience via a replica of the production environment, which may be especially critical during the time leading up to the launch of a new port type in the production environment.

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies only to the Exchange's certification environment. Additionally, the Exchange notes that it operates in a highly competitive market. Members have numerous alternative venues that they may participate on and direct their order flow, including 15 other equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, where competitive products are available for trading. Indeed, participants can readily choose to send their orders to other exchanges, and, additionally off-exchange venues, if they deem overall fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [14] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[15] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

## III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [16] and paragraph (f) of Rule 19b–4 [17] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeEDGA–2024–025 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-CboeEDGA–2024–025. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeEDGA–2024–025 and should be submitted on or before July 23, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024–14514 Filed 7–1–24; 8:45 am]

**BILLING CODE 8011–01–P**

[14] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[15] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f).

[18] 17 CFR 200.30–3(a)(12).

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–100437; File No. SR–NYSE–2024–23]**

### Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Designation of a Longer Period for Commission Action on Proposed Rule Change To Amend Section 703.12(II) of the NYSE Listed Company Manual To Expand the Circumstances Under Which Rights May Be Listed on the NYSE

June 26, 2024.

On April 29, 2024, the New York Stock Exchange LLC (''NYSE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Section 703.12(II) of the NYSE Listed Company Manual to expand the circumstances under which rights may be listed on the NYSE by allowing issuers to (i) issue rights to more than existing shareholders for a class of securities that is listed or to be listed on the Exchange, and (ii) list and trade rights on the Exchange prior to listing the security into which such rights will be exercisable. The proposed rule change was published for comment in the **Federal Register** on May 15, 2024.[3] The Commission has received no comments on the proposal.

Section 19(b)(2) of the Act[4] provides that within 45 days of the publication of notice of the filing of a proposed rule change, or within such longer period up to 90 days as the Commission may designate if it finds such longer period to be appropriate and publishes its reasons for so finding or as to which the self-regulatory organization consents, the Commission shall either approve the proposed rule change, disapprove the proposed rule change, or institute proceedings to determine whether the proposed rule change should be disapproved. The 45th day after publication of the notice for this proposed rule change is June 29, 2024. The Commission is extending this 45-day time period.

The Commission finds it appropriate to designate a longer period within which to take action on the proposed rule change so that it has sufficient time to consider the proposed rule change. Accordingly, the Commission, pursuant to section 19(b)(2) of the Act,[5] designates August 13, 2024, as the date by which the Commission shall either approve or disapprove, or institute proceedings to determine whether to disapprove, the proposed rule change (File No. SR–NYSE–2024–23).

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[6]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024–14519 Filed 7–1–24; 8:45 am]

**BILLING CODE 8011–01–P**

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 100102 (May 10, 2024), 89 FR 42543.

[4] 15 U.S.C. 78s(b)(2).

[5] 15 U.S.C. 78s(b)(2).

[6] 17 CFR 200.30–3(a)(31).

## SECURITIES AND EXCHANGE COMMISSION

**[SEC File No. 270–822, OMB Control No. 3235–0777]**

### Proposed Collection; Comment Request; Extension: Rules 15Fi–3 Through 15Fi–5

*Upon Written Request, Copies Available From:* Securities and Exchange Commission, Office of FOIA Services, 100 F Street NE, Washington, DC 20549–2736

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (''PRA'') (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (''Commission'') is soliciting comments on the existing collection of information provided for in Rules 15Fi–3 through 15Fi–5 (17 CFR 240.15Fi–3 through 240.15Fi–5), under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*). The Commission plans to submit this existing collection of information to the Office of Management and Budget (''OMB'') for extension and approval.

Rules 15Fi–3 through 15Fi–5 (17 CFR 240.15Fi–3 through 240.15Fi–5) under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*) require registered security-based swap dealers (''SBS dealer'') and registered major security-based swap participants (''major SBS participant'') (each SBS dealer and each major SBS participant hereafter referred to as an ''SBS Entity'') to apply specific risk mitigation techniques to portfolios of security-based swaps not submitted for clearing. Rules 15Fi–3 through 15Fi–5 impose a collection of information requirements on SBS Entities. Specifically, Rule 15Fi–3 requires SBS Entities to reconcile outstanding security-based swaps with applicable counterparties on a periodic basis. Rule 15Fi–4 requires SBS Entities to engage in certain forms of portfolio compression exercises with their counterparties, as appropriate. Rule 15Fi–5 requires SBS Entities to execute written security-based swap trading relationship documentation with each of its counterparties prior to, or contemporaneously with, executing a security-based swap transaction, and to periodically audit the policies and procedures governing such documentation.

Rules 15Fi–3 through 15Fi–5 have been promulgated pursuant to Section 15F(i)(2) of the Exchange Act, which requires that the Commission ''adopt rules governing documentation standards for security-based swap dealers and major security-based swap participants.'' Accordingly, the collections of information are at the heart of each of the underlying documentation requirements of the rules, such that not conducting them (or reducing the frequency of collection) would not be consistent with the statutory provisions. Moreover, the policies and procedures required to be established, maintained, and followed pursuant to Rules 15Fi–3 through 15Fi–5 are instrumental in focusing and assessing compliance with the underlying rules, consistent with how similar requirements are used in numerous other Commission rules. Thus, eliminating such collections (or reducing the frequency of collection) also would be inconsistent with the applicable statutory provisions and the intended effects of the rules.

The Commission estimated that approximately 53 entities may fit within the definition of SBS dealer, and up to five entities may fit within the definition of major SBS participant. Thus, the Commission estimated that approximately 58 entities would be required to register with the Commission as SBS Entities and would be subject to Rules 15Fi–3 through 15Fi–5. Of the 58 entities that would be required to register with the Commission as SBS Entities, the Commission estimated that approximately 20 would be dually-registered with the Commodity Futures Trading Commission (''CFTC'') as swap dealers or major swap participants. As the Rules 15Fi–3 through 15Fi–5 are largely similar to those adopted by the CFTC, dually-registered entities may have procedures and systems in place to collect the information, thereby minimizing compliance burdens. The Commission estimated that the total annual industry burden under 15Fi–3 through 15Fi–5 is approximately 464,836 hours per year.

*Written comments are invited on:* (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's estimates of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted by August 30, 2024.

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.

Please direct your written comments to: David Bottom, Director/Chief Information Officer, Securities and Exchange Commission, c/o John Pezzullo, 100 F Street NE, Washington, DC 20549, or send an email to: *PRA_Mailbox@sec.gov.*

Dated: June 26, 2024.

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024–14482 Filed 7–1–24; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–100429; File No. PCAOB–2024–04]**

## Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on Amendment to PCAOB Rule 3502 Governing Contributory Liability

June 26, 2024.

Pursuant to Section 107(b) of the Sarbanes-Oxley Act of 2002 (''Sarbanes-Oxley'' or the ''Act''), notice is hereby given that on June 20, 2024, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rules described in items I and II below, which items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rules from interested persons.

### I. Board's Statement of the Terms of Substance of the Proposed Rules

On June 12, 2024, the Board adopted an amendment to PCAOB Rule 3502, *Responsibility Not to Knowingly or Recklessly Contribute to Violations* (collectively, the ''proposed rules''). The text of the proposed rules appears in Exhibit A to the SEC Filing Form 19b–4 and is available on the Board's website at *https://pcaobus.org/about/rules-rulemaking/rulemaking-dockets/docket-053* and at the Commission's Public Reference Room.

### II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rules and discussed any comments it received on the proposed rules. The text of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements. In addition, to the extent that Section 103(a)(3)(C) of the Act applies to the proposed rules, the Board is requesting that the Commission approve the proposed rules, pursuant to that provision, for application to audits of emerging growth companies (''EGCs''), as that term is defined in Section 3(a)(80) of the Securities Exchange Act of 1934 (''Exchange Act''). The Board's request is set forth in section D.

#### *A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules*

(a) Purpose

Congress authorized the Board to promulgate rules and standards to govern auditor conduct.[1] To that end, in 2005, the Board codified auditors' longstanding ethical obligation not to contribute to firms' violations in PCAOB Rule 3502, *Responsibility Not to Knowingly or Recklessly Contribute to Violations*.[2] For well over a decade now, the Board has brought enforcement proceedings against associated persons pursuant to Rule 3502.

Yet Rule 3502's current formulation contains an incongruity that places negligent contributors to firms' violations beyond the rule's reach. That incongruity stems from the notion that registered firms, like any legal entity, can act only through natural persons. It logically follows that when a registered firm is found to have acted negligently, it is likely that such negligence is attributable to at least one natural person's negligence.

Rule 3502, however, at present requires a level of culpability higher than negligence—at least recklessness—before the Board can impose sanctions against associated persons who directly and substantially contribute to firms' negligence-based violations. Put another way, Rule 3502 requires a showing of more than negligence by individuals for the Board to sanction them for conduct resulting in negligence by firms. Thus, under current Rule 3502, associated persons who do not exercise reasonable care and contribute to firms' violations may escape liability and accountability—even while the firms committing the violations do not. The Board believes that amending Rule 3502 addresses this incongruity, and therefore better protects investors and promotes quality audits.

(b) Statutory Basis

The statutory basis for the proposed rules is Title I of the Act.

#### *B. Board's Statement on Burden on Competition*

Not applicable. The Board's consideration of the economic impacts of the proposed rules is discussed in section D below.

#### *C. Board's Statement on Comments on the Proposed Rules Received From Members, Participants or Others*

The Board released the proposed rule amendment for public comment in PCAOB Release No. 2023–007 (September 19, 2023). The Board received 28 written comment letters; one comment letter was subsequently withdrawn. The Board has carefully considered all comments received. The Board's response to the comments it received and the changes made to the rules in response to the comments received are discussed below.

#### Introduction

In the Sarbanes-Oxley Act of 2002 (''Sarbanes-Oxley'' or the ''Act''), Congress established the Board in the wake of a series of high-profile corporate collapses that laid bare auditor misconduct and the need for a new type of oversight of the public accounting industry.[3] As part of its

[1] *See* Section 103(a)(1) of Sarbanes-Oxley; *see also, e.g., id.* 101(c)(2), (c)(4), (c)(6) & (g)(1).

[2] *Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees,* PCAOB Release No. 2005–014, at 9 (July 26, 2005), *available at https://pcaobus.org/Rulemaking/Docket017/2005-07-26_Release_2005-014.pdf* (''The Board proposed [Rule 3502] to codify the ethical obligation of associated persons of registered firms not to cause registered firms to commit [ ] violations.'').

[3] Public Law 107–204, 15 U.S.C. 7201 *et seq.; see* S. Rep. No. 107–205, at 3 (2002) (''The purpose of [Sarbanes-Oxley] is to address the systemic and

Continued

comprehensive, multipronged approach to such oversight, Congress authorized the Board to investigate, bring charges against, and sanction (when appropriate) registered public accounting firms and associated persons [4] thereof for violations of the laws, rules, and standards that Congress charged the Board with enforcing.[5] That enforcement authority covers a wide array of auditor conduct, including negligent conduct.

Congress also authorized the Board to promulgate rules and standards to govern auditor conduct.[6] To that end, in 2005, the Board codified auditors' longstanding ethical obligation not to contribute to firms' violations in PCAOB Rule 3502, *Responsibility Not to Knowingly or Recklessly Contribute to Violations.*[7] For well over a decade now, the Board has brought enforcement proceedings against associated persons pursuant to Rule 3502.

Yet Rule 3502's current formulation contains an incongruity that places negligent contributors to firms' violations beyond the rule's reach. That incongruity stems from the notion that registered firms, like any legal entity, can act only through natural persons. It logically follows that when a registered firm is found to have acted negligently, it is likely that such negligence is attributable to at least one natural person's negligence.

Rule 3502, however, at present requires a level of culpability higher than negligence—at least recklessness—before the Board can impose sanctions against associated persons who directly and substantially contribute to firms' negligence-based violations. Put another way, Rule 3502 requires a showing of more than negligence by individuals [8] for the Board to sanction them for conduct resulting in negligence by firms. Thus, under current Rule 3502, associated persons who do not exercise reasonable care and contribute to firms' violations may escape liability and accountability—even while the firms committing the violations do not. The Board believes that amending Rule 3502 addresses this incongruity, and therefore better protects investors and promotes quality audits.

Accordingly, following notice and comment, the Board has amended Rule 3502 by changing from recklessness to negligence the liability standard for associated persons' contributory conduct. As explained in greater detail below, the Board believes, based on its experience and having considered the comments received, that the amendment better aligns Rule 3502 with the scope of the Board's enforcement authority under Sarbanes-Oxley, thus further advancing the Board's mission of investor protection.

## Rulemaking History

On September 19, 2023, the Board proposed to amend Rule 3502 in two ways: (1) by changing from recklessness to negligence the standard of conduct for associated persons' contributory liability and (2) by providing that, to be charged with violating Rule 3502, an associated person contributing to a registered firm's violation need not be an associated person of the firm that commits the primary violation (*i.e.,* that an associated person of one registered firm can contribute to a primary violation of another registered firm).[9] The Board received 28 comment letters on the Proposal from commenters across a range of affiliations.[10] In general, commenters recognized the importance of an effective PCAOB enforcement program and in holding individuals accountable when there are violations of applicable laws, rules, and professional standards. The final rule amendment—which, as detailed below, does not include the second aspect of the Proposal—is informed by the comments received on the Proposal, which are discussed throughout this release.

## Background

PCAOB Rule 3502 codifies associated persons' ethical obligation not to contribute to a registered firm's violations of the laws, rules, and standards that the Board is charged with enforcing. The rule provides grounds for secondary liability when an associated person of a registered firm acts at least recklessly to directly and substantially contribute to such a violation. Although the rule as adopted in 2005 incorporated a recklessness standard, the rule as proposed in 2004 required that individuals only negligently contribute to a firm's violation to be subject to liability.[11] Whereas negligence ''is the failure to exercise reasonable care or competence,'' [12] recklessness requires ''an extreme departure from the standard of ordinary care'' that ''presents a danger to investors or to the markets that is either known to the (actor) or is so obvious that the actor must have been aware of it.'' [13] Indeed, Sarbanes-Oxley characterizes ''reckless conduct'' as a subset of ''intentional or knowing conduct,'' [14] whereas negligence is an ''objective'' standard that is not measured by ''the intent of the accountant.'' [15]

The Board has adopted negligence as the liability standard for actionable contributory conduct under Rule 3502.

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structural weaknesses affecting our capital markets which were revealed by repeated failures of audit effectiveness and corporate financial and broker-dealer responsibility in recent months and years.''). As the Senate Report notes, ''the frequency of financial restatements by public companies ha[d] dramatically increased'' in the run up to the passage of Sarbanes-Oxley. S. Rep. No. 107–205, at 15; *see id.* (''From 1990–97, the number of public company financial restatements averaged 49 per year, but jumped to an average of 150 per year in 1999 and 2000.'').

[4] An associated person is ''any individual proprietor, partner, shareholder, principal, accountant, or professional employee of a public accounting firm, or any independent contractor or entity that, in connection with the preparation or issuance of any audit report . . . (1) shares in the profits of, or receives compensation in any other form from, that firm; or (2) participates as agent or otherwise on behalf of such accounting firm in any activity of that firm.'' PCAOB Rule 1001(p)(i). The definition of an ''associated person'' does not include persons engaged only in clerical or ministerial tasks. *See id.*

[5] *See* Sections 105(b) & (c) of Sarbanes-Oxley.

[6] *See id.* 103(a)(1); *see also, e.g., id.* 101(c)(2), (c)(4), (c)(6) & (g)(1).

[7] *Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees,* PCAOB Release No. 2005–014, at 9 (July 26, 2005) (''2005 Adopting Release''), *available at https://pcaobus.org/Rulemaking/Docket017/2005-07-26_Release_2005-014.pdf* (''The Board proposed [Rule 3502] to codify the ethical obligation of associated persons of registered firms not to cause registered firms to commit [ ] violations.'').

[8] For ease of reference, this release sometimes refers to associated persons who are the contributory actors for purposes of Rule 3502 as ''persons'' or ''individuals.'' The Board notes, however, that both natural persons and entities can be associated persons, and therefore Rule 3502 charges can be brought against both natural persons and entities, consistent with the meaning of the term ''person associated with a registered public accounting firm.''

[9] *Proposed Amendments to PCAOB Rule 3502 Governing Contributory Liability,* PCAOB Release No. 2023–007 (Sept. 19, 2023) (''2023 Proposing Release'' or the ''Proposal''), *available at https://assets.pcaobus.org/pcaob-dev/docs/default-source/rulemaking/053/pcaob-release-no.-2023-007-rule-3502-proposal.?=7d49cc51_9.*

[10] Comment letters on the Proposal, as well as a staff white paper regarding characteristics of emerging growth companies, are available on the Board's website in Rulemaking Docket No. 053, *available at https://pcaobus.org/about/rules-rulemaking/rulemaking-dockets/docket-053/letters.* One of the comment letters was withdrawn.

[11] *See Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees,* PCAOB Release No. 2004–015, at 18 & n.40 (Dec. 14, 2004) (''2004 Proposing Release''), *available at https://pcaobus.org/Rulemaking/Docket017/2004-12-14_Release_2004-015.pdf.*

[12] *In re SW Hatfield, C.P.A.,* SEC Release No. 34–69930, at 35 n.169 (July 3, 2013) (citation and quotation marks omitted).

[13] *Id.* at 29 (citation and quotation marks omitted); *see also Marrie* v. *SEC,* 374 F.3d 1196, 1204 (D.C. Cir. 2004); 2005 Adopting Release at 13 (''[T]he phrase 'knew, or was reckless in not knowing' is a well-understood legal concept, and the Board intends for the phrase to be given its normal meaning.'').

[14] *See* Section 105(c)(5)(A) of Sarbanes-Oxley.

[15] *In re Melissa K. Koeppel, CPA,* PCAOB File No. 105–2011–007, at 166 (Dec. 29, 2017) (quoting *In re Kevin Hall, CPA,* SEC Release No. 34–61162, at 12 (Dec. 14, 2009) (quotation marks omitted)).

And for good reason: A negligence standard is appropriate based on the Board's extensive experience with Rule 3502 since the rule's adoption nearly two decades ago, it closes a gap in the PCAOB's regulatory framework that can lead to anomalous results, and it advances certain objectives in the Board's 2022–2026 Strategic Plan in furtherance of the Board's overall mission.

In the first subsection below, the Board reviews the Board's 2004 proposal and 2005 adoption of Rule 3502. Then, the Board details the reasons for the amendment the Board has adopted to modernize and strengthen the rule.

*A. History of Rule 3502*

As part of a package of proposed ethics and independence rules, the Board proposed PCAOB Rule 3502 in 2004.[16] In issuing the proposal, the Board observed that ''[w]hile certain types of violations, by their nature, may give rise to direct liability only for a registered public accounting firm, the firm's associated persons bear an ethical obligation not to be a cause of any violations by the firm.'' [17] Accordingly, through Rule 3502, the Board sought to ''codify that obligation'' and ''make it clear that the obligation is enforceable by the Board.'' [18] Using language ''intended to articulate a negligence standard,'' the proposed version of Rule 3502 subjected associated persons to potential contributory liability if they ''knew or should have known'' that an act or omission by them would contribute to a firm's primary violation.[19]

Following a public comment period,[20] the Board adopted Rule 3502 with two modifications from the proposal. First, while affirming its authority to promulgate a negligence-based ethics rule prohibiting contributory conduct,[21] the Board revised the liability standard from negligence to recklessness, which the Board at that time believed would ''strike[ ] the right balance in the context of th[e] rule.'' [22] Second, the Board modified ''contribute''—the verb that describes the connection between the associated person's conduct and the firm's primary violation—by adding the words ''directly and substantially.''

The latter modification was made due to commenters expressing concern that, because of the collaborative nature of accounting work, each individual involved in formulating a decision or other action that ultimately leads to a firm violation could be held liable for causing the violation.[23] The Board explained that the addition of ''directly'' means, among other things, that an associated person's conduct must ''either essentially constitute[ ] the [firm's] violation'' or be ''a reasonably proximate facilitating event of, or a reasonably proximate stimulus for, the violation.'' But, the Board clarified, ''directly'' does not place outside the scope of Rule 3502 contributory conduct ''just because others also contributed to the violation, or because others could have stopped the violation and did not.'' ''Substantially,'' the Board explained, means that an associated person's conduct must ''contribute[ ] to [a] violation in a material or significant way,'' though it need not be ''the sole cause of the violation.'' [24]

*B. Reasons for the Amendment*

As the Board previously recognized, when an associated person causes a firm to commit a violation, such conduct ''operates to the detriment of the protection of investors.'' [25] The following subsections explain why the modification to Rule 3502 is appropriate in furtherance of the Board's mission to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports.

1. Aligning Rule 3502 With the Board's Enforcement Authority

As the Board previously has explained, a registered firm ''can only act through the natural persons who serve as its agents, including its associated persons.'' [26] Accordingly, ''a natural person's actions may render both the [firm] primarily liable and the natural person secondarily liable.'' [27] Yet under the current formulation of Rule 3502, an incongruity exists between the respective requisite mental states for liability of a registered firm resulting from an associated person's conduct and for liability of the associated person: A firm can commit a primary violation of certain laws, rules, or standards by acting *negligently,* but an associated person who directly and substantially contributed to that violation must have acted at least *recklessly* to be secondarily liable.

This incongruity means that associated persons may have weaker incentives to exercise the appropriate level of care in their audit work. They may not exercise reasonable care (the standard for negligence) if they know that they cannot be held individually liable by the PCAOB for a firm's primary violation unless an act or omission by them amounts to an ''an extreme departure from the standard of ordinary care for auditors'' (the standard for recklessness).[28] The modification to Rule 3502's liability standard from recklessness to negligence closes this regulatory gap, which should incentivize associated persons to be more deliberate and careful in their

[16] *See generally* 2004 Proposing Release at 18–19. As originally proposed (and adopted), Rule 3502 was entitled *Responsibility Not to Cause Violations. See id.* at A–4; 2005 Adopting Release at A–5. Shortly after adoption, however, the Board changed the title of the rule to its current title, *Responsibility Not to Knowingly or Recklessly Contribute to Violations.* The Board made the change ''[a]fter discussions with the SEC'' and ''to avoid any misperception that the rule affects the interpretation of any provision of the federal securities laws.'' *Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees,* PCAOB Release No. 2005–020, at 2 (Nov. 22, 2005), *available at https://pcaob-assets.azureedge.net/pcaob-dev/docs/default-source/rulemaking/docket017/2005-11-22_release_-020.pdf?sfvrsn=69338fcd_0.* In so doing, however, the Board clarified that ''[t]he rule, as amended, should be interpreted and understood to be the same as the rule adopted by the Board.'' *Id.*

[17] 2004 Proposing Release at 18.

[18] *Id.*

[19] *Id.* at 18 n.40; *see id.* at A–4 (proposed rule text).

[20] ''Several commenters supported the rule as proposed and noted that they saw the rule as essential to the Board's ability to carry out its disciplinary responsibilities under the Act,'' 2005 Adopting Release at 9, while others did not fully endorse it. Their objections were based principally on the view that negligence might be an ill-suited liability standard ''in light of the complex regulatory requirements with which auditors must comply'' and out of concern that such standard ''would allow the Board, or the SEC, to proceed against associated persons who in good faith, albeit negligently, have caused a registered firm to violate applicable laws or standards.'' *Id.* at 9, 13. Certain commenters ''also questioned the Board's authority to adopt the proposed rule, or at least the proposed rule with a negligence standard.'' *Id.* at 9.

[21] *See id.* at 12 n.23.

[22] 2005 Adopting Release at 13; *see id.* at 12 & n.23.

[23] *See id.* at 9, 13.

[24] *Id.* at 13.

[25] 2005 Adopting Release at 10.

[26] 2004 Proposing Release at 18; *see* 2005 Adopting Release at 12 (''[Registered] firms . . . can only act through the natural persons that comprise them, many of whom are 'associated persons' subject to the Board's ethics standards and disciplinary authority.''). Indeed, as one commenter on the Proposal put it, a firm is the sum of its parts.

[27] *In re Timothy S. Dembski,* SEC Release No. 34–80306, at 13–14 n.35 (Mar. 24, 2017) (quoting *SEC* v. *Koenig,* 2007 WL 1074901, at *7 (N.D. Ill. Apr. 5, 2007)).

[28] *Marrie,* 374 F.3d at 1204; *see* Russell G. Pierce & Eli Wald, *The Relational Infrastructure of Law Firm Culture and Regulation,* 42 Hofstra L. Rev. 109, 129 (2013) (explaining how rules from the legal industry's governing body that would restrict lawyers' limited liability ''will encourage lawyers to devote more energy to maintaining the quality of the firm because they could potentially face personal liability for poor quality services''); *see also* Colleen Honigsberg, *The Case for Individual Audit Partner Accountability,* 72 Vand. L. Rev. 1871, 1885 (2019) (arguing that ''existing deterrence mechanisms have failed to produce optimal audit quality'' and ''are ineffective'').

actions. Indeed, ''accountability frequently improves outcomes.'' [29]

Numerous commenters agreed with the Board's regulatory concerns noted above. These commenters generally noted that the Board's concerns were valid and clear, and that a negligence standard would better align Rule 3502 with the scope of the Board's enforcement authority under Sarbanes-Oxley and provide a tool to eliminate incongruous results in liability between individuals and firms. Indeed, one commenter characterized the difference between negligence and recklessness as ''substantial'' and ''consequential'' and noted that the current gap in liability standards directly impacts the Board's ability to fulfill its statutory mission.[30]

Another commenter remarked that a negligence standard will enable the PCAOB and the U.S. Securities and Exchange Commission (SEC or ''Commission'') to more efficiently and effectively pursue enforcement cases regardless of which entity has the resources to bring the case. Commenters also stated that a negligence standard would appropriately align Rule 3502's liability threshold with the standard of care that auditors currently should be exercising when performing their professional responsibilities and that both the Commission and civil plaintiffs in private litigation currently can pursue cases against auditors for negligence. In encouraging the PCAOB to adopt the Proposal, one commenter further noted that the change to negligence would bolster investors' expectations that accountants will be independent and diligent in their audit work.

Other commenters, however, believed that the Proposal did not present a sufficient rationale for moving to a negligence standard after the Board previously declined to do so in 2005. These commenters opined that the same concerns about a negligence standard that existed in 2005 exist today and questioned whether there were significant enough developments to merit the change.[31] Indeed, certain commenters acknowledged the incongruity discussed in the Proposal but contended either that it is not significant or problematic, that it is not an impediment to enforcement, or that closing the gap in liability standards would not change auditor conduct.[32] One commenter stated explicitly that no incongruity or gap exists.

Several commenters also stated that auditors are subject to sufficient oversight under the current framework, including via the PCAOB's inspection program, enforcement in Commission proceedings, and enforcement by state regulatory agencies. Certain of these commenters further stated that a negligence standard would risk, among other things, disturbing the PCAOB's inspection process by upsetting inspection dynamics and threatening the cooperative and constructive nature of the process that has developed over time.

The Board is mindful of the efficiencies gained through open dialogue with firms and individuals alike during the inspection process. Given that firms and individuals already are subject to a negligence standard for *primary* violations, however, the Board does not believe that the incremental change of moving from recklessness to negligence for *contributory* conduct will have a chilling effect on inspections, especially given that the Board will continue to exercise discretion about when to bring Rule 3502 charges.[33]

Commenters also opined that amending Rule 3502 is unnecessary because the Board's then-proposed (now-adopted [34]) QC 1000 standard provides clearer expectations with regard to individuals in quality control (QC) roles.[35] Although the Board agrees that QC 1000 crystallizes the responsibilities of certain individuals serving in QC roles, Rule 3502 applies more broadly than to just those particular individuals. Thus, although QC 1000 and Rule 3502 could overlap to cover the same conduct in some circumstances, there are other circumstances in which there would not be overlap.[36]

Commenters similarly expressed mixed views about whether the change to negligence would incentivize auditors to more fully comply with applicable laws, rules, and standards that the Board is charged with enforcing. Multiple commenters remarked in the affirmative, noting that such incentivization is foreseeable and that a negligence standard will encourage individuals and firms to maintain a high level of quality in their audit work, which in turn benefits investors and financial markets alike. Indeed, one commenter remarked that the current recklessness standard *in*adequately incentivizes associated persons to exercise the appropriate level of care in their audit work. This commenter also noted that, beyond incentivizing individuals' compliance, a negligence standard also would incentivize *firms* to ensure, through training and other measures, that their

[29] Honigsberg, *supra,* at 1902.

[30] Comment Letter from Better Markets at 3 (Nov. 3, 2023).

[31] In support of such assertion, one commenter cited *F.C.C.* v. *Fox Television Stations, Inc.,* 556 U.S. 502 (2009). The rationale articulated in the Proposal and this adopting release, however, more than satisfies *Fox*'s criteria for a conscious change in policy. *See id.* at 515 (''[I]t suffices that the new policy is permissible under the statute, that there are good reasons for it, and that the agency *believes* it to be better, which the conscious change of course adequately indicates.''). As to auditors' reliance on the standard in the current rule, as in *Fox,* the Board is not ''punishing [auditors] without notice of the potential consequences of their action.'' *Id.* at 518. That is so because the adoption of a negligence standard, by itself, does not impose any civil money penalty or other sanction; rather, sanctions are available only if Rule 3502 is *violated* after the amended rule becomes effective.

[32] One commenter stated that the Proposal failed to articulate how the change to negligence would align Rule 3502 with Sarbanes-Oxley and questioned whether there were cases where the current recklessness standard did not suffice to hold persons accountable. The Proposal, however, made both of these points clear. *See* 2023 Proposing Release at 7 (describing the current misalignment with Sarbanes-Oxley); *id.* at 24–25 (discussing estimated cases in 2022). That commenter and one other also noted that the PCAOB has been able to assess significant penalties under the current Rule 3502 formulation and that the Board's disciplinary proceedings have resulted in collateral consequences for firms and individuals. While that may be the case, the Board did not adopt a negligence standard for the purpose of facilitating an increase in *penalties;* rather, as the Proposal explained, the Board proposed—and has adopted—a negligence standard to facilitate an increase in *accountability* and *deterrence. See* 2023 Proposing Release at 7.

[33] One commenter expressed concern over whether the inspection process is sufficiently robust to conclude that an associated person has contributed to a firm's negligence-based violation, and relatedly, another asserted that auditors believe that the Board is holding them to an inspections bar that constantly evolves. Inspection staff's findings, however, are not conclusive for purposes of imposing legal liability under Rule 3502 (or any PCAOB rule). *See PCAOB Inspection Procedures: What Does the PCAOB Inspect and How Are Inspections Conducted?, available at https://pcaobus.org/oversight/inspections/inspection-procedures* (''[A]ny references in [an inspection] report to violations or potential violations of law, rules, or professional standards are not a result of an adjudicative process and do not constitute conclusive findings for purposes of imposing legal liability.''). Rather, whether there is legal liability for a violation and whether conduct merits sanctions (and if so, what the sanctions are) are determined through the adversarial process involving the Board's Division of Enforcement and Investigations and only after respondents have been afforded the opportunity to present a defense.

[34] This release references several professional standards that the Board has adopted but which are pending Commission approval, and which therefore are subject to change. *See* Section 107(b) of Sarbanes-Oxley.

[35] See generally A Firm's System of Quality Control and Other Amendments to PCAOB Standards, Rules, and Forms, PCAOB Release No. 2024–005 (May 13, 2024) (''QC 1000 Release'').

[36] *See, e.g., Herman & MacLean* v. *Huddleston,* 459 U.S. 375, 383 (1983) (''While some conduct actionable under Section 11 may also be actionable under Section 10(b), it is hardly a novel proposition that the 1934 [Securities Exchange] Act and the 1933 [Securities] Act 'prohibit some of the same conduct.' 'The fact that there may well be some overlap is neither unusual nor unfortunate.' '' (citations omitted)).

employees are complying with applicable professional standards.

By contrast, other commenters argued that a negligence standard will not incentivize compliance, for a variety of reasons. Multiple commenters premised such view on the downstream effects that oversight with respect to firms has on individuals. According to certain of these commenters, such effects (*e.g.,* reduced responsibility on audits, compensation- and promotion-related consequences), as well as other firm policies and preventative measures (such as training), are sufficient to guard against negligence and incentivize individual compliance. Another commenter opined that the auditor reporting model and the identification of auditors in Form AP suffice to address individual accountability.

While the Board agrees that each of the above factors may play a role in driving individual accountability in certain respects, none is a form of *regulatory* accountability that is akin to the Board's authority to bring enforcement proceedings and impose publicly a range of disciplinary sanctions as remedial measures. Moreover, the market-driven consequences relating to the auditor reporting model and identification of auditors on Form AP are felt primarily (if not exclusively) by the engagement partner on an audit, while Rule 3502 applies more broadly.

Another commenter questioned whether a negligence standard would have a deterrent effect (or close any gap) given that auditors already are subject to a negligence standard for contributory liability in Commission actions. One commenter noted that, given that auditors already are subject to negligence actions by other entities (including the Commission and state regulators), empirical evidence should be provided to support how auditor behavior would change under a negligence standard for Rule 3502.[37] As the Board previously noted, however, an increase in the *number* of regulators on alert for the same or similar violative conduct increases the likelihood of that conduct being detected and, consequently, the likelihood that the conduct would be sanctioned.[38]

In other commenters' views, a negligence standard would not incentivize compliance because sanctions are ineffective to deter mere errors in judgment. As explained below, however, the amendment does not target mere errors in judgment, but rather *unreasonable* conduct. Multiple commenters also posited that a lower threshold for auditor liability may have a negative impact on audit quality, including at smaller firms. Indeed, one commenter asserted that the impact of the proposed rule change (and proceedings brought pursuant to it) would be felt more acutely by firms that are not affiliated with the largest global networks, despite those firms having a significantly smaller share in auditing the market capitalization of U.S. issuers. These commenters generally attributed what they view as a potential loss in audit quality to several factors, including recruiting, retention, and staffing challenges; reduced collaboration among auditors; and auditors engaging in unproductive, excessive self-protective behavior. The Board addresses below commenters' concerns about the amendment's potential impacts on audit quality and smaller firms, respectively.

2. The Board's Implementation Experience

Although the Board viewed Rule 3502's recklessness liability threshold as ''strik[ing] the right balance in the context of th[e] rule'' at the time of the rule's adoption in 2005, the threshold had not yet been tested in practice by the PCAOB, and experience has shown that it prevents the Board from executing its investor-protection mandate to the fullest extent that Congress authorized in Sarbanes-Oxley.

In the instances in which the Board has instituted proceedings against firms for negligence-based violations, the Board has not been able to charge Rule 3502 violations against the individuals that negligently contributed to those firms' violations. Although the decision not to bring charges against individuals varies case by case and is at the Board's discretion, it remains that the Board has been legally barred by the current formulation of Rule 3502 from holding accountable under Rule 3502 individuals who negligently, directly, and substantially contributed to the firms' violations.[39]

The Board's application of Rule 3502 in various contexts supplies experience-based reasons for the proposed amendment to the liability standard. For example, when dealing with the design and implementation of firm QC policies and procedures under applicable QC standards, the Board has observed that registered firms that commit a QC violation often have multiple individuals with overlapping QC responsibility but that no single individual was reckless in failing to act, and thus no individual can be held personally accountable for the firm's QC failure.[40] And yet, individuals with QC responsibility at a firm are often in some of the most important decision-making roles within the firm because a compliant QC system serves as the backstop to ensure that all *other* professional standards are followed.[41]

Multiple commenters suggested that a negligence standard should not apply to enforcement of QC matters because the Board's inspection function already provides it with transparency into a firm's QC system. Inspections (and, relatedly, remediation) of QC matters, however, are distinct from enforcement, including with respect to the available potential consequences for firms and individuals, respectively. Yet Congress also expressly envisioned that the Board's inspections program would inform its enforcement activities.[42] Such entwinement is therefore a feature of Sarbanes-Oxley—not a flaw or a reason not to adopt a negligence standard.

One commenter also appeared to interpret the Proposal as the Board suggesting that having multiple people with overlapping responsibility for a firm's QC system is an obstacle to investor protection or enhanced audit quality and that a single individual needs to be held accountable for a QC violation in the absence of reckless behavior. That was not the Board's intent; rather, the Board meant simply what it said: When there are multiple individuals involved in the QC function, it could be that no individual's conduct rose to the level of recklessness

[37] This commenter did not provide the source of any data or propose any methods by which to generate empirical evidence on this subject.

[38] 2023 Proposing Release at 14 n.51.

[39] As the 2005 Adopting Release notes, however, Rule 3502 ''is not the exclusive means for the Board to enforce applicable Board rules and standards against associated persons.'' 2005 Adopting Release at 14 n.25.

[40] The Board's recently adopted QC 1000 standard mitigates this concern to an extent by requiring firms to assign one or more individuals to certain roles with designated responsibilities within a firm's QC system. *See* QC 1000 Release at 82–86. The concern remains, though, because ''[a] firm may have multiple individuals or multiple layers of personnel supporting these roles.'' *Id.* at 83.

[41] *See* QC § 20.03, *System of Quality Control* (''A firm has a responsibility to ensure that its personnel comply with the professional standards applicable to its accounting and auditing practice. A system of quality control is broadly defined as a process to provide the firm with reasonable assurance that its personnel comply with applicable professional standards and the firm's standards of quality.''); QC 1000 Release at 70–71 (setting forth, in QC 1000.05, the objective of a firm's QC system).

[42] *See, e.g.,* Section 104(c)(3) of Sarbanes-Oxley (requiring the Board, ''in each inspection,'' to ''begin a formal investigation or take disciplinary action, if appropriate, with respect to any [potential] violation [identified during an inspection], in accordance with this Act and the rules of the Board'').

despite a firm's QC failure, thus allowing persons who negligently, directly, and substantially contribute to a QC failure to avoid individual accountability under Rule 3502.[43]

Moreover, the Board did not mean to imply that a single person ''needs'' to be held individually accountable in all circumstances for negligence contributing to a firm's QC failure.[44] The Board exercises discretion about whom to charge and what charges to bring, and even in the absence of a charge, the *potential* to be held individually liable for contributory negligence may increase the amount of care and attention dedicated to QC by responsible individuals. Indeed, while reflecting only a modest change, the Board anticipates that the amendment will have a positive impact on audit quality as a result of its deterrent effect.

Another comment letter posited that a negligence standard would place an unfair burden on national office partners responsible for a firm's QC functions and engagement quality review partners, who the comment letter asserted typically do not have the authority to establish firm strategies or allocate resources. This commenter expressed concern that the Board would pursue enforcement actions against a single individual when a firm's partners collectively are responsible for the strategy and resource allocation decisions that led to a firm's violation. Regardless of whether collective responsibility is uniformly the practice, the Board should not be precluded from exercising its discretion to pursue a Rule 3502 charge against an individual who failed to exercise reasonable care and competence, even in cases involving a firm's strategy or resource-allocation decisions that led to a QC failure.

In addition to the QC context, Rule 3502 also arises in sole-proprietorship cases, in which the sole owner and sole partner of a firm causes the firm to commit a violation. Yet for some types of violations, there is not always sufficient evidence of reckless behavior. A negligence standard thus would promote greater accountability by the sole proprietor and prevent that person from being shielded from individual liability under Rule 3502.

One commenter sought clarity regarding how Rule 3502 might be applied to sole proprietors. The Board notes that examples include instances in which firms fail to obtain an engagement quality review[45] or fail to file (or file timely) required PCAOB forms.[46] In each scenario, the respective primary violations can be committed only by a firm because the obligations are imposed solely on the firm,[47] yet a sole proprietor of a firm could negligently, directly, and substantially contribute to the firm's violation of the relevant PCAOB rules and standard.

Another commenter identified independence violations as a common type of case not mentioned above and for which the commenter believes that a negligence standard of contributory liability would promote greater individual accountability. The Board agrees.[48] Another commenter identified a data compilation regarding cases and fact patterns that the commenter said could be a resource in confirming and validating the change to Rule 3502.[49]

3. Advancing the Board's Investor-Protection Mandate

In the Board's 2022–2026 Strategic Plan, the Board expressed a rejuvenated focus on the PCAOB's investor-protection mandate and stated its intent ''to modernize and streamline our existing standards . . . where necessary to meet today's needs.'' [50] The Board also expressed an intent to ''engag[e] in vigorous and fair enforcement that promotes accountability and deterrence,'' including by ''tak[ing] a more assertive approach to bringing enforcement actions'' and ''hold[ing] accountable'' those who commit ''violations that result from negligent conduct.'' [51] The amendment to Rule 3502 is consistent with those goals.

When Congress enacted Sarbanes-Oxley, it empowered the Board to promulgate and adopt certain standards and rules, to inspect registered firms for compliance with those standards and rules, and to enforce compliance by firms and their associated persons. Among the tools that Congress provided to the Board for enforcement is the ability to impose certain sanctions for negligent conduct, including single instances of negligence.[52] That liability threshold serves a dual function: It incentivizes auditors to conduct their work knowing that reasonable care is the standard for assessing it (*i.e.,* deterrence), and it allows the Board to publicly discipline auditors who were found to have not exercised an appropriate degree of care (*i.e.,* accountability).[53] Each of those functions—one *ex ante* to auditors' conduct and the other *ex post*—goes to the core of the Board's mission of protecting investors and promoting high-quality audits.

The current formulation of Rule 3502, however, stops short of deploying the Board's authority to sanction negligent conduct to the fullest extent by requiring at least reckless conduct before an associated person can be held secondarily liable. The amendment that the Board has adopted to Rule 3502's liability standard removes this constraint and makes the rule both a more effective deterrent and a more

[43] *See* 2023 Proposing Release at 9.

[44] Comment Letter from PricewaterhouseCoopers LLP at A4 (Nov. 2, 2023).

[45] *E.g., In re Jack Shama,* PCAOB Release No. 105–2024–004 (Jan. 23, 2024); *In re Robert C. Duncan Accountancy Corp.,* PCAOB Release No. 105–2022–010 (June 22, 2022); *In re Tamba S. Mayah, CPA,* PCAOB Release No. 105–2021–007 (Sept. 13, 2021).

[46] *See, e.g., In re Jeffrey T. Gross, Ltd.,* PCAOB Release No. 105–2019–016 (July 23, 2019) (primary violation of PCAOB Rule 3211 relating to Form AP).

[47] *See* AS 1220, *Engagement Quality Review;* PCAOB Rule 2200, *Annual Report* (Form 2 filing rule); PCAOB Rule 2203, *Special Reports* (Form 3 filing rule); PCAOB Rule 3211, *Auditor Reporting of Certain Audit Participants* (Form AP filing rule).

[48] Indeed, as the Board has previously stated, Rule 3502 is ''essential to the proper functioning of the Board's independence rules.'' 2004 Proposing Release at 19; *see* 2005 Adopting Release at 14.

[49] The resource is available at *https://wp.nyu.edu/compliance_enforcement/category/artificial-intelligence.* PCAOB staff's review indicates that what the commenter referred to as qualitative data mainly consists of blog posts written on a wide array of legal issues and news articles that are much broader in scope, cannot be analyzed readily in their entirety, and are not directly relevant to the Board's analysis.

[50] PCAOB, Strategic Plan 2022–2026, at 10, *available at https://assets.pcaobus.org/pcaob-dev/docs/default-source/about/administration/documents/strategic_plans/strategic-plan-2022-2026.pdf?sfvrsn=b2ec4b6a_4/.*

[51] *Id.* at 3, 13; *see also id.* at 8 (''[W]e are focused on aggressively pursuing all statutory legal theories for charging respondents and remedies available in executing our enforcement program, which is central to protecting investors and promoting the public interest.'').

[52] *See* Sections 105(c)(4) & (c)(5) of Sarbanes-Oxley; *Rules on Investigations and Adjudications,* PCAOB Release No. 2003–015, at A2–58 (Sept. 29, 2003), *available at https://assets.pcaobus.org/pcaob-dev/docs/default-source/rulemaking/docket_005/release2003-015.pdf?sfvrsn=35827b4_0* (''The Act plainly contemplates that disciplinary proceedings can be instituted for a violation based on a single negligent act.''). The Board received multiple comments regarding its authority to pursue enforcement proceedings based on single instances of negligence, and the Board addresses those comments below.

[53] *See* Honigsberg, *supra,* at 1899 (''Individual accountability could provide a counterweight to the current incentive structure. . . . [A]udit partners do not internalize the full consequences of an audit failure. Promoting individual brands will better address this inefficiency and reduce externalities by causing audit partners to internalize these failures.''); *see also* Gina-Gail S. Fletcher, *Deterring Algorithmic Manipulation,* 74 Vand. L. Rev. 259, 268–69 (2021) (''[I]f the applicable laws are narrow, only capturing the most blatant misconduct, wrongdoers may not be deterred from breaking the law. . . . [D]eterrence is effective if regulators have strong, suitable tools to enforce the regime and market actors know whether they are violating the law.'').

effective enforcement tool, and in so doing, better aligns the rule with Sarbanes-Oxley.[54]

Several commenters stated that it is clear and understandable how the amendment to Rule 3502 advance the Board's statutory mandate to protect investors, including by promoting the twin goals of accountability and deterrence. One such commenter remarked that a negligence standard ''may be needed'' to enhance accountability to investors,[55] while another noted that such standard ''fall[s] squarely'' within the scope of the Board's mission and ''clearly and unambiguously advances'' the Board's cause.[56] Still another opined that the amendment would ensure consistency between the liability standard and investor expectations and that ''it makes no sense'' to have differing standards for firms and individuals.[57]

As to deterrence, multiple commenters stated that the amendments should result in auditors being more likely to comply with their respective legal requirements. One commenter further opined that a negligence standard ''sends a strong message'' to auditors regarding the requisite level of care that they should be applying in their work.[58]

Other commenters expressed a different view of the amendments relative to investor protection. One commenter stated that, should the amendment discourage certain individuals from accepting important QC roles for fear of being held liable, the public's interest would not be served by having less cautious or less qualified individuals fill those roles. Another opined that the amendments would incentivize high-quality talent to avoid the audit profession, which could lead to lower audit quality, increased audit fees, and a large number of delistings. As certain other commenters pointed out and as the Board observed in the Proposal, however, auditors already are subject to liability and disciplinary schemes that encourage them to comply—and not just avoid reckless noncompliance—with applicable statutory, regulatory, and professional standards.

Still another commenter expressed uncertainty about how a change to negligence will achieve further investor-protection benefits. This commenter remarked that the Board currently has means to hold accountable individuals who are negligent in various contexts and that investors are best protected when noncompliance is avoided in the first place. While the Board agrees that avoiding noncompliance in the first instance promotes audit quality and benefits investors, the Board views the addition of another enforcement tool to deter negligent conduct (including conduct that currently is beyond the Board's reach), and to hold accountable those who engage in such conduct, as a complement to—not mutually exclusive from—avoiding noncompliance.

Beyond deterrence and accountability, multiple commenters remarked that the amendments should enhance investors' confidence, both in audits and in the information provided in companies' financial statements. Some commenters noted that a change to a negligence standard would protect investors by encouraging auditors to be more careful about their work and positively affecting capital-market efficiency. Another commenter offered several additional downstream investor-protection benefits, including that as audit quality improves, the likelihood of auditors being subjected to meritorious litigation, and the risks and costs to investors resulting from that litigation (as well as misstatements and omissions in audited financial statements), should be reduced.

**Discussion of the Amendment**

As discussed above, the Board has amended PCAOB Rule 3502 by changing the liability standard from recklessness to negligence. The details of the amendment are discussed in the following subsections.

*A. Text of the Amended Rule and the Negligence Standard Generally*

The Board has amended Rule 3502's liability standard as proposed by deleting the phrase ''knowing, or recklessly not knowing'' (and certain ancillary surrounding text) and inserting elsewhere into the rule the phrase ''knew or should have known'' (and certain ancillary surrounding text). The outgoing phrase describes conduct that amounts to at least recklessness,[59] whereas the incoming phrase sets a negligence standard using ''classic negligence language.'' [60] Consequently, the Board is changing the standard for contributory liability from an ''extreme departure from the standard of ordinary care'' [61] (recklessness) to ''the failure to exercise reasonable care or competence'' (negligence).[62]

Such a change addresses the incongruity and related issues noted above. Specifically, it aligns the requisite mental states for liability of a registered firm and for liability of an associated person whose conduct directly and substantially contributed to the firm's violation.[63] In so doing, the modification should better incentivize associated persons to exercise the appropriate level of care, thus promoting investor protection.

Numerous commenters remarked that a change to negligence is appropriate, and with limited exception, commenters remarked that the proposed language to effectuate that change—which the Board has adopted—is clear and understandable.

One commenter called the proposed rule text (''knew or should have known'') ''overly vague and broad'' and asserted that, in contrast to an accountability framework that sets forth clear expectations, the proposed rule does not provide notice of specific conduct that may lead to a violation.[64] As the Proposal explained (and as repeated above), however, the ''knew or should have known'' phrasing is ''classic negligence language,'' and negligence is ''the failure to exercise reasonable care or competence.'' [65] Indeed, one commenter remarked that such language is ''familiar in the American legal system.'' [66] Moreover, as discussed in the 2005 Adopting Release and the Proposal (and as discussed below), the Board has delineated through its explanation of ''directly and substantially'' the nexus and magnitude that an auditor's conduct must have to

[54] *See* PCAOB, Strategic Plan 2022–2026, at 10 (''Effective auditing, attestation, quality control, ethics, and independence standards advance audit quality and are foundational to the PCAOB's execution of its mission to protect investors.'').

[55] Comment Letter from Council of Institutional Investors at 5 (Oct. 26, 2023).

[56] Comment Letter from Better Markets at 8.

[57] Comment Letter from Center for American Progress at 2 (Nov. 3, 2023).

[58] Comment Letter from Better Markets at 5.

[59] *See* 2005 Adopting Release at 12 n.23.

[60] *In re KPMG Peat Marwick LLP,* SEC Release No. 34–43862 (Jan. 19, 2001) (''Ordinarily, the phrase 'should have known' . . . is classic negligence language.''), *pet. for review denied, KPMG, LLP* v. *SEC,* 289 F.3d 109 (D.C. Cir. 2002); *see also Erickson Prods., Inc.* v. *Kast,* 921 F.3d 822, 833 (9th Cir. 2019) (' '[S]hould have known' . . . is a negligence standard. To say that a defendant 'should have known' of a risk, but did not know of it, is to say that he or she was 'negligent' as to that risk.''); *KPMG,* 289 F.3d at 120 (''knew or should have known'' is language that ''virtually compel[s]'' a negligence standard).

[61] *Marrie,* 374 F.3d at 1204 (citation and quotation marks omitted).

[62] *SW Hatfield,* SEC Release No. 34–69930, at 35 n.169 (citation and quotation marks omitted).

[63] However, the sanctions to which a contributory actor may be subject upon being found to have violated Rule 3502—including whether the Board may impose any of the heightened sanctions in Section 105(c)(5) of Sarbanes-Oxley—depend on the associated person's conduct and not that of the firm that commits the primary violation.

[64] Comment Letter from RSM US LLP at 1 (Nov. 3, 2023).

[65] 2023 Proposing Release at 13 & n.45.

[66] Comment Letter from Center for Audit Quality at 11 (Nov. 2, 2023).

a firm's primary violation to be actionable. The Board is thus satisfied that such a well-known standard in the law, supplemented by additional parameters that have been in place for nearly two decades, is neither vague nor overly broad.

Several commenters sought clarity over how the adopted text of Rule 3502 (''knew or should have known''), as well as the definition of negligence (''failure to exercise reasonable care or competence''), would interact with other standards of conduct applicable to auditors, and in particular the obligation of exercising due professional care under then-proposed (now-adopted) AS 1000, *General Responsibilities of the Auditor in Conducting an Audit*.[67] To be sure, due professional care and reasonable care and competence are largely overlapping concepts.[68] However, the Board wishes to emphasize three points.

First, while there may be overlap, AS 1000 does not apply to all conduct for which the Board has enforcement authority;[69] thus, there is a need for a separate rule with a negligence standard. Second, because Rule 3502 includes the ''directly and substantially'' modifier, it will not always be the case that conduct that violates the obligation of due professional care also violates Rule 3502; thus, Rule 3502 is not duplicative of AS 1000, even if conduct violating the latter may also violate the former in certain circumstances. Third, Rule 3502—located within the ''Ethics and Independence'' section of the Board's rules regarding professional practice standards—reflects an overarching ethical obligation, and the Board believes it appropriate to codify that general obligation, even if it overlaps with more specific provisions in particular professional standards.

A substantial number of commenters did not appear to support the change. In general, these commenters stated that they do not believe that negligence is an appropriate standard for assessing conduct and compliance on complex audit engagements, which commenters said require a wide range of judgments. For instance, one commenter opined that what could be labeled as a ''violation'' of professional standards instead may be only a difference of opinions between accountants about a particular pronouncement(s). That commenter further opined that, by proposing a negligence standard, the Board misunderstands the nature of audits. Several other commenters opined that it is bad policy to penalize errors in judgment and for the PCAOB to second-guess auditors' good-faith decisions in situations involving the application of professional judgment.

As noted above, however, firms and associated persons already are subject to a negligence standard for their primary violations, including for single instances of negligence that violate professional standards.[70] The amendment to Rule 3502 therefore affects only an incremental (albeit important) change, and only for contributory conduct. Given the Board's nearly two decades of experience distinguishing isolated, good-faith errors in professional judgment from conduct that warrants disciplinary action, as well as the modest estimated increase in Rule 3502 cases that would result from the amendment, the Board does not anticipate that a change in the liability standard for contributory conduct will be used to sanction isolated, good-faith errors in professional judgment—let alone be wielded as a ''blunt'' or ''draconian'' instrument, as one commenter suggested[71]—including with respect to less senior engagement team members.[72] The amendment focuses on unreasonable conduct; it does not impose strict liability.[73]

One commenter opined that a Rule 3502 charge could cause associated persons to ''lose their livelihood'' due to ''career-ending penalties'' under the Proposal.[74] Several other commenters expressed a similar concern about the negligence threshold and the potential collateral effects and impacts on auditors' careers. While the Board appreciates that disciplinary orders have consequences—as they should—research suggests that auditors remain gainfully employed following a culpability finding.[75] And in all events, the Board emphasizes that it is not the Board's intent to pursue, through Rule 3502 charges, what one commenter described as ''foot-faults'' or ''unintentional slips, pure errors of judgment, and innocuous errors on 'technicalities.' '' [76] Nor do the Board's standards require that auditors exercise ''perfect judgment at all times,'' as one commenter put it,[77] to avoid an enforcement proceeding (under Rule 3502 or otherwise).[78]

Some commenters expressed concern over the notion that, as a result of the amendment, the Board would be able to pursue conduct that is not itself a violation but that merely contributes to a violation. One commenter characterized this as a ''significant change from current PCAOB enforcement policy,'' [79] but in fact it is no change at all; under the current version of Rule 3502, the Board can bring charges for conduct that is not itself a primary violation. The amendment merely changes the standard for when an individual's contributory conduct becomes actionable; it does not alter whether the

[67] See General Responsibilities of the Auditor in Conducting an Audit and Amendments to PCAOB Standards, PCAOB Release No. 2024–004, at 30–39 (May 13, 2024) (''AS 1000 Release'') (subject to Commission approval); see also AS 1015, Due Professional Care in the Performance of Work.

[68] *See* AS 1000 Release at A1–3 (''due professional care'' includes ''acting with reasonable care and diligence''); *see also* QC 1000 Release at 81 (''We are adopting this provision [QC 1000.10] with modifications to align with the descriptions of due professional care and professional skepticism being adopted in AS 1000.'').

[69] *See* AS 1000 Release at 30–31 (delineating the parameters of ''all matters related to the audit'' to which AS 1000's requirement to exercise due professional care applies).

[70] *See, e.g., In re Sassetti, LLC,* PCAOB Release No. 105–2024–018 (Mar. 28, 2024); *In re Berkower, LLC,* PCAOB Release No. 105–2024–016 (Mar. 28, 2024).

[71] Comment Letter from U.S. Chamber of Commerce at 2 (Nov. 7, 2023).

[72] To iterate what the Board said in 2005, Rule 3502 is not ''a vehicle to pursue compliance personnel who act in an appropriate, reasonable manner that, in hindsight, turns out to have not been successful.'' 2005 Adopting Release at 14.

[73] ''Strict liability is imposed upon a defendant without proof that he was at fault. In other words, when liability is strict, neither negligence nor intent must be shown.'' Dobbs' Law of Torts § 437.

[74] Comment Letter from RSM US LLP at 1, 2.

[75] *See* J. Krishnan, M. Li, M. Mehta & H. Park, *Consequences for Culpable Auditors, available at https://ssrn.com/abstract=4627460.* In their working paper studying audit professionals subject to Commission or PCAOB enforcement proceedings between 2003 and 2019, the authors make three key findings: First, a substantial number of culpable auditors remain gainfully employed by their firms one year after the enforcement event (26% of Big 4 and 43% of non-Big 4 culpable auditors). Second, culpable individuals leaving Big 4 firms primarily move to the corporate sector and secure senior or mid-level executive positions at private firms. By contrast, culpable auditors departing from non-Big 4 firms tend to join other non-Big 4 public accounting firms, often as partners. Third, . . . the large majority of culpable auditors do not engage in liquidity-increasing real estate transactions around enforcement.

[76] Comment Letter from U.S. Chamber of Commerce at 9, 10.

[77] Comment Letter from RSM US LLP at 3.

[78] *See* AS 1015.03, *Due Professional Care in the Performance of Work* (quoting a treatise describing the obligation of due care as: ''[N]o man, whether skilled or unskilled, undertakes that the task he assumes shall be performed successfully, and without fault or error; he undertakes for good faith and integrity, but not for infallibility, and he is liable to his employer for negligence, bad faith, or dishonesty, but not for losses consequent upon pure errors of judgment.'' (citation omitted)); AS 1000 Release at 31 (''We continue to believe that the description of due professional care in the final standard is consistent with the description in AS 1015.03 (and the reference in the current standard to the legal treatise, *Cooley on Torts*), which uses the terms 'reasonable care and diligence' and 'good faith and integrity but not infallibility' to describe due care.'').

[79] Comment Letter from U.S. Chamber of Commerce at 2.

contributory conduct must be an independent violation apart from the firm's underlying primary violation.

Several commenters expressed concern regarding a negligence standard in Rule 3502 in light of the current regulatory environment—specifically amidst the Board's other standard-setting projects, including the then-proposed (now-adopted) quality control standard, QC 1000. These commenters opined that new requirements in proposed and adopted other standards may put auditors at greater risk of violating Rule 3502, including based on the introduction or modification of key concepts and their interrelation to negligence.

The Board appreciates that audits, especially of large enterprises, have the potential to be quite complex and can require input from various individuals, including individuals not on the engagement team. QC systems likewise can be quite complex and require input from numerous people. And as in 2005, ''[t]he Board also recognizes that persons subject to its jurisdiction must comply with complex professional and regulatory requirements in performing their jobs.'' [80] But complexity is not a reason to allow negligent auditors—individuals who by definition have acted *unreasonably*—to contribute directly and substantially to firms' violations without consequence. Indeed, as one commenter noted, the complexity of audits and the current environment in which companies operate—which is rapidly changing and subject to emerging risks—*supports* amending Rule 3502 because audited financial statements are becoming increasingly important.

The Board also recognizes that it recently has adopted amendments to several standards [81] and has proposed amendments to other standards [82] and to certain PCAOB rules.[83] This is consistent with the Board's Strategic Plan, which states: ''We expect to propose and adopt numerous amendments and new standards over the coming years, in accordance with our standard-setting and research agendas. We also plan to evaluate certain existing standards to determine whether they are outmoded.'' [84] Many of the newly adopted standards, moreover, have staggered effective dates, and thus auditors will not be required to come into compliance with each of them at the same time.[85] And in all events, as firms make efforts to comply with new standards, it necessarily follows that individuals who could be subject to Rule 3502 also would be making such efforts because firms can act only through their natural persons.

The Board does not intend for any of its new or revised standards, either alone or in conjunction with the amendment the Board has adopted, to ''create[ ] a trap for the unwary,'' as one commenter opined.[86] Far from it, the Board's standard-setting agenda seeks to modernize standards in a way that promotes high-quality audits through compliance in the first instance. Enforcement proceedings promote this same *ex ante* focus on compliance insofar as they serve as a deterrent to other auditors from engaging in the same or similar misconduct.

Finally, some commenters expressed concern about whether an associated person could be liable for negligence under Rule 3502 in situations where a primary violation by a firm requires a standard higher than negligence. One commenter remarked that holding an associated person liable in such circumstances would be ''unprecedented (and unlawful)'' and stated that the Board should consider specifically exempting violation-causing conduct when a primary violation involves intentional conduct.[87] Another commenter sought clarity from the Board on the issue and asked whether the Board believes that individual liability in such a scenario would be appropriate. Although the Board will continue to evaluate whether to bring Rule 3502 charges on a case-by-case basis, when the firm's primary violation requires more than negligence, the Board does not anticipate charging individuals for negligently contributing to such violations.[88]

### *B. Retention of ''Directly and Substantially''*

As proposed, the Board has decided to retain the ''directly and substantially'' modifier to describe the connection between a contributory actor's conduct and a registered firm's primary violation.[89] Thus, for conduct to ''directly'' contribute to a primary violation, it must ''either essentially constitute[ ] the violation''—in which case the conduct necessarily is a direct cause of it [90]—or be ''a reasonably proximate facilitating event of, or a reasonably proximate stimulus for, the violation''; but it need not ''be the final step in a chain of actions leading to the violation.'' [91] Moreover, ''directly'' does not excuse an associated person who negligently ''engages in conduct that substantially contributes to a violation, just because others also contributed to the violation, or because others could have stopped the violation and did

[80] 2005 Adopting Release at 14.

[81] See generally Amendments Related to Aspects of Designing and Performing Audit Procedures that Involve Technology-Assisted Analysis of Information in Electronic Form, PCAOB Release No. 2024–007 (June 12, 2024) (subject to Commission approval); QC 1000 Release; AS 1000 Release; The Auditor's Use of Confirmation, and Other Amendments to PCAOB Standards, PCAOB Release No. 2023–008 (Sept. 28, 2023); Planning and Supervision of Audits Involving Other Auditors and Dividing Responsibility for the Audit with Another Accounting Firm, PCAOB Release No. 2022–002 (June 21, 2022).

[82] See, *e.g.,* Proposed Auditing Standard—Designing and Performing Substantive Analytical Procedures and Amendments to Other PCAOB Standards, PCAOB Release No. 2024–006 (June 12, 2024); Proposing Release: Amendments to PCAOB Auditing Standards related to a Company's Noncompliance with Laws and Regulations And Other Related Amendments, PCAOB Release No. 2023–003 (June 6, 2023).

[83] See, *e.g.,* Proposing Release: Firm Reporting, PCAOB Release No. 2024–003 (Apr. 9, 2024); Firm and Engagement Metrics, PCAOB Release No. 2024–002 (Apr. 9, 2024); Proposals Regarding False or Misleading Statements Concerning PCAOB Registration and Oversight and Constructive Requests to Withdraw from Registration, PCAOB Release No. 2024–001 (Feb. 27, 2024).

[84] PCAOB, Strategic Plan 2022–2026, at 10.

[85] *See* PCAOB Release No. 2022–002, at 58 (effective for audits of financial statements for fiscal years ending on or after December 15, 2024); PCAOB Release No. 2023–008, at 96 (effective for audits of financial statements for fiscal years ending on or after June 15, 2025); AS 1000 Release at 96 (with limited exception, effective for audits of financial statements for fiscal years beginning on or after December 15, 2024); QC 1000 Release at 378 (effective December 15, 2025); PCAOB Release No. 2024–007, at 61 (effective for audits of financial statements for fiscal years beginning on or after December 15, 2025).

[86] Comment Letter from U.S. Chamber of Commerce at 10.

[87] Comment Letter from RSM US LLP at 3.

[88] *See Howard* v. *SEC,* 376 F.3d 1136, 1141 (D.C. Cir. 2004) (''Although we held in *KPMG, LLP* v. *SEC,* that the 'knew or should have known' language in § 21C embodied a negligence standard for purposes of that case, it does not necessarily follow that negligence is the standard'' where ''scienter [is] an element of the primary violations.''); *KPMG Peat Marwick,* SEC Release No. 34–43862 (''We hold today that negligence is sufficient to establish 'causing' liability under Exchange Act Section 21C(a), at least in cases in which a person is alleged to 'cause' a primary violation that does not require scienter.'').

[89] *See* 2005 Adopting Release at 13. As discussed above, the ''directly and substantially'' modifier was added in response to commenters' concerns that a negligence standard might sweep too broadly. *See also* 2005 Adopting Release at 13. Because the Board is retaining ''directly and substantially,'' as explained herein, the guardrails that the Board put in place in 2005 in response to such concerns remain in Rule 3502.

[90] *Cf. Paul F. Newton & Co.* v. *Tex. Commerce Bank,* 630 F.2d 1111, 1118 (5th Cir. 1980) (''[C]ommon law agency principles, including the doctrine of respondeat superior, remain viable in actions brought under the Securities Exchange Act and provide a means of imposing secondary liability for violations of the Act independent of § 20(a). The federal securities statutes are remedial legislation and must be construed broadly, not technically and restrictively.'').

[91] *See* 2005 Adopting Release at 13.

not.'' [92] Nor would it necessarily excuse an associated person's conduct when another actor engages in intentional misconduct that might otherwise break the chain of causation—in particular where the associated person's conduct is at least negligent and created the situation for the other actor to engage in intentional misconduct, and where the associated person realized or should have realized the potential for, and likelihood of, such third-party intentional misconduct.[93]

For its part, ''substantially'' continues to require that the associated person's conduct ''contribute[ ] to the violation in a material or significant way,'' though it ''does not need to have been the sole cause of the violation.'' [94] The Board stresses that Rule 3502 is not intended to ''reach an associated person's conduct that, while contributing to the violation in some way, is remote from, or tangential to, the firm's violation.'' [95]

Commenters generally encouraged the Board to retain the ''directly and substantially'' modifier, including one commenter remarking that the Board's reasons for retaining it ''remain valid.'' [96] Multiple commenters, moreover, stated that these terms are clear and understandable. One commenter posited that the Board should not retain ''directly and substantially'' as part of Rule 3502.

Several commenters sought additional clarity around the terms ''directly and substantially.'' For instance, one commenter noted that the terms are not defined in Rule 3502 and claimed that the purported lack of clarity will make the rule inoperable. This commenter suggested that the Board instead import a more established legal doctrine of causation. Another commenter called the terms ''subjective'' and asked for a clearer articulation of them,[97] and another asked whether the terms ''will be applied differently moving forward.'' [98]

Having considered all commenters' views, the Board is satisfied that the modifier ''directly and substantially'' is sufficiently clear and operable and believes that no further delineation of the terms is needed at this time. The Board notes that, going back to the 2005 Adopting Release, the explanation of ''directly and substantially'' includes concepts from established legal principles (*e.g.,* ''directly'' includes circumstances where an individual's conduct is a ''reasonably proximate facilitating event of, or a reasonably proximate stimulus for, the [firm's] violation'').

The Board further notes that, based on the amended rule text, ''directly and substantially'' would apply only to the sufficiency of the connection between an associated person's conduct and a firm's violation. Thus, to be liable under Rule 3502, a person must have known, or should have known, that an act or omission by them would contribute—but not that it would *directly and substantially* contribute—to a firm's violation.

One commenter remarked that the Board failed to explain its intention behind this aspect of the amendment and that the wording creates potential ambiguities and unfairness. The Board, however, sees it differently—by eliminating the need for any inquiry into individuals' mental states regarding the manner in which their conduct contributes to the firm's violation, the Board believes that the rule has the potential to be applied more uniformly (and thus more fairly). Moreover, if an associated person knew or should have known that his or her conduct would contribute to a violation in *any* way, then that individual should not be able to evade liability simply because the individual did not know the extent of the nexus and magnitude of such contribution. But in all events, the Board iterates that, absent conduct ''directly and substantially'' contributing to a firm's violation, an individual's actions or omissions are not subject to discipline under Rule 3502.

Two commenters opined that the Proposal suggested that the Board was open to a tertiary liability theory, in which a first associated person's conduct contributes to the conduct of a second associated person, which in turn contributes to a registered firm's violation. But as those commenters also recognized, the rule still would require the first person's conduct to directly and substantially contribute to *the firm's* violation.[99] Thus, contrary to those commenters' concerns, the definition of ''directly'' is not stretched beyond what it would be if there were no second person involved, let alone beyond common usage of the word.

Finally, some commenters suggested other phrases or concepts to incorporate into the rule to modify ''contribute.'' One commenter called for limiting liability to ''egregious actions.'' [100] Such a standard, however, more aptly describes conduct that is reckless (as opposed to negligent),[101] which would be contrary to what the Board intends for the amendment to accomplish.

That same commenter expressed the view that the negligence standard should not apply to a professional who spends only a de minimis amount of time on an engagement, and further suggested that the Board add language to clarify that liability would only extend to a professional having a substantive level of participation on the engagement. Another commenter similarly suggested that the Board require that an associated person's conduct be a ''substantial factor'' in bringing about the firm's violation.[102] The Board, however, believes that the contours of ''substantially'' (in ''directly and substantially'') suffice to help ensure that Rule 3502 is applied only to those individuals with a substantive level of participation or responsibility on an engagement with respect to a firm's violation in connection with an audit. And as the Board previously has

[92] *Id.*

[93] *See* Restatement (Second) of Torts § 448 (''The act of a third person in committing an intentional [violation] is a superseding cause of harm to another resulting therefrom, although the actor's negligent conduct created a situation which afforded an opportunity to the third person to commit such a [violation], unless the actor at the time of his negligent conduct realized or should have realized the likelihood that such a situation might be created, and that a third person might avail himself of the opportunity to commit such a [violation].'').

[94] 2005 Adopting Release at 13.

[95] *Id.; see also id.* at 14 (the Board does not ''seek to reach those whose conduct, unbeknownst to them, remotely contributes to a firm's violation''). One commenter opined that the distinction between obligations placed on individuals and firms, respectively, should not be disturbed insofar as there may be instances where it is appropriate for a firm to be sanctioned for a violation but where no particular individual played a sufficient role in that violation. This commenter urged the Board to not use Rule 3502 to ''collapse this distinction.'' Comment Letter from Center for Audit Quality at 9. The Board agrees—there are indeed instances where it is appropriate to sanction a firm but not any individual(s) (under Rule 3502 or otherwise). The amendment the Board has adopted does nothing to collapse that distinction: It changes only the actionable standard of conduct, but does nothing to alter the nexus and magnitude requirements of ''directly and substantially,'' *i.e.,* it does not alter the requisite sufficiency of an individual's role relative to a firm's violation.

[96] Comment Letter from Ernst & Young LLP at 4 (Nov. 3, 2023).

[97] Comment Letter from Accounting & Auditing Steering Committee of the Pennsylvania Institute of Certified Public Accountants at 5 (Nov. 2, 2023).

[98] Comment Letter from Audit and Assurance Services Committee of the Illinois CPA Society at 3 (Nov. 2, 2023).

[99] *See* 2023 Proposing Release at 17 n.65; *e.g., In re Shandong Haoxin Certified Public Accountants Co., Ltd.,* PCAOB Release No. 105–2023–045, at ¶ 65 (Nov. 30, 2023) (multiple individuals violated Rule 3502 in connection with the same primary violation by the firm through different (though related) contributory conduct).

[100] Comment Letter from Accounting & Auditing Steering Committee of the Pennsylvania Institute of Certified Public Accountants at 5.

[101] *See, e.g., In re Gately & Assocs., LLC,* SEC Release No. 34–62656, at 18 (Aug. 5, 2010) (''Recklessness can be established by an 'egregious refusal to investigate the doubtful and to see the obvious.' '' (citation omitted)).

[102] Comment Letter from RSM US LLP at 7.

expressed—in the 2005 Adopting Release, in the Proposal, and above—Rule 3502 is not intended to reach an associated person's conduct that, while contributing to the violation in some way, is remote from, or tangential to, the firm's violation.

*C. No New Liability Standard in Light of the Commission's Authority*

As explained in the Proposal, associated persons already are subject to potential liability—including money penalties—for negligently contributing to registered firms' violations of numerous laws and rules governing the preparation and issuance of audit reports via the Securities Exchange Act of 1934 (''Exchange Act''). Specifically, Section 21C of the Exchange Act authorizes the Commission to institute cease-and-desist proceedings against any ''person that is, was, or would be a cause of [a] violation [of the Exchange Act or any rule or regulation thereunder], due to an act or omission the person knew or should have known would contribute to such violation,'' [103] and Section 21B further authorizes the Commission to ''impose a civil penalty'' upon finding that such person ''is or was a cause of [such] violation.'' [104] Section 3(b)(1) of Sarbanes-Oxley, in turn, provides that ''[a] violation by any person of . . . any rule of the Board shall be treated for all purposes in the same manner as a violation of the [Exchange Act] or the rules and regulations issued thereunder.'' Thus, the amendment to Rule 3502's liability threshold does not subject auditors to any new or different standard to govern their conduct in light of the Commission's authority.[105]

Numerous commenters seemed to disagree with that proposition for several reasons. Some commenters pointed out that the Commission cases cited in footnote 52 of the Proposal, while each a proceeding under Section 21C of the Exchange Act, were also proceedings under Commission Rule of Practice 102(e), which requires either ''[a] single instance of highly unreasonable conduct that results in a violation'' or ''repeated instances of unreasonable conduct, each resulting in a violation of applicable professional standards.'' [106] Sanctions are not available under Rule 102(e) when an auditor engages in a single instance of unreasonable (but not highly unreasonable) conduct.[107] Thus, certain commenters said that the cases were not ''on par'' with what the Board intends through the amendment to Rule 3502.[108]

To be sure, those commenters are correct that the cases cited in footnote 52 of the Proposal involve proceedings under Commission Rule 102(e), as well as under Section 21C. Commenters, however, did not appear to contest that the Commission has the authority to bring proceedings for single acts of ordinary negligence under Section 21C, including for civil money penalties (authorized by Section 21B), *without also proceeding under Commission Rule 102(e).*[109] Rather, commenters instead suggested only that the Commission rarely exercises such authority in practice. While that may be the case, the Board's point nonetheless remains: The amendment to Rule 3502's liability threshold does not subject auditors to any new or different standard to govern their conduct.

The Commission release cited by certain commenters when advancing the contrary argument makes this point abundantly clear. In it, the Commission stated that a single act of negligence ''may result in a violation of the federal securities laws'' and that ''the person committing such an error, though not subject to discipline under Rule 102(e), would be exposed to the sanctions available under [such] other provisions.'' [110] The Commission noted elsewhere in its release that a single act of ordinary negligence ''could have legal consequences.'' [111]

One commenter suggested that Section 21C proceedings are an inapt analog for charges under Rule 3502 because Section 21C was intended to quickly enjoin conduct that may lead to violations, but was not designed to be a sanctions-imposing provision. Whether that was the original intent of Section 21C,[112] Section 21B now indisputably allows for sanctions (in the form of monetary penalties) in a proceeding under Section 21C when an auditor or any other person was negligent in causing violations by others. Indeed, much like Section 21B's direct-violation provision, the text of the secondary-violation provision in Section 21B expressly contemplates the imposition of a penalty based on conduct that *already* occurred.[113]

[103] 15 U.S.C. 78u–3(a); *see also* 15 U.S.C. 77h–1(a), 80a–9(f)(1), 80b–3(k)(1).

[104] 15 U.S.C. 78u–2(a)(2). The Commission's Section 21B authority to impose civil penalties for violations in Section 21C cease-and-desist proceedings was added in 2010 as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act. *See* Public Law 111–203.

[105] Nor does the Commission's authority to sanction associated persons' negligent contributory conduct detract from the proposed amendment's deterrent effect. As previously noted, as an increase in the number of regulators on the lookout for the same or similar violative conduct increases the likelihood of that conduct being detected and, consequently, the likelihood that the conduct would be sanctioned. *See* Anton R. Valukas, *White-Collar Crime and Economic Recession,* 2010 U. Chi. Legal F. 1, 12 (2010) (''One of the most powerful deterrents to misconduct is an increased threat of prosecution. . . . A 'can do' accountant is less likely to provide questionable opinions if there is a substantial certainty that he will be caught and punished.''); *see also* Fletcher, *supra,* at 268 (''Certainty of punishment''—including ''the possibility of detection, apprehension, conviction, and sanctions''—is one of two ''primary factors'' that drive deterrence.).

[106] 17 CFR 201.102(e); *see In re David S. Hall, P.C.,* SEC Initial Decision Release No. 1114 (Mar. 7, 2017) (ALJ Op.), *decision made final,* SEC Release No. 34–80949 (June 15, 2017); *In re Gregory M. Dearlove, CPA,* SEC Release No. 34–57244 (Jan. 31, 2008); *In re Philip L. Pascale, CPA,* SEC Release No. 34–51393 (Mar. 18, 2005).

[107] *See Amendment to Rule 102(e) of the Commission's Rules of Practice,* SEC Release No. 34–40567 (Oct. 26, 1998) (''[T]he Commission is not adopting a standard that reaches single acts of simple negligence.'').

[108] Comment Letter from Center for Audit Quality at 7; Comment Letter from Moss Adams LLP at 3 (Nov. 3, 2023). One commenter observed that the Commission proposed but ultimately declined to adopt an ordinary negligence standard for contributory conduct by accountants under Rule 102(e). But as that commenter also recognized, the Commission did so while expressly acknowledging that an ordinary negligence standard in Rule 102(e) would have been duplicative of authority that it already possessed. *See* SEC Release No. 34–40567 (''Moreover, the Commission possesses authority, wholly independent of Rule 102(e), to address and deter such errors through its enforcement of provisions of the federal securities laws that impose liability on persons, including accountants, for negligent conduct.''). The Board, by contrast, lacks ability to pursue contributory negligent conduct based on the current formulation of Rule 3502.

[109] Indeed, civil money penalties are not available under Commission Rule 102(e)—only censure or denial (temporary or permanent) of the privilege of appearing or practicing before the Commission. 17 CFR 201.102(e). Thus, the Commission would not need to meet Rule 102(e)'s ''highly unreasonable conduct'' standard to impose a civil money penalty for a single act of negligence under Section 21B of the Exchange Act.

[110] SEC Release No. 34–40567 at n.28; *see also id.* at n.38 (''In other instances, the federal securities laws expressly subject auditors to liability without requiring intentional misconduct. . . . [S]ection 21C of the Exchange Act imposes liability when a person is a 'cause' of a violation 'due to an act or omission the person knew or should have known would contribute to such violation.' '').

[111] *Id.* at n.47.

[112] The commenter's cited authority does not appear to support that view. *See* Andrew M. Smith, *SEC Cease-and-Desist Orders,* 51 Admin. L. Rev. 1197, 1226 (1999) (''The legislative history of the [statute that includes Section 21C] is not clear as to whether Congress intended to require the SEC to find a reasonable likelihood of future violation before imposing a cease-and-desist order, although a strong argument can be made that Congress did not intend to require the SEC to make such a finding. In addition, most, if not all, of the proponents and architects of cease-and-desist authority, and many who have commented on the [relevant statute] and its predecessor legislative proposals, believe that such a finding is not necessary.'').

[113] 15 U.S.C. 78u–2(a)(2)(B) (''In any proceeding instituted under [Section 21C] against any person, the Commission may impose a civil penalty, if the Commission finds, on the record after notice and

Continued

This commenter also posited that, in addition to a primary violation, Section 21C also requires a finding of harm to the public that was in part caused by a contributory negligent act. While that may be the case for issuance of a temporary order pursuant to Section 21C(c), no such finding is required for imposition of a monetary penalty under Section 21B.[114] And regardless, although harm is not an element of proof for a Rule 3502 violation, inherent in any proceeding under Rule 3502 is the foundational principle that the Board is bringing the proceeding and imposing sanctions ''to protect the interests of investors and further the public interest in the preparation of informative, accurate, and independent audit reports.'' [115]

Another commenter remarked that in a Commission proceeding for ordinary negligence under Section 21C (and not also for highly unreasonable conduct under Rule 102(e)), the Exchange Act limits what sanctions the Commission can impose, and in the commenter's view, the Commission lacks the authority to impose certain sanctions that the Board can impose. But while the available sanctions for a single act of negligence might be different in a proceeding under Rule 3502 compared with one under Section 21C—indeed, the Commission can seek certain sanctions that the Board cannot [116]—Sarbanes-Oxley *does* place express limits on what sanctions the Board can impose.[117] In the Board's view, that the limitations on sanctions in the Exchange Act and in Sarbanes-Oxley, respectively, might not be the same in all respects does not render the Board's enforcement authority ''unprecedented.'' [118]

*D. Authority for the Amendment*

Several commenters expressed doubt regarding the Board's statutory authority for the amendment in two respects: They questioned whether the Board has the authority to sanction single acts of ordinary negligence as a general matter (*i.e.,* in cases of direct violations or otherwise), and they questioned the Board's authority to promulgate a contributory liability rule at the negligence standard. In general, these commenters asserted that the Board's authority in these respects is either unclear or rests on questionable interpretations of Sarbanes-Oxley. One commenter further opined that the Proposal ignores congressional intent and that the Board's authority is ''not as settled as the Proposal assumes,'' [119] and still another comment letter posited that Sarbanes-Oxley is clear that in the absence of repeated negligence, sanctions should not be imposed.

Although the Board believes that its authority in both respects is well-settled for reasons the Board has previously explained,[120] the Board nonetheless addresses these commenters' views.

1. Authority To Sanction Single Acts of Negligence Generally

The text of Section 105 of Sarbanes-Oxley plainly permits the Board to impose liability for single acts of negligence. Specifically, Section 105(c)(4) authorizes the Board to impose an array of sanctions—listed in subparagraphs (A) through (G)—upon finding that a registered firm or associated person engaged in violative conduct, without reference to the level of culpability required but ''subject to applicable limitations'' in Section 105(c)(5). Section 105(c)(5), in turn, provides that ''[t]he sanctions and penalties described in subparagraphs (A) through (C) and (D)(ii) of [Section 105(c)(4)] shall only apply to [ ] intentional or knowing conduct, including reckless conduct,'' or ''repeated instances of negligent conduct each resulting in a violation of the applicable statutory, regulatory, or professional standard.'' Section 105(c)(5) thus does not restrict the Board's authority to impose for single acts of negligence certain sanctions—those in subparagraphs (D)(i) and (E) through (G) of Section 105(c)(4).

The Board has long recognized this grant of authority,[121] as did multiple commenters. One commenter agreed that the Board has had authority to bring enforcement proceedings for negligence ''[s]ince the PCAOB's creation,'' [122] and another posited that Congress ''clearly'' intended for the Board to sanction associated persons for negligent conduct.[123] Still another asserted that Sarbanes-Oxley ''empowers'' the Board

opportunity for hearing, that such person . . . is *or was* a cause of the violation of any provision of this chapter, or any rule or regulation issued under this chapter.'' (emphasis added)); *see also* Smith, *supra,* at 1199 (''[Section 21C's] plain language—'has violated'—appears to authorize the SEC to base a cease-and-desist order upon a *single past violation,* without any showing that the violator is likely to break the law in the future.'' (emphasis added)).

[114] *Compare* 15 U.S.C. 78u–3(c)(1), *with id.* 78u–2(a)(2). In any event, it would appear that harm to the public interest is sufficient, but not *required,* for a temporary restraining order under Section 21C, as that provision allows the Commission to enter a temporary restraining order ''[w]henever the Commission determines that the alleged violation or threatened violation . . . is likely to result in significant dissipation or conversion of assets, significant harm to investors, *or* substantial harm to the public interest.'' *Id.* 78u–3(c)(1) (emphasis added).

[115] Section 101(a) of Sarbanes-Oxley. As the Commission has recognized, moreover, even ''unreasonable, or negligent, accounting or auditing errors . . . could undermine accurate financial reporting.'' SEC Release No. 34–40567.

[116] The Commission's authority is more expansive in other ways, as well. For example, as noted in the Proposal, the Commission is not limited to holding accountable auditors for contributory conduct with respect to primary violations committed only by registered firms; rather, the Commission also may hold accountable auditors who cause violations by any other person, including issuers. *See* 2023 Proposing Release at 9 n.33. Additionally, while Rule 3502 applies only to associated persons of registered firms, the Commission's authority under Section 21C is not so limited; it applies to ''any person,'' including nonaccounting professionals. 15 U.S.C. 78u–3(a); *see also id.* 78c(a)(9) (defining ''person'').

[117] *See* Section 105(c)(5) of Sarbanes-Oxley. One commenter sought clarity with respect to footnote 48 of the Proposal, and specifically the circumstances under which the Board would be permitted to impose heightened sanctions. The Board takes this opportunity to clarify that, although the amendment to Rule 3502 allows the Board to sanction single instances of negligent contributory conduct, the heightened sanctions referenced in Section 105(c)(5) of Sarbanes-Oxley—specifically, those sanctions listed in subparagraphs (A) through (C) and (D)(ii) of Section 105(c)(4)—would *not* be available for a Rule 3502 violation absent a finding that the individual who violated Rule 3502 acted at least recklessly or committed repeated acts of negligence each resulting in a violation of an applicable statutory, regulatory, or professional standard.

[118] Comment Letter from Center for Audit Quality at 8. This commenter also sought to cast as inappropriate a negligence standard for Rule 3502 in light of the mental state required for aiding and abetting liability. The Board agrees with the commenter that aiding and abetting generally requires knowing conduct, which is why the Board has not relied on that theory of liability—in 2004, in 2005, in the Proposal, or now—as an analog or basis for Rule 3502. *See, e.g.,* 2005 Adopting Release at 11 n.20 (''Rule 3502, of course, differs from an aiding-and-abetting cause of action in important respects. Among other things, the rule does not apply whenever an associated person causes another to violate relevant laws, rules and standards. Rather, Rule 3502 applies only when an associated person causes a violation by the registered firm with which the person is associated.'').

[119] Comment Letter from U.S. Chamber of Commerce at 2.

[120] *See* 2004 Proposing Release at 18; 2005 Adopting Release at 10–12; *see also* 2023 Proposing Release at 12 n.43.

[121] Two decades ago, the Board stated:

The Act *plainly contemplates that disciplinary proceedings can be instituted for a violation based on a single negligent act.* Section 105(c)(5) of the Act provides that the Board may impose the more severe sanctions authorized by section 105(c)(4) only in cases that involve intentional or knowing conduct (including reckless conduct) or repeated instances of negligent conduct. Implicit in that provision is that *a violation based on a single instance of negligent conduct is sufficient to warrant a disciplinary proceeding to impose lesser sanctions.*

PCAOB Release No. 2003–015, at A2–58–59 (emphases added); *see also id.* at A2–76 (''[S]ection 105(c)(5) of the Act requires scienter or repeated negligence for imposition of the most severe sanctions. The Act does not limit the standard that must be met for imposition of other sanctions.''); 2005 Adopting Release at 12 n.23.

[122] Comment Letter from North American Securities Administrators Association, Inc. at 1 (Nov. 13, 2023).

[123] Comment Letter from Center for American Progress at 3.

to sanction associated persons in instances ''when their conduct was not intentional or reckless.'' [124] Indeed, this latter commenter opined that the Proposal created a ''misimpression'' that associated persons currently can *only* be sanctioned for intentional or reckless misconduct.[125] This of course was not the Board's intent.

Other commenters, however, took the opposite view. One comment letter opined that, when read together, the provisions of Sections 105(c)(4) and (c)(5) discussed above make clear that unless negligent conduct is repeated, sanctions and penalties ''should not be applied.'' [126] If Congress had intended for *all* sanctions listed in Section 105(c)(4) to be unavailable absent reckless conduct or repeated acts of negligence, however, then it would have had no reason to make the specific carve-outs that it did in Section 105(c)(5); there would be no point to them. Such an interpretation thus runs contrary to both Section 105(c)(5)'s text and the bedrock principle of statutory construction to not read a statute in a way that renders language superfluous.[127]

2. Authority for a Negligence-Based Contributory-Liability Rule

Congress intended to grant to the Board ''plenary authority'' to establish or adopt ethics standards.[128] To that end, Section 103(a)(1) of Sarbanes-Oxley mandates that the Board

> shall, by rule, establish . . . and amend or otherwise modify or alter, such auditing and related attestation standards, such quality control standards, such ethics standards, and such independence standards to be used by registered public accounting firms in the preparation and issuance of audit reports . . . as may be necessary or appropriate in the public interest or for the protection of investors.[129]

As the Board twice recognized nearly two decades ago—once when it proposed Rule 3502 and again when the Board adopted it—a contributory liability rule merely codifies auditors' longstanding ethics obligations.[130]

Some commenters nonetheless expressed doubt about whether the statutory authority to regulate ethical conduct equates to a statutory authority to sanction negligent conduct. In doing so, one such commenter appeared to interpret the Proposal's discussion of the Commission's authority under Section 21C of the Exchange Act to mean that the Board was relying on that provision as authority for the amendment. The Board, however, did not rely (and is not relying) on Section 21C of the Exchange Act as a source of authority for its negligent contributory-liability standard; rather, the Board agrees with the commenter that such provision applies only to the Commission. The Proposal's discussion of Section 21C instead was meant to show that, by adopting a negligence threshold in Rule 3502, the Board would not be subjecting auditors to any new standard to govern their contributory conduct.[131]

As the Board previously explained, ''an associated person's ethical obligation is not merely to refrain from knowingly causing a violation but also to act with sufficient care to avoid negligently causing a violation.'' [132] Such obligation has deep historical roots. For instance, the AICPA's Code of Professional Conduct at the time that Sarbanes-Oxley was enacted (and still today) made it an ''act discreditable to the profession''—and therefore a violation of its ethics rules [133]—for a member accountant to ''*permit[] or direct[] another* to make[] materially false and misleading entries in the financial statements or records of an entity'' ''*by virtue of his or her negligence.*'' [134] Just the same if a member were to ''*permit[] or direct[] another* to sign[] a document containing materially false and misleading information'' ''*by virtue of his or her negligence.*'' [135]

Congress clearly had in mind the AICPA Code of Professional Conduct when it authorized the Board to promulgate ethics standards. The AICPA had a prominent presence during the drafting of Sarbanes-Oxley and in the run up to its passage,[136] and beyond Congress empowering the Board to write its own ethics standards, it also empowered the Board to ''adopt as its rules[] . . . any portion of any statement of auditing standards or *other professional standards*'' and to ''modify, supplement, revise, or subsequently amend, modify, or repeal, in whole or in part, any portion of any [such] statement.'' [137] In other words, Congress authorized the Board to adopt (and later amend or modify) parts of the AICPA's Code of Professional Conduct as the Board's ethics standards, and at the time of Sarbanes-Oxley's enactment, that Code included prohibitions on negligent contributory conduct.

One commenter cited a provision of the AICPA Code of Professional Conduct that has a ''knowingly'' standard for contributory conduct (Section 0.200.020.04). This commenter also cited the Board's then-proposed (now-adopted) EI 1000, *Integrity and Objectivity,* to note that the definition of ''integrity'' in that standard includes

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[124] Comment Letter from Ernst & Young LLP at 2.

[125] *Id.*

[126] Comment Letter from Eight Accounting Professors (Cannon, et al.) at 4 (Nov. 2, 2023).

[127] *See, e.g., FCC* v. *NextWave Personal Cmmc'ns Inc.,* 537 U.S. 293, 302 (2003) (''[E]ven § 525(a) itself contains explicit exemptions for certain Agriculture Department programs. These latter exceptions would be entirely superfluous if we were to read § 525 as the Commission proposes—which means, of course, that such a reading must be rejected.''); *see also TRW Inc.* v. *Andrews,* 534 U.S. 19, 31 (2001) (''[W]ere we to adopt [respondent's] construction of the statute, the express exception would be rendered insignificant, if not wholly superfluous.'' (citation and quotation marks omitted)).

[128] S. Rep. 107–205, at 8.

[129] *See also* Section 101(c)(2) of Sarbanes-Oxley.

[130] 2004 Proposing Release at 18; *see* 2005 Adopting Release at 9. Beyond codifying auditors' ethics obligations, Rule 3502 is also ''essential to the proper functioning of the Board's independence rules.'' 2004 Proposing Release at 19; *see also* 2005 Adopting Release at 14. As the Board previously explained:

> For example, Rule 3521 provides, in part, that a registered firm is not independent of its audit client if the firm provides that audit client with a service for a contingent fee. When an associated person causes . . . the registered firm to provide that service for a contingent fee, Rule 3502 would allow the Board to discipline the associated person for that conduct.

2005 Adopting Release at 14.

[131] 2023 Proposing Release at 14 (discussing Section 21C and concluding: ''Thus, the proposed amendment to Rule 3502's liability threshold would not subject auditors to any new or different standard to govern their conduct.'').

[132] 2005 Adopting Release at 9.

[133] The AICPA's *Ethics Rulings* are a body of decisions made by the AICPA's professional ethics division's executive committee that ''summarize the application of Rules of Conduct and Interpretations to a particular set of factual circumstances.'' Introduction, Code of Professional Conduct (as Adopted January 12, 1988), *available at https://us.aicpa.org/content/dam/aicpa/research/standards/codeofconduct/downloadabledocuments/2014december14codeofprofessionalconduct.pdf; see also* AICPA Code of Professional Conduct § 0.500.01 (updated June 2020) (''The code is the only authoritative source of AICPA ethics rules and interpretations.'' (italics omitted)).

[134] AICPA Code of Professional Conduct, ET § 501.05(a), *Negligence in the Preparation of Financial Statements or Records* (emphases added), *recodified at* Section 1.400.040.01.

[135] *Id.* § 501.05(c) (emphases added).

[136] During committee hearings for Sarbanes-Oxley, the Senate heard testimony from five individuals who were serving, or previously had served, in leadership roles within the AICPA (including the AICPA's then-current Chair and its former Chair), and also relied on data provided by the AICPA. *See* S. Rep. 107–205, at 3–4, 61, 63; *see also* H.R. Rep. No. 107–414, at 19 (2002) (noting that the AICPA's then-President and CEO provided testimony to a House of Representatives committee on a related bill).

[137] Section 103(a)(3) of Sarbanes-Oxley (emphasis added). In 2003, the Board adopted parts of the AICPA Code of Professional Conduct as its interim ethics standards, *Establishment of Interim Professional Auditing Standards,* PCAOB Release No. 2003–006, at 10 (Apr. 18, 2003), and the Commission approved such adoption ''as consistent with the requirements of [Sarbanes-Oxley],'' *Order Regarding Section 103(a)(3)(B) of the Sarbanes-Oxley Act of 2002,* SEC Release No. 34–47745 (Apr. 25, 2003).

''[n]ot knowingly or recklessly misrepresenting facts,'' without reference to negligence.[138] However, this commenter did not acknowledge that the AICPA Code also has contributory-conduct provisions at the negligence standard, as discussed above.

Certain commenters compared the Board's authority for a contributory negligence standard in Rule 3502 to private plaintiffs' inability to bring suit under Section 10(b) of the Exchange Act [139] for aiding and abetting securities fraud. To be sure, in *Central Bank of Denver,* the U.S. Supreme Court held that ''there is no private aiding and abetting liability under § 10(b)'' ''[b]ecause the text of § 10(b) does not prohibit aiding and abetting.'' [140] But that holding regarding an implied private right of action has little bearing on the Board's authority for the amendment.

The Board draws its authority for the amendment from different text in a different statute. As explained above, Congress empowered the Board to promulgate ethics standards pursuant to Section 103(a) of Sarbanes-Oxley, which is distinct from any congressional grant of authority to the Commission, including those in Sections 10(b) or 21C of the Exchange Act.[141] There is no analogous statutory mandate for the Commission to ''establish . . . ethics standards'' in the area of auditors' professional responsibility.

The Board, however, indisputably *does* have such a mandate in Section 103(a)(1) of Sarbanes-Oxley,[142] and with that distinct mandate comes distinct authority.[143] Indeed, as the Commission recognized when approving the Board's adoption of Rule 3502 in 2006, ''the rule is within the scope of the PCAOB's authority, particularly its authority to establish ethical standards.'' [144] Section 103(a)(1), moreover, is an enabling (or authorizing) statute that permits the Board to establish standards to govern the preparation and issuance of audit reports ''as may be necessary or appropriate in the public interest,'' which text provides broad rulemaking authority.[145]

So, too, is Section 101(g)(1) of Sarbanes-Oxley—yet another source of authority for the amendment. That provision authorizes the Board to promulgate rules to ''provide for . . . the exercise of its authority, and the performance of its responsibilities under this Act,'' which include ''enforc[ing] compliance'' with applicable laws, rules, and standards; ''conduct[ing] investigations and disciplinary proceedings''; and ''impos[ing] appropriate sanctions where justified.'' [146] Section 101(g)(1) thus empowers the Board to implement the Board's ''ultimate purposes'' under Sarbanes-Oxley of ''protect[ing] the interests of investors and further[ing] the public interest in the preparation of informative, accurate, and independent audit reports.'' [147] The amendment, and Rule 3502 generally, do precisely that.

### Statement Regarding the Proposed Amendment To Clarify the Relationship Between Contributory Actor and Primary Violator

As noted above, in addition to proposing a change in Rule 3502's liability standard, the Proposal also contemplated amending Rule 3502 to provide that an associated person contributing to a violation need not be an associated person of the registered firm that commits the primary violation (*i.e.,* that an associated person of one registered firm can contribute to a primary violation of another registered firm).[148] Specifically, the Board proposed changing the word ''that'' to ''any'' immediately before the reference to the registered public accounting firm that commits the primary violation. After due consideration, the Board has decided not to adopt any changes to Rule 3502 to implement this aspect of the Proposal, for two primary reasons.

First, as the Proposal explained, the Board's rules already contemplate that associated persons can be associated with more than one registered firm at the same time.[149] Specifically, PCAOB Rule 1001(p)(i)'s definition of an ''associated person'' provides that if a firm reasonably believes that one of its associated persons is primarily associated with another registered firm, then that person is excluded from the definition of an ''associated person,'' but only ''for purposes of completing a registration application on Form 1, Part IV of an annual report on Form 2, or Part IV of a Form 4 to succeed to the registration status of a predecessor.'' For all other purposes, that carveout does not apply, thus underscoring that, in the context of Rule 3502's reference to an

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[138] QC 1000 Release at A4–1.

[139] 15 U.S.C. 78j.

[140] *Cent. Bank of Denver, N.A.* v. *First Interstate Bank of Denver, N.A.,* 511 U.S. 164, 191 (1994).

[141] Section 105 of Sarbanes-Oxley also supplies authority to adopt the proposed amendment. *See* 2005 Adopting Release at 12; 2023 Proposing Release at 12 n.43. As the Board previously explained, ''Section 105 authorizes the Board to investigate and, when appropriate, discipline registered firms *and* their associated persons,'' and because (1) ''[c]ertain types of violations, by their nature, may give rise to direct liability only for a registered public accounting firm,'' and (2) ''[s]uch firms . . . can only act through the natural persons that comprise them,'' it follows that (3) ''[w]hen one or more of those associated persons has caused that firm to'' commit a violation, ''it is appropriate, and consistent with the Board's duty to discipline registered firms and their associated persons under Section 101(c)(4) of the Act, that the Board be able to discipline the associated person for that misconduct.'' 2005 Adopting Release at 12.

[142] One commenter remarked that Section 103 ''is not untethered'' from the rest of Sarbanes-Oxley. Comment Letter from U.S. Chamber of Commerce at 4. The Board agrees: Section 103 tethers *directly* to Section 101(c)(2), which mandates that the Board ''establish or adopt, or both, by rule, auditing, quality control, ethics, independence, and other standards . . . in accordance with section 7213 [103] of this title.'' Indeed, doing so is an express ''Dut[y] of the Board'' under Section 101(c). Section 101(c)(2) is thus another source of authority for the Board's amendment.

[143] Nor does Section 103(a) of Sarbanes-Oxley include the telltale terms of a statute that requires a mental state higher than negligence, as does Section 10(b) of the Exchange Act. *See Ernst & Ernst* v. *Hochfelder,* 425 U.S. 185, 197 (1976) (''Section 10(b) makes unlawful the use or employment of 'any manipulative or deceptive device or contrivance' in contravention of Commission rules. The words 'manipulative or deceptive' used in conjunction with 'device or contrivance' strongly suggest that § 10(b) was intended to proscribe knowing or intentional misconduct.''); *id.* at 199 (''The argument simply ignores the use of the words 'manipulative,' 'device,' and 'contrivance' [are] terms that make unmistakable a congressional intent to proscribe a type of conduct quite different from negligence.'').

[144] Order Approving Proposed Ethics and Independence Rules Concerning Independence, Tax Services, and Contingent Fees and Notice of Filing and Order Granting Accelerated Approval of the Amendment Delaying Implementation of Certain of these Rules, SEC Release No. 34–53677, at 9 (Apr. 19, 2006).

[145] *See, e.g., AT&T Corp.* v. *Iowa Utils. Bd.,* 525 U.S. 366, 377–78 & n.5 (1999) (construing a provision allowing the FCC to ''prescribe such rules and regulations as may be necessary in the public interest to carry out'' the relevant statute as a ''general grant of rulemaking authority'' sufficient for the FCC to promulgate the regulations at issue); *Metrophones Telecommc'ns, Inc.* v. *Global Crossing Telecommc'ns, Inc.,* 423 F.3d 1056, 1068 (9th Cir. 2005) (''Given the reach of the [FCC's] rulemaking authority under § 201(b)''—which granted to the FCC the ''broad power to enact such 'rules and regulations as may be necessary in the public interest to carry out the provisions of this Act' ''—''it would be strange to hold that Congress narrowly limited the Commission's power to deem a practice 'unjust or unreasonable.' ''); *Brown* v. *Azar,* 497 F. Supp. 3d 1270, 1281 (N.D. Ga. 2020) (''[W]hen an agency is authorized to 'prescribe such rules and regulations as may be necessary in the public interest to carry out the provisions of the Act,' Congress' intent to give an agency broad power is clear.''), *appeal dismissed as moot,* 20 F.4th 1385 (11th Cir. 2021) (mem.).

[146] Sections 101(c)(4) and (6) of Sarbanes-Oxley.

[147] Section 101(a) of Sarbanes-Oxley; *In re Permian Basin Area Rate Cases,* 390 U.S. 747, 780 (1968) (''We are, in the absence of compelling evidence that such was Congress' intention, unwilling to prohibit administrative action imperative for the achievement of an agency's ultimate purposes.''); *see Doe* v. *FEC,* 920 F.3d 866, 870–71 (D.C. Cir. 2019) (''When an agency's 'empowering provision' '' permits the agency '''to make, amend, and repeal such rules . . . as are necessary to carry out the provisions of' '' the statute, ''the courts will sustain a regulation that is 'reasonably related' to the purposes of the legislation.'' (citations omitted)).

[148] *See* 2023 Proposing Release at 16–17.

[149] *See id.* at 10 n.36.

''associated person,'' a person can be associated with two or more registered firms at once.

Second, an individual who ''directly and substantially'' contributes to a firm's violation (consistent with the meaning of that phrase in Rule 3502, as described above) in all instances likely also will have ''participate[d] as agent *or otherwise on behalf of* such [ ] firm in *any* activity of that firm'' ''*in connection with* the preparation or issuance of *any* audit report,'' and thus be an ''associated person'' of that firm.[150] In the Board's view, this definition of ''associated person,'' in combination with the notion that a person can be associated with multiple firms at the same time, renders unnecessary the proposed change from ''that'' to ''any'' in Rule 3502.

The Board appreciates commenters' feedback on this aspect of the Proposal. As one commenter surmised, this aspect of the Proposal was aimed at providing for equal accountability by associated persons as firm structures evolve. Based on the two points noted above, however, the Board believes that such accountability currently exists.[151] It was not the Board's intent through this aspect of the Proposal to deter collaboration or the sharing of perspectives between firms. And, to the extent that commenters believe that this aspect of the Proposal would exacerbate their concerns with respect to a negligence standard, the Board's decision not to adopt any amendment in this regard should help to alleviate those concerns.

**Effective Date**

If the amendment to PCAOB Rule 3502 is approved by the Commission, then (as proposed) the Board intends that it would become effective 60 days from the date of Commission approval.[152] In that regard, the Board anticipates that conduct occurring more than 60 days after Commission approval would be subject to Rule 3502, as amended, but that conduct occurring prior to, or within 60 days after, Commission approval would not be subject to the amendment to Rule 3502.

Commenters expressed mixed views regarding the effective date. One commenter agreed that 60 days after Commission approval is appropriate, and another stated that it did not disagree with the Board's basis for an effective date 60 days after Commission approval. Another commenter stated that it could not comment on an appropriate effective date because the Board should redeliberate and repropose amendments to Rule 3502. Other commenters encouraged the Board to delay the effectiveness until the Board more fulsomely assesses the costs of the amendment and considers the amendment's impact on the profession and audit quality.

Several commenters suggested that the Board delay the effectiveness of any amendment to Rule 3502 to provide for time to gauge the impact of other then-pending proposals, including QC 1000 and AS 1000 (both of which have since been adopted). In general, these commenters opined that the impact of the amendment to Rule 3502 could depend on how the amendment interacts with, and the potential unintended consequences of, changes to other professional standards. Another commenter encouraged the Board to delay the effectiveness of the amendment for medium-sized and smaller firms, including those in non-U.S. jurisdictions, to appropriately understand the amendment's ramifications and to respond accordingly.

The Board recognizes that it is in various stages of the process of modernizing several of its standards and rules to protect the interests of investors and further the public interest. Those updates (both adopted and proposed) reflect that, over the years, audits and the audit industry have evolved, and the Board's standards and rules should as well.[153] The Board also appreciates that its revised standards and rules may require adjustment by individuals and firms, which is why each of those standards also includes (or proposes to include, in the case of proposals) a delay in its respective effective date following the date of Commission approval.[154] The notion that multiple standards are being modernized in parallel, however, is not a basis for permitting individuals—regardless of the size of the firm(s) with which they are associated—to negligently, directly, and substantially contribute to firms' primary violations. And as noted above, as firms make efforts to comply with new standards, it necessarily follows that individuals who could be subject to Rule 3502 also would be making such efforts (because firms can act only through their natural persons).

Accordingly, having considered the comments and for the reasons above, the Board continues to believe that 60 days after Commission approval is an appropriate effective date for the amendment to Rule 3502. That period provides sufficient time for associated persons to familiarize themselves with the applicable legal standards and to increase their diligence as necessary and appropriate, which enhances audit quality and therefore serves the interests of the public and better protects investors.

*D. Economic Considerations and Application to Audits of Emerging Growth Companies*

The Board is mindful of the economic impacts of its rulemaking. This section describes the baseline for evaluating the economic impacts of the amendment to Rule 3502, the need for rulemaking, its expected economic impacts (including benefits, costs, and potential

[150] *See* Section 2(a)(9) of Sarbanes-Oxley (emphases added); PCAOB Rule 1001(p)(i).

[151] Beyond these two points, one commenter opined that ''in most, if not all, cases,'' an auditor's direct and substantial contribution to a primary violation by a firm with which the auditor is *not* associated also would have at least negligently, directly, and substantially contributed to a primary violation by a firm with which the auditor *is* associated. Comment Letter from Ernst & Young LLP at 4. This proposition further underscores the point that no clarifying amendment is needed given the current regulatory framework.

[152] *See* 2023 Proposing Release at 31.

[153] *See* PCAOB, Strategic Plan 2022–2026, at 10 (''[A]s important as [auditing, attestation, quality control, ethics, and Independence] standards are, some of them were written by the audit profession prior to the PCAOB's establishment and have not been updated since we adopted them in 2003 on what was intended to be an interim basis. The world has changed since 2003, and our standards must adapt to keep up with developments in auditing and the capital markets. We intend to modernize and streamline our existing standards and to issue new standards where necessary to meet today's needs.'').

[154] *See* PCAOB Release No. 2022–002, at 58 (effective for audits of financial statements for fiscal years ending on or after December 15, 2024); PCAOB Release No. 2023–008, at 96 (effective for audits of financial statements for fiscal years ending on or after June 15, 2025); AS 1000 Release at 96 (with limited exception, effective for audits of financial statements for fiscal years beginning on or after December 15, 2024); QC 1000 Release at 378 (effective December 15, 2025); PCAOB Release No. 2024–007, at 61 (effective for audits of financial statements for fiscal years beginning on or after December 15, 2025); *see also* PCAOB Release No. 2024–006, at 61 (contemplating effectiveness for audits of fiscal years beginning on or after December 15 in the year of approval by the Commission); PCAOB Release No. 2024–003, at 89 (proposing effective dates of 90 days after Commission approval for certain aspects and no earlier than March 31, 2026, or one year after Commission approval, whichever is later, for other aspects); PCAOB Release No. 2024–002, at 186 (proposing phased effective dates beginning no earlier than October 1 in the year after Commission approval); PCAOB Release No. 2024–001, at 63 (proposing an effective date of six months after Commission approval to comply with certain aspects); PCAOB Release No. 2023–003, at 94 (contemplating effectiveness for audits of fiscal years beginning in the year after approval by the Commission, or if Commission approval occurs in the fourth quarter of a calendar year, effectiveness for audits of fiscal years beginning two years after the year of Commission approval).

unintended consequences), and reasonable alternatives considered. Due to data limitations, much of the economic analysis is qualitative; however, it incorporates quantitative information, including PCAOB enforcement data and academic and industry research, where feasible.

The Board sought information relevant to the economic analysis throughout this rulemaking and has carefully considered the comments submitted, including the data and studies suggested by the commenters.

*A. Baseline*

Section C above describes the important components of the baseline against which the amendment's economic impacts are considered, including the current formulation of Rule 3502 and the Board's implementation experience. The Board discusses below the Board's enforcement activities. Table 1 presents PCAOB enforcement data on Rule 3502 charges from 2009–2024.[155] This table provides historical information on how frequently individuals have been charged under the current formulation of Rule 3502.

TABLE 1—NUMBER AND INCIDENCE OF RULE 3502 CHARGES, 2009–2024

| Year | Cases with Rule 3502 charges (A) | Firms sanctioned (B) | Incidence of Rule 3502 charges (%) C = A/B |
|---|---|---|---|
| 2009 | 2 | 5 | 40 |
| 2010 | 0 | 2 | 0 |
| 2011 | 2 | 6 | 33 |
| 2012 | 3 | 4 | 75 |
| 2013 | 5 | 10 | 50 |
| 2014 | 2 | 20 | 10 |
| 2015 | 17 | 37 | 46 |
| 2016 | 14 | 30 | 47 |
| 2017 | 15 | 42 | 36 |
| 2018 | 8 | 13 | 62 |
| 2019 | 8 | 19 | 42 |
| 2020 | 2 | 13 | 15 |
| 2021 | 3 | 14 | 21 |
| 2022 | 6 | 30 | 20 |
| 2023 | 5 | 43 | 12 |
| 2024 | 4 | 20 | 20 |
| Total | 96 | 308 | 31 |

Source: Settled and Adjudicated Disciplinary Orders Reported by the Board to the Public Pursuant to Section 105(d) of Sarbanes-Oxley, *available at https://pcaobus.org/oversight/enforcement/enforcement-actions.*

Column A shows the number of cases in which associated persons were found to have violated Rule 3502 (includes settled and adjudicated cases); column B shows the number of cases in which registered firms were sanctioned (for any violation); and column C is the ratio of the two, expressed as a percentage to reflect the proportion of firm cases when an associated person was charged with Rule 3502 by the Board.

From 2009 through April 30, 2024, there have been a total of 96 cases with Rule 3502 violations. At an average of six per year, the number of Rule 3502 cases was highest in 2015 at 17 and lowest in 2010, when no Rule 3502 violations were found.[156] The 96 cases represent 31 percent of the total number of cases in which the Board sanctioned firms for violations from 2009–2024. The data presented in the table does not predict how many Rule 3502 violations the Board might find because of the amendment; it indicates that in over two-thirds of the cases in which a firm was sanctioned, no contributory actor was held accountable under Rule 3502.[157]

Commenters suggested alternative means of assessing the baseline for this amendment. Some commenters suggested that the Board consider the Commission's enforcement data. However, PCAOB enforcement data is a more relevant comparison because this data is limited to cases brought by the PCAOB, offering a more precise perspective for understanding the baseline of the amendment. Although the Commission's enforcement data is valuable, it is impacted by various factors, including the Commission's case mix, prosecutorial discretion, resource allocation decisions, and enforcement priorities. While the Commission and the PCAOB coordinate enforcement efforts as required by Sarbanes-Oxley, their respective mandates are separate from each other. Given these separate mandates,

[155] Table 1 contains data through April 30, 2024. The Board brought the first Rule 3502 charge in 2009 for conduct committed after the effective date of Rule 3502 in April 2006.

[156] Column Year refers to the year the firms were sanctioned. Column A reflects Rule 3502 cases involving sanctions of one or more respondents as one instance. Some firms were sanctioned in different years than associated persons were sanctioned for the corresponding Rule 3502 violations. In such cases, Rule 3502 violations by associated persons are counted in the same year the firms were sanctioned. Therefore, column A can be interpreted as a subset of cases in Column B.

[157] One commenter asserted that Table 1 in the Proposal did not illuminate whether the cases without Rule 3502 charges would have merited or supported a Rule 3502 charge for individual negligence had that option been available, and suggested that the PCAOB perform that analysis, even if for a shortened period of 5 years. Another commenter also suggested that this analysis does not indicate cases where a Rule 3502 charge would have been inappropriate or where the absence of charges was supported by the Board's exercise of prosecutorial discretion. However, the Board notes that staff has already performed an analysis of that nature for the immediately preceding two years, which forms the basis of the estimated increase in the number of cases discussed below. *See also* 2023 Proposing Release at 24–25 (providing estimate for 2022). Performing an analysis for additional older years may be potentially less robust, given the extremely fact-based nature of the evaluation; staff recollections of whether all of the available investigatory evidence could have supported a negligence claim are naturally less reliable for older matters; and relevant staff may have since departed the PCAOB.

inclusion of the Commission's data herein would not contribute to a fuller understanding of the PCAOB's historical practices.

Other commenters suggested that, rather than the comparison provided in Table 1 of individual Rule 3502 cases to firm cases, a more relevant comparison would be PCAOB enforcement proceedings against firms to PCAOB enforcement proceedings against individuals (under Rule 3502 and otherwise). One of these commenters acknowledged, however, that such a comparison would not shed meaningful light on the need for the proposed change, and the Board agrees. Because contributory liability under Rule 3502 is distinct from primary liability, aggregating individual liability for all types of violations would not contribute to an understanding of the PCAOB's historical application of Rule 3502. Column A in Table 1 focuses on contributory liability only and therefore more clearly illuminates the baseline of the PCAOB's use of Rule 3502 as currently formulated.

Another commenter suggested conducting a survey regarding the resulting internal impact of PCAOB enforcement proceedings at the firm level on associated individuals. While a well-designed survey may provide additional insights, the Board believes that staff analysis based on PCAOB enforcement activities provides a sufficiently reliable basis for assessing the need for and scope of the amendment to Rule 3502.[158]

*B. Need*

This section discusses the problem the amendment intends to address and how the amendment addresses the problem.

1. Problems To Be Addressed

The need for the amendment arises from a current gap in the PCAOB's regulatory framework. Specifically, as described in detail in section C above, the gap in the PCAOB's regulatory framework relates to a misalignment between the liability standard for firms that commit violations resulting from an associated person's conduct and the liability standard for the associated person who contributes directly and substantially to the firm's violation. Under the current formulation of Rule 3502, while firms can be held accountable by the PCAOB for violations due to negligence, individuals can be held liable for their contributory conduct only if their conduct was at least reckless, a more stringent standard than negligence. That is, Rule 3502's current formulation places negligent individual contributors to firms' violations beyond Rule 3502's reach.

The gap discussed above creates regulatory inefficiency and undermines the PCAOB's regulatory objectives, including furthering the public interest in the preparation of informative, accurate, and independent audit reports. Inefficiency arises under the current regulatory framework because the PCAOB cannot hold individuals accountable for negligent contributory conduct while the Commission can, and therefore the PCAOB would have to refer one part of a broader case to the Commission to take action (as it deems appropriate) against the negligent individual. If the Commission decided to move forward with a separate case against the individual, Commission staff may need to familiarize themselves with the case, potentially reinterview witnesses, and undertake (as needed) additional investigative steps. This could result in delays and, given that these activities would relate to substantially the same set of facts that the PCAOB is seeking to establish with respect to the firm, would render duplicative the PCAOB's prior work in these areas, thereby creating inefficiencies. Moreover, if the Commission chooses not to pursue the case (for example, due to resource constraints or competing priorities), the individual's negligent conduct may go unsanctioned.[159] This lack of individual accountability could hinder the effectiveness of the PCAOB's enforcement proceedings and may lead to under-deterrence among individuals within the industry, as they observe only the firm being penalized without consequences for the individuals responsible for the negligent conduct.

2. How the Amendment Addresses the Need

The amendment to Rule 3502 addresses the need by aligning the liability standards for firms and associated persons. It changes the liability standard for individual contributory conduct from recklessness to negligence. Doing so closes the regulatory gap described above and allows the Board to hold individuals accountable when they directly and substantially contribute to a firm's violation if their contributory act or failure to act was negligent but not reckless. By closing the gap, the amendment eliminates the obstacles in the public enforcement framework and helps improve regulatory efficiency.

The amendment does not result in a novel expansion of liability to reach conduct that is currently not subject to enforcement, as the Commission already has authority to discipline associated persons who negligently cause a firm's violation. Instead, it merely provides the PCAOB with the ability to hold individuals accountable similar to the Commission.

Some commenters agreed that the amendment would address the regulatory gap within the existing framework. However, other commenters challenged the need for the amendment. Some commenters asserted that the PCAOB already has tools for disciplining individuals and that the absence of Rule 3502 charges does not imply a lack of individual accountability. To be sure, the PCAOB currently has the authority to hold individuals accountable for violations of rules that contemplate individual responsibility, and the Board actively brings cases to hold individuals accountable for wrongdoing. But Rule 3502 is a distinct authority that creates and enforces a distinct obligation, and currently, the PCAOB is unable to hold individuals accountable under that rule when they act unreasonably but not recklessly. The amendment thus is not ''duplicative,'' as some commenters suggested,[160] and the Board's analysis therefore centers on the need to close this particular regulatory gap to give the PCAOB the appropriate tool for these sets of circumstances.

Other commenters asserted that the PCAOB's need was not sufficient to justify the amendment to Rule 3502 that these commenters considered profound, with its attendant costs and consequences. Certain of these commenters suggested that any change in auditor behavior that the PCAOB hopes to accomplish has already been accomplished by the Commission's ability to bring cases for negligent conduct, and that therefore the PCAOB has not shown a convincing need. As

[158] Further, the suggested survey would have shed light on firms' internal disciplinary measures taken against associated individuals, which, as discussed below, are important but not equivalent in effect to public proceedings.

[159] *See, e.g.,* Samuel B. Bonsall IV, Eric R. Holzman & Brian P. Miller, *Wearing out the Watchdog: The Impact of SEC Case Backlog on the Formal Investigation Process,* 99 Acct. Rev. 81, 81 (2024) (''We find that higher office case backlog decreases the likelihood of an investigation into a restating firm. . . . Backlog also impacts pursued investigations, leading to more prolonged investigations, a lower Accounting and Auditing Enforcement Releases likelihood, and smaller SEC penalties. Our evidence suggests that busyness undermines the SEC's investigation process.'').

[160] Comment Letter from U.S. Chamber of Commerce at 7; Comment Letter from Center for Audit Quality at 6.

discussed in section C above, the amendment to Rule 3502 is not a significant shift in the liability landscape. Rather, it allows the PCAOB to discipline associated persons for negligently contributing to firms' violations, which is misconduct that the Commission currently can pursue. The Board recognizes, however, that this incremental increase in the PCAOB's enforcement capability may in turn generate certain incremental effects on auditor behavior, as discussed further below.

Some commenters also asserted the absence of adequate evidence to support the need for the amendment. However, the comments received did not offer data that can be used to supplement the analysis meaningfully, and the Board is not aware of additional data or quantitative analysis that could be performed. Thus, as noted at the outset, the Board has performed limited quantitative analysis where possible but relies largely on qualitative analysis to inform this rulemaking.

One comment letter noted that the PCAOB's current inspection program is effective in enhancing audit quality, citing academic research to support that view.[161] While the Board acknowledges that the PCAOB's inspection program plays a vital role in enhancing audit quality, the PCAOB's enforcement program plays a distinct but complementary role in holding firms and associated persons accountable for violations, and thereby sanctioning and deterring unlawful conduct. The amendment aims to fill a gap in that latter program by helping to ensure that individuals negligently contributing to a firm's violations are held accountable and that the integrity of the audit process is strengthened. The continued persistence of a high rate of audit deficiencies also suggests that, while the inspections and enforcement processes may be effective at enhancing audit quality, as the commenter describes, additional efforts are needed, including through this rulemaking.[162]

In general, commenters did not introduce arguments or data that caused the Board to rethink its assessment of the need: there is a regulatory gap, the gap is small because the Commission already has the ability to bring negligence-based secondary-liability cases, but the gap can nonetheless result in regulatory inefficiencies or an incremental absence of deterrence and accountability, respectively. The amendment would close this gap, yielding the economic impacts discussed further below.

### *C. Economic Impacts*

This section discusses the expected benefits and costs of the amendment and potential unintended consequences.

A critical component of the Board's assessment of the economic impacts of this amendment is the Board's assessment of the likely number of PCAOB enforcement cases that would be brought under the amended rule. For the Proposal, staff examined enforcement matters from 2022 to assess the potential increase in recommended cases had Rule 3502 included the proposed amendment. Staff estimated two to three instances in 2022 where the amendment could have prompted staff to recommend a Rule 3502 charge.[163] Staff also indicated that, based on its expertise, that number would be broadly consistent with other years.

For this release, staff updated its analysis to include an additional year (2023); for 2023, staff also believes that, had negligence been the standard in Rule 3502, two or three instances could have prompted staff to recommend a Rule 3502 charge.[164] The Board continues to note that this estimate may vary to the extent that there are modifications to other Board standards or changes in enforcement priorities.

This analysis influenced, and continues to influence, the Board's assessment of the likely benefits, costs, and potential unintended consequences of the amendment—namely, that auditors are already held to a contributory negligence standard, that the change here is only adding the PCAOB as an enforcer, and that this change therefore would have meaningful but incremental benefits. As discussed further below, it would result in more efficient enforcement in specific cases, and it may prompt individuals to exercise the appropriate level of care and to make firms more efficiently allocate resources, which would raise audit quality. It would also have some incremental anticipated costs, and unintended consequences that parallel the anticipated costs, including litigation, liability, and opportunity costs, and potential inefficiencies in terms of self-protective behavior.

One commenter agreed with the Board's expectation that the economic impact will be modest while others challenged this analysis. They took issue with the estimate of only a few additional cases for 2022 resulting from the amendment, questioning the basis and relevance of this prediction. Based on extensive experience, staff believes that this number is a fair average representation across other years and provides an estimate of the additional cases resulting from the Board pursuing charges under the amendment. In fact, as discussed above, staff updated its analysis to include data from 2023 and that analysis generated an estimate of two to three additional cases in 2023, consistent with that for 2022. Overall, the estimation approach espoused here (with respect to both 2022 and 2023) applies expert judgment to the PCAOB's recent case data to offer a pragmatic perspective.[165]

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[161] For example, the commenter cited Lindsay M. Johnson, Marsha B. Keune & Jennifer Winchel, *U.S. Auditors' Perceptions of the PCAOB Inspection Process: A Behavioral Examination,* 36 Contemp. Acct. Res. 1540, 1557 (2019) (''Overall, participants described substantial modifications in their audit approach in response to inspection findings and the anticipation of inspections. These modifications are consistent with auditors and their firms actively working to comply with PCAOB expectations . . . .''). This behavioral study examined auditors' observations and behaviors in response to the PCAOB inspection process, focusing on factors such as perceived power and trust in the regulatory body.

[162] *See, e.g., PCAOB Report: Audits with Deficiencies Rose for Second Year in a Row to 40% in 2022* (July 25, 2023), *available at https://pcaobus.org/news-events/news-releases/news-release-detail/pcaob-report-audits-with-deficiencies-rose-for-second-year-in-a-row-to-40-in-2022.*

[163] *See* 2023 Proposing Release at 25. This is an estimate of cases in which staff would likely have recommended Rule 3502 charges against natural persons. Because Rule 3502 charges can be brought against associated persons, which include both natural persons and legal entities, it is possible that the estimate could be higher if it were to include potential additional cases against legal entities. However, due to the complexity of the fact patterns presented in such cases, staff could not estimate the number of additional cases that would have been brought against such entities. Additionally, although the Proposal's estimate included the second aspect of the Proposal, staff has confirmed that the estimate remains appropriate without that aspect.

[164] Staff were limited in the ability to perform further analysis given the intensively fact-specific nature of investigatory and charging decisions. Further, the availability (or unavailability) of potential charges can itself shape the investigatory process. Finally, determining whether all the available facts and circumstances would have supported a staff recommendation against an individual for negligent contributory conduct also depends on an intimate familiarity with the entire investigatory file as it pertains to that individual's conduct and the relevant standard of care. As recollections fade over time, a case-specific analysis of what charges could have been supported becomes less reliable. Other staff have moved to different roles within the PCAOB or departed the organization entirely. The Board therefore focused its analysis on the most recent time period where relevant staff members are available and their knowledge is the freshest, and then confirmed staff's view of whether it has any reason to believe that this time period would not be representative of the broader trend.

[165] An alternative approach would involve providing an upper bound of the number of cases, *i.e.,* the total number of firm cases that were brought each year. This can be easily derived from Table 1. However, not every firm case would be associated with individual contributory liability, and some cases would involve individual primary liability

Moreover, the PCAOB has existing authorities to bring charges against individuals—both for primary violations and for at least reckless contributory conduct; [166] the amendment therefore would close a gap regarding one particular type of conduct (negligent contributory conduct) rather than supplanting these other forms of accountability. Staff's estimate of two to three additional cases thus appears objectively reasonable.

In terms of the potential variability in the future of other standards, including QC 1000 and AS 1000, commenters took issue with the uncertainty that poses. But standards and regulatory priorities are always evolving in a bid to keep pace with developments in the relevant environments (*e.g.,* developments within the regulated industry, legal developments, etc.). Indeed, there could be benefits to amending Rule 3502 in tandem with other standards if it means that individuals, in determining how their registered firm should implement the new standards, are more sharply aware of the standard of care that is expected of them and can design their firm's implementation strategies accordingly. Moreover, if the Board assumes that the number of Rule 3502 cases increases more significantly in the future because the facts and circumstances of those matters show that individuals are failing to act reasonably under newer PCAOB requirements, and thereby contributing to firms' violations of other standards, then the Board expects that both the benefits and costs of Rule 3502 would be higher.[167]

Some commenters posited that the amendment would represent a profound change in liability and have significant impacts on the profession and far-reaching unintended consequences. As previously discussed, the amendment does not effectuate a fundamental shift in the liability landscape, but rather aligns the PCAOB's secondary liability standard with that of the Commission. And thus, as discussed below, the Board has assessed that there would be recognizable but not significant benefits, or costs, attributable to enhanced compliance with other PCAOB rules and standards.

The Board has considered this discrepancy between commenters' assertions of the significance of the amendment and the Board's analysis of the amendment's incremental effect. This discrepancy could be the result of unstated assumptions on commenters' parts:

- One possibility is that commenters are aware of (but do not acknowledge expressly) a more significant deficit in associated persons failing to act reasonably, which the Board has not detected through its oversight, such that there will be considerably more opportunities for enforcement under the amended rule than the Board has assumed in its analysis. In that case, the Board would expect to see more cases potentially being brought, with more benefits from enhanced compliance with PCAOB standards, and more costs from the actions that individuals would take to come into compliance and demonstrate the reasonableness of their actions if challenged.
- Another possibility is that commenters believe that the PCAOB would exercise its discretion under the amended rule irresponsibly—choosing to pursue cases against individuals over differences in reasonable judgments, or cases where an individual had only a remote connection to, or was responsible for only a small fraction of, the decision-making process that led to a firm's violation—and thus they believe that the unintended consequences (*e.g.,* self-protective behaviors) would be more significant than staff estimates. The Board does not believe that commenters' concerns are warranted. As described, the Board intends to deploy its prosecutorial discretion responsibly, informed by the recommendations of its staff, and any sanctions imposed by the Board are subject to de novo review by the Commission,[168] all of which guides the Board's exercise of discretion in determining what matters to pursue.

The Board discusses these points in more detail below.

1. Benefits

This subsection presents the expected benefits of the amendment, particularly enhancements in regulatory efficiency and individual accountability, as well as positive impacts on capital markets. Several commenters agreed with the Board's analysis, while others disagreed with certain aspects of the Board's assessment of the benefits. The Board discusses these in more detail below.

One commenter asserted that the benefits discussion in the Economic Analysis section of the Proposal is high-level and lacks application of the specifics of the amendment. The benefits discussions—in the Proposal and in this release—however, touch upon a crucial aspect of the amendment, which involves expanding the PCAOB's enforcement authority to discipline associated persons for negligently contributing to violations of a firm. While the discussion may appear broad, it is intended to highlight the overarching benefits of this expansion, including enhancing individual accountability, strengthening investor protection, and promoting greater adherence to applicable laws, rules, and professional standards.

The following sections discuss regulatory efficiency and individual accountability and expected impacts on capital markets.

i. Regulatory Efficiency and Individual Accountability

The amendment can improve regulatory efficiency by enabling the PCAOB to bring a case involving negligence against a firm and the responsible relevant associated person(s), rather than referring part or all of the case to the Commission or charging only the firm. Under the status quo, the Commission (as well as other authorities such as a state board of accountancy), but not the PCAOB, can bring such cases. By contrast, the PCAOB can only sanction the firm and defer to the Commission to take action against the negligent individual (as the Commission deems appropriate).

By enabling the PCAOB to address violations by a firm and contributory violations by its associated persons concurrently, the amendment ensures that individuals who fail to meet their responsibilities with reasonable care are held accountable. This method of reinforcing individual accountability and facilitating improvement among practitioners elevates overall audit quality, benefiting both firms and investors by reducing the likelihood of negligent conduct.

a. Effects on Associated Persons

Enabling the PCAOB to hold individuals accountable can lead to more deterrence among all individual associated persons. Currently, individuals may act inappropriately if they discount the likelihood of public sanction because the PCAOB lacks the ability to bring charges for negligent contributory conduct, although they

too. Therefore, the Board declined to engage in this alternative approach and rather relied on staff's expertise in terms of providing a more pragmatic perspective on the additional number of cases under the amendment.

[166] Here, the Board agrees with commenters who pointed out that the PCAOB has alternative means of bringing charges against individuals.

[167] Conversely, if the number of additional cases declines over time due to changes in auditor behavior in response to the Rule 3502 enforcement risk, this may translate into an increase in benefits discussed below.

[168] *See* Section 107(c) of Sarbanes-Oxley; *see also, e.g., SW Hatfield, C.P.A.,* SEC Release No. 34–69930, at 2–3.

may not be able to avoid sanction by the Commission or private sanction by their firms. However, the imposition of a firm's disciplinary action against individuals depends on the detection and investigation of the individuals' misconduct. Detection, in turn, may depend on the frequency and efficacy of external review processes, *e.g.,* PCAOB inspections. Additionally, without a noncompete agreement, a firm cannot prevent a partner from associating with a different registered public accounting firm and performing issuer or broker-dealer audit work, or from becoming employed by an issuer or broker-dealer in an accountancy or financial management capacity; in contrast, a PCAOB sanction may do so.[169] Finally, a firm cannot suspend an individual's CPA license, but a PCAOB sanction can lead to collateral consequences with relevant state accountancy authorities.[170]

Because of the reasons discussed above, adding the PCAOB as an additional enforcer may increase auditors' perception that negligent conduct may be detected, investigated, and effectively sanctioned; doing so therefore can provide additional deterrence against misconduct, even though the risk of liability resulting from the additional deterrence is not a large one insofar as the Commission currently has the authority to discipline associated persons for negligently causing a firm's violations. Academic literature also suggests that public authorities' sanctioning tools (*e.g.,* public censure, fines, associational prohibitions) deter future misconduct more effectively than private reprimands by a firm.[171]

By increasing individual accountability and the potential for liability, the amendment can provide incremental deterrence against future violations and, hence, enhance incentives for individuals to perform important roles with reasonable care. Individuals that exercise reasonable care, in turn, may contribute to better compliance practices in their firms. This change is expected to lead to more diligent adherence to professional standards. In fact, in support of the amendment, one commenter contended that the heightened level of deterrence would reduce the risk of substandard audits by encouraging auditors to adhere to professional standards and regulations to avoid liability.

The amendment's effect as a deterrent to auditor misconduct generated different viewpoints from commenters. Some commenters indicated that reducing the liability threshold from recklessness to negligence would deter misconduct, lead to more careful work by auditors, and enhance audit quality. These commenters also indicated the proposed change in liability would boost public confidence, increase investors' confidence in financial statements, and strengthen the financial markets. One commenter suggested that improvements in audit quality will reduce financial misstatements and omissions as well as auditor litigation risk and costs to investors resulting from such litigation. This is consistent with the Board's analysis presented here.

By providing incremental deterrence and, hence, enhancing individual auditors' incentives in the performance of their audits, the amendment can improve audit quality. Academic literature suggests that auditors' incentives to perform high-quality audits can increase with greater enforcement.[172] Furthermore, in general, academic research provides evidence that enforcement proceedings have a deterrent effect[173] and can potentially improve audit quality of non-sanctioned entities that are aware of sanctions imposed on others.[174] Other related literature also discusses the role of regulation in providing auditors with incentives for improving audit quality.[175]

By contrast, one commenter asserted the amendment does not deter conduct because penalties are not an effective method to deter one-time mistakes, inadvertence, and errors in judgement. Another commenter expressed a concern that the PCAOB did not explain how the amendment would result in Rule 3502 becoming a more effective deterrent than the current formulation of Rule 3502. Other commenters expressed skepticism that the amendment will incentivize individuals or change behavior. One commenter expressed concern that the amendment may not incentivize the negligent or reckless auditors as intended because those individuals may be the least risk averse. The Board considered these commenters' perspectives as well as academic research noted above that suggests enforcement proceedings have a deterrent effect.[176] The Board believes that there is sufficient support for the Board's belief that the amendment would enhance deterrence (albeit

[169] *See* Section 105(c)(7) of Sarbanes-Oxley.

[170] *See, e.g.,* N.Y. State Rules of the Board of Regents § 29.10(f); *see also* Section 105(d)(1) of Sarbanes-Oxley (requiring the Board to report disciplinary sanctions it imposes to, among others, ''any appropriate State regulatory authority or any foreign accountancy licensing board with which [a sanctioned] firm or person is licensed or certified'').

Also, a firm may expel a partner, but such an action is unlikely to be public (*e.g.,* a private settlement may contain nondisclosure and antidisparagement clauses) and thereby is less likely to be an effective deterrent to associated persons of other firms as compared to a public sanction. Similarly, a firm may be able to inflict a private financial penalty (*e.g.,* through a claw-back or forfeiture of paid-in capital or deferred compensation). However, a firm may not have effective provisions in its partnership agreements or may view enforcing those clauses as uneconomical if forced to litigate them as a contractual dispute.

[171] *See, e.g.,* John T. Scholz, Enforcement Policy and Corporate Misconduct: The Changing Perspective of Deterrence Theory, 60 Law & Contemp. Probs. 253, 265 (1997). Scholz states:

When corporations have the means of punishing subordinates for illegal behavior, punishing the corporation rather than individuals responsible for wrongdoing may serve to strengthen the corporation's private enforcement system. Criminal prosecution of individuals will be necessary, however, whenever the potential gains to the individual from illegal behavior far exceed the worst punishment the firm could impose.

*See also* Michelle Hanlon & Nemit Shroff, *Insights Into Auditor Public Oversight Boards: Whether, How, and Why They ''Work,''* 74 J. Acct. & Econ. 1, 4 (2022) (''We find that the majority of respondents think that POB [Public Oversight Board] inspectors have greater authority (enforcement options) than peer-reviewers and that the culture at POBs is more conducive to detecting auditing deficiencies.'').

[172] *See, e.g.,* Ralf Ewert & Alfred Wagenhofer, *Effects of Increasing Enforcement on Financial Reporting Quality and Audit Quality,* 57 J. Acct. Res. 121, 123 (2019) (''Our main finding is that auditing and enforcement are complements in a low-intensity enforcement regime but can become substitutes in a strong regime. The auditor's incentives to perform a high-quality audit increase with greater enforcement because the expected penalty rises, and they decrease with lower anticipated earnings management.'').

[173] *See* Robert H. Davidson & Christo Pirinsky, *The Deterrent Effect of Insider Trading Enforcement Actions,* 97 Acct. Rev. 227, 227 (2022) (''Insiders who have witnessed [a Commission] enforcement action have a lower probability for future conviction than their unexposed peers.'').

[174] *See, e.g.,* Phillip Lamoreaux, Michael Mowchan & Wei Zhang, *Does Public Company Accounting Oversight Board Regulatory Enforcement Deter Low-Quality Audits?* 98 Acct. Rev. 335, 339 (2023) (''We find that audit firm responses to PCAOB enforcement only occur following sanctions of like-sized firms. That is, small firm responses only follow sanctions of small firms and large firm responses only follow sanctions of large firms. Specifically, following the PCAOB sanction of a small audit firm, the likelihood of misstatement is 2.2 percentage points lower for clients of competing non-sanctioned small audit firm offices in the same [Metropolitan Statistical Area]. In contrast, following PCAOB sanctions of a large audit firm, the likelihood of misstatements decreases by 2.6 percentage points for clients of non-sanctioned audit offices within the sanctioned audit firm.'').

[175] *See, e.g.,* A.C. Pritchard, *The Irrational Auditor and Irrational Liability,* 10 Lewis & Clark L. Rev. 19, 19 (2006) (''Audit quality is promoted by three incentives: reputation, regulation, and litigation.'').

[176] See, *e.g.,* Ralf Ewert & Alfred Wagenhofer, Effects of Increasing Enforcement; Robert H. Davidson & Christo Pirinsky, The Deterrent Effect of Insider Trading Enforcement Actions; Lamoreaux, et al., Does Public Company Accounting Oversight Board Regulatory Enforcement Deter Low-Quality Audits?

incrementally) and that the deterrence would lead to benefits.

One commenter stated that the Proposal implied that ''the discipline imposed by a firm (whether financial penalty or even expulsion) is less likely to be an effective deterrent to others' '' misconduct compared to public sanction, but that there was a lack of evidence in the Proposal to support such a claim.[177] Unlike internal disciplinary measures, public sanctions are visible to everyone, including potential clients and employers.[178] This public visibility may result in all associated individuals exercising greater care while carrying out their responsibilities. Therefore, as discussed in more detail above, the Board believes that public discipline can enhance the deterrence effect beyond what internal discipline can achieve, making it a key tool for enforcing accountability and upholding high standards in the audit profession.[179]

b. Effects on Firms

Some firms choose to invest in staffing and resources voluntarily to comply better with regulatory requirements. Yet, competitive pressures from other firms that prefer not to make similar investments may lead these firms to reconsider their investment decisions. With the amendment, however, all firms lacking adequate staffing and resources would now face enhanced possibility of sanctions of their associated persons, prompting them to make additional investments. This change is expected to improve audit quality by counteracting underinvestment of staffing and resources, thereby reducing noncompliance by audit firms. This collective uplift mitigates any single firm's competitive concerns and promotes broader societal benefits by fostering a more robust and reliable compliance environment resulting in improved overall audit quality.

Individual auditors, perceiving greater litigation and liability risks, are likely to change their behavior and take their professional responsibilities more seriously, ensuring that their actions are objectively reasonable under the circumstances. This shift in individual behavior can lead to greater compliance by firms with their respective legal requirements, including auditing standards, quality control standards, and ethics and independence standards, which were enacted to promote audit quality and investor interests. In other words, by preventing individual negligence, the amendment can also mitigate firm negligence, as individuals' actions directly impact firm actions, such as implementing better quality control systems.[180] One commenter agreed that the amendment will result in firms being more likely to comply with their respective legal requirements.

ii. Capital Market Impact

As explained above, the amendment can introduce an incremental deterrent effect, which could lead to improvements in audit quality. Increased audit quality can improve financial reporting quality and enhance investors' confidence in the information provided in companies' financial statements. Because auditors have a responsibility to provide reasonable assurance about whether the financial statements are free of material misstatement, higher audit quality could increase the likelihood that the auditor would discover a material misstatement or would qualify its audit opinion when a material misstatement exists and is not corrected by management. If a Commission registrant were to include such a qualified audit opinion in a filing with the Commission, then Commission staff may deem the registrant's filing to be deficient.[181] Furthermore, a qualified audit opinion may evoke negative market reactions. For these reasons, higher audit quality could incentivize issuers to take steps to ensure their financial statements are free of material misstatement. Issuers could take these steps proactively, prior to the audit, or in response to adjustments requested by the auditor.

Financial statements that are free of material misstatement are of higher quality and more useful to investors. In particular, more reliable financial information allows investors to improve the efficiency of their capital allocation decisions. Investors may also perceive less risk in capital markets generally, leading to an increase in the supply of capital.[182] An increase in the supply of capital could increase capital formation while also reducing the cost of capital to companies.[183] A reduction in the cost of capital reflects a welfare gain because it implies investors perceive less risk in the capital markets.

Commenters agreed that the amendment will enhance investors' confidence both in audits and in the information provided in companies' financial statements, as well as have an incremental positive effect on capital-market efficiency.

2. Costs

This section discusses the expected costs of the amendment. Because the

[177] Comment Letter from National Association of State Boards of Accountancy at 2 (Oct. 24, 2023). Another commenter expressed that the firm's approach to prevent and respond to instances of negligence in response to inspection findings may impact the individual more, as the firm's actions may more directly dictate an individual's future. But as discussed above, while the Board acknowledges that the PCAOB's inspection program plays a vital role in enhancing audit quality, the PCAOB's enforcement program plays a distinct but complementary role in holding firms and associated persons accountable for violations, and thereby punishing and deterring unlawful conduct. In other words, there is a distinction to be made between firm's quality control and private sanctions deterring misconduct.

[178] On one hand, if a person receiving a private sanction remains an associated person of the same firm, such a firm may have incentives (*e.g.,* to win new business or keep existing business) not to disclose the private sanction to clients, prospective clients, or the public, or may have agreed not to do so. On the other hand, if a person receiving a private sanction leaves the firm, whether as part of the sanction or voluntarily, and then seeks, for example, to join a new firm (or an issuer or broker-dealer in an accountancy or financial management capacity), the prior firm might not disclose details about the sanction to the new prospective firm or employer, whether per nondisclosure or anti-disparagement provisions or as a matter of general policy.

Furthermore, the sufficiency of private sanctions is hard to square with the PCAOB's authority to discipline *formerly* associated persons of firms, as provided by Section 929F of the Dodd-Frank Wall Street Reform and Consumer Protection Act. *See* Section 2(a)(9)(C) of Sarbanes-Oxley. If a private sanction (*i.e.,* expelling the associated person from the firm) were sufficient, Congress presumably would not have given to the PCAOB the power to impose a public sanction against an individual who is no longer associated with a registered firm.

[179] *See, e.g.,* Scholz, Enforcement Policy and Corporate Misconduct 265.

[180] Quality control systems play a fundamental and widespread role in overall audit quality. These systems are essential in ensuring the audit process adheres to professional standards. A robust quality control system can help firms to detect and address factors that compromise audit quality.

[181] *See* 17 CFR 210; *see also Financial Reporting Manual* § 4220, Division of Corporation Finance, SEC, *available at https://www.sec.gov/divisions/corpfin/cffinancialreportingmanual.pdf.*

[182] *See, e.g.,* Hanwen Chen, Jeff Zeyun Chen, Gerald J. Lobo & Yanyan Wang, *Effects of Audit Quality on Earnings Management and Cost of Equity Capital: Evidence from China,* 28 Contemp. Acct. Res. 892 (2011); Richard Lambert, Christian Leuz & Robert E. Verrecchia, *Accounting Information, Disclosure, and the Cost of Capital,* 45 J. Acct. Res. 385 (2007).

[183] Cost of capital is the rate of return investors require to compensate them for the lost opportunity to deploy their capital elsewhere. Equivalently, cost of capital is the discount rate investors apply to future cash flows. Cost of capital depends on, among other factors, the riskiness of the underlying investment. Accordingly, the rate of return required by equity holders—cost of equity capital—and the rate of return required by debt holders—cost of debt capital—may differ to the extent equity and debt securities expose investors to different levels of risks. For theoretical discussion on the link between the greater availability of information to investors and cost of capital, see, for example, Richard A. Lambert, Christian Leuz & Robert E. Verrecchia, *Information Asymmetry, Information Precision, and the Cost of Capital,* 16 Rev. Fin. 1, 16–18 (2012); David Easley & Maureen O'Hara, *Information and the Cost of Capital,* 59 J. Fin. 1553, 1571 (2005); and William Robert Scott & Patricia C. O'Brien, *Financial Accounting Theory* 412 (Prentice Hall 3d ed. 2003).

amendment is expected to lead to an increase in the number of enforcement cases by the PCAOB, the Board discusses costs to firms and individuals, and costs to issuers.

The Board's assessment of the degree of the anticipated costs is affected by the Board's estimate of the number of additional cases to be brought, as discussed at the outset of this section. As discussed there, the amendment is expected to result in a slight increase in the number of PCAOB enforcement cases (two to three per year) due to the changed liability threshold. Any additional cases due to the amendment will involve legal costs, which could result in substantial costs for the firms and individuals involved. Staff could not provide an estimate for the per-case cost; however, the small number of incremental cases could limit the aggregate cost of the amendment, in particular, when the total number of issuers and broker-dealers is taken into account.

i. Costs to Firms and Individuals

With the anticipated increase of enforcement proceedings of two to three per year, certain firms will incur direct and indirect costs with respect to those proceedings as a result of the amendment. These costs include legal costs and broader financial and operational impacts.

Direct costs include increased hours and resources (including attorneys, experts, and other personnel) to prepare for, respond to, and defend against investigations and charges—actual or anticipated. The Board expects that, in most cases, the costs of defending associated persons who have negligently contributed to a firm's violation will be borne by the firm.[184] The direct defense costs can be grouped into two categories based on the stage of the matter:

- First, during the investigative stage, staff works to determine whether it is likely that a primary violation occurred and if so, whether an individual directly and substantially contributed to the violation. Because this inquiry already takes place (albeit to determine whether someone acted recklessly rather than negligently), the incremental resource cost to firms at the investigative stage will not be significant.
- Second, staff works to determine whether the individual acted negligently and notifies the potential respondent of that determination. After this point, the direct costs of the amendment to firms may increase more significantly.[185] Staff lacks sufficient data to reliably estimate the costs of each matter because the costs depend on numerous factors, including the duration of the matter,[186] the complexity of the matter (*e.g.,* a complex audit case versus a simpler case of noncompliance with PCAOB filing requirements), the number and nature of counsel and expert witnesses retained, and so forth.[187]

Apart from these direct defense costs, if the individual is adjudicated as having acted negligently and a sanction is imposed, the individual would incur potential financial costs of having been found liable for failing to act with reasonable care and thereby contributing to the firm's violation. To the extent that there are civil money penalties, they would be assessed against the individual.[188]

A firm that has indemnification agreements in place that would compel it to bear the financial burden of defending or indemnifying associated persons may choose to purchase insurance to help alleviate the contingent financial burden. If so, it would have to buy insurance in the market, and the pricing of such insurance may depend on the risks of loss identified by the underwriting process. Or a firm may self-insure against such liabilities, in which case the amount held in reserve or reinsurance may vary based on anticipated losses.

There may also be opportunity costs as enforcement proceedings distract individuals from their everyday responsibilities. The opportunity costs relate to diversion from engagement tasks and other work.

Further, an individual may incur reputational costs, such as adverse employment or career events. Commenters asserted that the effects of the Proposal would include causing harm to individuals' careers (*e.g.,* by being removed from issuer client service roles or being demoted) and collateral consequences (*e.g.,* follow-on proceedings by state boards of accountancy or disciplinary measures by other regulators) consistent with having been found to have violated the Board's standards, and hence the federal securities laws. The Board agrees and recognizes that these costs could exist in any proceeding brought under the amendment. [189] While the Board may consider the relevant facts and circumstances in determining the sanction it believes appropriate in the public interest, the Board recognizes that additional consequences beyond the sanctions imposed in the case frequently occur. The Board acknowledges that these consequences could be significant to the individual against whom they are imposed. However, the Board also believes that these consequences would not be significant in the aggregate, taking into account the number of associated persons across all registered firms and in light of the anticipated number of additional proceedings likely to be brought as a result of the amendment.

Certain commenters raised concerns about the potential increase in legal costs for firms. In particular, they noted the increased legal liability that

[184] That is, the Board believes that the firm would have advancement and indemnification agreements in place with relevant firm personnel. In certain circumstances, it is possible that an individual respondent that is found liable would have to reimburse the firm (or the firm's insurer) for defense costs, but the extent and nature of that obligation depends on the facts and circumstances as applicable to the terms and conditions of the indemnification and insurance agreements.

[185] One commenter expressed concern that the PCAOB's investigations and enforcement could become at least marginally more costly given enforcement requirements of the negligence criteria. The Board agrees; there could be incremental costs to the PCAOB of pursuing negligence-based cases. The Board expects these would be generally proportional to the costs discussed above for potential individual respondents (*e.g.,* both sides may need to hire expert witnesses to litigate whether conduct met the standard of care). Another comment letter expressed doubt that the firm would cover an individual's defense costs if the individual chose to mount a defense that involved attributing responsibility to the firm. The Board believes that in these circumstances, it is more likely that the firm would nonetheless have to continue abiding by its advancement and indemnification obligations, but that the firm might then have to retain separate counsel for the individual, which would increase the overall costs as discussed (given an increase in complexity and number of counsel).

[186] As set out in the PCAOB rules, a PCAOB enforcement case has numerous stages where the proceedings might halt. For example, a persuasive Rule 5109(d) submission may convince the staff not to recommend proceedings; the Board may determine not to institute proceedings under Rule 5200; the Hearing Officer might dismiss the matter; the matter might end with a Hearing Officer's initial decision; or the initial decision might be appealed to the Board, the Commission, or the courts. The longer the litigation, the greater the costs (*e.g.,* attorney fees, expert witness fees, and opportunity costs).

[187] These factors make it impracticable to construct a quantitative estimate of the anticipated cost—there is no ''typical'' case that the Board could use to construct an estimate that would be extensible across the two to three cases per year anticipated here. While the Board requested information about costs, including relevant data, commenters did not provide specific data about defense costs that would permit the Board to construct a quantified estimate. The Board's analysis therefore continues to be qualitative in nature.

[188] If not foreclosed from doing so, individuals might seek to have their firm bear these financial costs pursuant to indemnification agreements, insurance agreements, or otherwise. However, such agreements or arrangements might not cover civil money penalties.

[189] *See* J. Krishnan, M. Li, M. Mehta & H. Park, *Consequences for Culpable Auditors, available at https://ssrn.com/abstract=4627460.*

associated persons might face under the amendment, which may result in higher costs of firms defending their associated persons and liability insurance for firms. Other commenters voiced concerns about the potential for increased state-level investigations and disciplinary proceedings against individuals, which could lead to the suspension or revocation of professional licenses. However, another commenter asserted the amendment's contributory negligence standard would better align the PCAOB's liability approach with the majority of the states' liability approach, which does not limit individual liability for negligent conduct.

The Board agrees that the amendment could increase legal and liability insurance costs, as well as the number of state investigations. Those incremental costs, however, would not be significant based on the two to three additional cases expected per year.

Several commenters highlighted that the amendment could significantly increase audit firms' litigation risk and legal liability for small firms. They indicated that increased costs, encompassing defense expenditures and opportunity costs, are expected to disproportionately affect small firms, which may lack the resources and market influence to offset these expenses. The commenters cautioned that small firms with a limited capacity to absorb these costs or demand higher fees could face significant challenges.

The Board acknowledges that litigation risk and legal liability involve costs, and those costs may have a greater impact on small firms, where direct costs and distractions are less absorbable by firms' other activities or personnel. For example, small firms are especially vulnerable to increases in legal costs, as small firms may disproportionately bear the burden of insuring against the risk. However, the Board believes certain features of the market and this amendment would limit these effects.

First, smaller firms typically have simpler supervisory structures that may make it easier for these firms to supervise their partners to help to ensure that partners are acting with reasonable care.[190] They also may be less impacted by the concern raised by other commenters that responsibility for firm compliance could be divided up among many individuals, with accountability for any one act of negligence being more difficult to establish. Second, in assessing insurance costs, the Board distinguishes between market-wide effects (*i.e.,* a market-wide increase in directors & officers or professional liability coverage) and specific-firm effects (*i.e.,* a specific firm experiencing an increase in the cost of insurance if it has a specific claim brought against its associated persons). The Board believes the market-wide effects are likely to be smaller: Again, the Commission already has the authority to bring negligence-based cases, and the staff has estimated that the amendment would result in an average of two to three more cases per year. The Board believes it less likely that the amendment or resulting incremental claims experience would cause a significant shift in underwriters' perception of risk and thus the availability or pricing of insurance for smaller firms in general. However, the Board acknowledges that the impact on a specific firm that is involved in a specific matter could be more significant; an increase in its individual claims experience could cause an increase in the cost of coverage and/or retention amounts in the future or make it more difficult to secure acceptable coverage.

In addition to the direct costs described above, the amendment could result in indirect costs as individuals adjust their behavior and put forth additional effort to ensure they do not contribute to a firm's violation through their negligence. However, to the extent that these indirect costs are incurred to bring previously negligent conduct up to a level of reasonable care, these costs are properly allocable to the underlying law, rule, or standard that the firm is alleged to have violated, as those provisions each assume a level of costs necessary for the firm to comply.

One commenter expressed concerns about a requirement in the Proposal that involves the application of ''directly and substantially'' only to the sufficiency of the connection between an associated person's conduct and a firm's violation. The commenter asserted that this is an important change from the present rule, under which an alleged violator must know (or recklessly not know) not only that they are contributing to a violation, but also that the contribution is direct and substantial. The Board notes that its analysis, which includes staff estimate of two to three additional cases per year based on the Proposal, takes into account the application of ''directly and substantially'' only on the sufficiency of the connection between the associated person's conduct and a firm's violation. The Board does not believe that this change would be a significant driver of costs to individuals or firms in the aggregate.[191]

ii. Costs to Issuers (Audit Fees)

To the extent that firms pass on some of the costs to their audit clients, the amendment could result in audit fee increases to cover firms' compliance costs related to the amendment. Consistent with this notion, academic studies find that increased enforcement intensity can lead to temporary increases in audit fees for some issuers.[192] Further academic research provides evidence that audit fees increase with the auditor's assessment of business risk, which includes risk of regulatory sanctions, among others.[193] The findings indicate that the increases in audit fees are due to the increase in the number of audit hours, but not hourly rates.

3. Potential Unintended Consequences

The following discussion describes potential unintended consequences that the Board considered and, where applicable, factors that mitigate the adverse effects, such as the steps the Board has taken or the existence of countervailing forces.

i. Self-Protective Behavior

The Board recognized in the Proposal that auditors might engage in self-

[190] The Board acknowledges that smaller firms may have fewer resources to invest in dedicated supervisory structures. However, given that their respective QC systems oversee a smaller number of engagements, the same level of resources may not be necessary for the firm to nonetheless obtain reasonable assurance that their personnel comply with applicable professional standards and regulatory requirements.

[191] Nor would it be a significant contributor to costs in particular cases; indeed, it might save costs by avoiding effort seeking to establish the reasonableness of the individual's belief as to the directness and substantialness of the participation or lack thereof where a direct and substantial connection in fact has already been established.

[192] Annita Florou, Serena Morricone & Peter F. Pope, *Proactive Financial Reporting Enforcement: Audit Fees and Financial Reporting Quality Effects,* 95 Acct. Rev. 167, 167 (2020) (''We examine the costs and benefits of proactive financial reporting enforcement by the U.K. Financial Reporting Review Panel. Enforcement scrutiny is selective and varies by sector and over time, yet can be anticipated by auditors and companies. We find evidence that increased enforcement intensity leads to temporary increases in audit fees and more conservative accruals. However, cross-sectional analysis across market segments reveals that audit fees increase primarily in the less-regulated AIM segment, and especially those AIM companies with a higher likelihood of financial distress and less stringent governance. On the contrary, less reliable operating asset-related accruals are more conservative in the Main segment and, in particular, those Main companies with stronger incentives for higher financial reporting quality. Overall, our study indicates that financial reporting enforcement generates costs and benefits, but not always for the same companies.'').

[193] *See, e.g.,* Timothy B. Bell, Wayne R. Landsman & Douglas A. Shackelford, *Auditors' Perceived Business Risk and Audit Fees: Analysis and Evidence,* 39 J. Acct. Res. 35 (2001).

protective behavior.[194] Specifically, while the threat of enforcement action can motivate individuals to act in a manner consistent with their legal obligations, it can also result in excessive monitoring and self-protective behavior, leading to an inefficient allocation of time and resources. The effect on audit quality may change as the degree of intervention increases. Individuals may spend more time on a task than is necessary to accomplish it at the appropriate level of care. Similarly, individuals may excessively document the nature of their task performance to demonstrate compliance in a future proceeding. Time spent on unproductive, self-protective activities may detract from other important obligations and directly impact audit quality.

Many commenters echoed this concern and emphasized the potential significance of this issue, including that its effects may discourage effective collaboration between and among accountants, especially in complex audits. Some of these commenters expressed concern that moving to a negligence standard for contributory liability would lead to sanctions of professionals who make judgments in good faith. A few commenters asserted that emphasizing every error an auditor makes will encourage auditors to focus on defensive auditing—which could result in a decrease in audit quality. These commenters' concerns center on the prospect that increased liability risk could lead auditors to prioritize self-protective measures (*e.g.,* overemphasizing compliance documentation) and excessive monitoring over more important audit tasks, particularly in small- and mid-sized firms with limited resources. Another comment letter raised concerns about the impact of coercive enforcement strategies on audit practices, suggesting that such strategies could lead to defensive behaviors rather than genuine quality improvements.

The Board notes that the compliance and documentation requirements in applicable professional standards are designed to sufficiently demonstrate compliance, thus mitigating the need for excessive, unproductive documentation.[195] Furthermore, the possibility of such self-protective behavior is not new. As discussed above, the Commission currently can initiate enforcement proceedings against individuals for negligent contributory conduct.[196] And, as commenters have pointed out, the PCAOB currently possesses a robust enforcement regime covering negligent primary conduct. Therefore, the risk of litigation and sanctions is already a factor in the current regulatory environment, driving the existing need for individuals to act with reasonable care and to be able to demonstrate their compliance. Thus, while the Board acknowledges some inefficient behavior could result from the amendment, consistent with the incremental increase in deterrence that the Board posits above, the Board continues to believe that the likelihood that the amendment would drive significant increases in self-protective behavior is low.

ii. Lack of Available Personnel or Compensation Enhancements

As recognized in the Proposal, excessive risk of enforcement action could unintentionally discourage auditors from accepting important audit roles if they fear being held liable, leaving these roles to be accepted by less cautious or less qualified individuals.[197] Alternatively, auditors may seek to offset the increased risk by demanding higher compensation for taking certain roles or responsibilities, which could have downstream effects on audit fees.

Many commenters remarked about the amendment's potential negative impact on the accounting and audit workforce. These commenters highlighted an existing ''talent crisis,'' especially affecting small- and mid-sized firms. They noted that the amendment's threshold for sanctionable conduct and resulting increased liability risks could intensify the crisis. The commenters contended that the amendment might discourage talented individuals at various career stages from engaging in PCAOB-regulated work, potentially leading to lower audit quality, higher fees, and public company delisting. The commenters identified fear of punitive action and a culture of defensive auditing as factors that could deter newcomers from entering the profession and prompt experienced auditors to leave, further jeopardizing the talent pipeline. In addition, the commenters argued that the amendment would affect the on-the-job nature of auditors' learning. Many of the same commenters also raised concerns that a shift to a negligence standard might discourage experienced auditors from accepting essential roles due to the fear of increased liability for good faith judgments. According to these commenters, a negligence standard could dissuade risk-averse and diligent professionals integral to a firm's quality control system, thus affecting auditors' development, training, and monitoring. One commenter added that this amendment in combination with other recent proposed standards may exacerbate the talent crisis problem.

Some commenters cited literature to support their concerns that there has been a steady decline in the number of accounting graduates and that this is partly due to the regulatory environment making the profession unappealing.[198] While the cited studies indicate a decline in the number of accounting graduates and professionals or a waning interest in the accounting profession, they do not expressly point out regulatory oversight as a reason for the decline. Rather, according to one of these studies, the 150 CPA credit hour requirement as well as relatively low starting salaries are the two main reasons for not choosing accounting as a major among college students who considered accounting.[199]

The Board acknowledges the commenters' concerns about the amendment's potential impact on auditing personnel. However, the lack of available auditing personnel is likely the result of the interplay between numerous factors in the labor market. On the supply side, a notable decline in the number of entry-level auditors, as evidenced by a significant decrease in the number of new CPA candidates, suggests a waning interest among entry-level professionals in auditing

[194] *See* 2023 Proposing Release at 26.

[195] *See, e.g.,* AS 1215, Audit Documentation.

[196] Also, as discussed in section C above, the AICPA's Code of Professional Conduct makes certain negligent contributory acts by individuals an ''act discreditable to the profession.'' *See* AICPA Code of Professional Conduct, ET § 501.05(a), *Negligence in the Preparation of Financial Statements or Records, recodified at* Section 1.400.040.01.

[197] *See* 2023 Proposing Release at 26.

[198] *See* Association of International Certified Professional Accountants, *2023 Trends Report* (2023), *available at https://www.aicpa-cima.com/professional-insights/download/2023-trends-report; see also* Center for Audit Quality and Edge Research, *Increasing Diversity in the Accounting Profession Pipeline: Challenges and Opportunities* (2023) (''CAQ–Edge Report''), *available at https://thecaqprod.wpenginepowered.com/wp-content/uploads/2023/07/caq_increasing-diversity-in-the-accounting-profession-pipeline_2023-07.pdf.*

[199] *See* CAQ–Edge Report at 7; *see also* Daniel Aobdia, Qin Li, Ke Na & Hong Wu, *The Influence of Labor Market Power in the Audit Profession,* Social Science Research Network (SSRN) (2024), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4732093* (''[W]e confirm that audit offices in more concentrated labor markets have greater labor market power and exercise it in the form of higher skill requirements and greater required effort from their auditors, at similar or slightly lower wages.'').

careers.[200] A study found that for graduates who have already completed the 150 CPA credit hour requirement, finding the time to study for the CPA exam and the overall rigor of the exam are the most significant challenges to licensure.[201] Other contributing factors may include the retirement of baby boomers and a lack of diversity in the profession.[202]

On the demand side, as the economy grows, businesses evolve, and more companies go public, the demand for auditors will increase.[203] Furthermore, technological advancements and the integration of digital tools into business processes have created a need for auditors with expertise in cybersecurity, blockchain, and data analytics.[204] Taking into account the current state of supply of and demand for auditors, attracting talent likely would depend primarily on factors under firms' control, such as auditor compensation, especially given that college students have cited low starting salary as one of the main hurdles to choosing accounting as a major.

Thus, while the Board acknowledges the potential for this amendment to affect the market for audit services, the Board disagrees with commenters' assessment of the magnitude of these risks. First, the Board continues to believe that the Board is not establishing a novel burden on individuals to refrain from acting negligently and thereby contributing to a firm's violation; instead, the Board is merely providing a mechanism for the PCAOB to discipline individuals who fail to meet that standard. The effect is, therefore, the incremental probability of PCAOB enforcement. However, this increased probability is not so novel and significant that it would be expected to impact noticeably the market for associated persons' services. Second, firms have a tool at their disposal—adjusting compensation—that could tend to increase the supply of these services as needed, although there may be short-term displacements. The increased cost of labor may be absorbed by firms or passed to issuers and investors through increased audit fees.

iii. Reduced Competition in the Audit Market

The amendment to Rule 3502 could disproportionately impact small- and medium-sized firms if they are less able to bear the cost of defending their personnel. As discussed above, these costs include attorney fees to defend associated persons against charges and distracting personnel from generating income from the performance of client services. In an extreme case, a firm might not be able to sustain its practice considering the negative impact; more broadly, less profitable firms may perceive that the risk of such costs is too significant compared to their existing net profit from issuer and broker-dealer audit work and, therefore, decide to exit those markets. This result could further consolidate the market for issuer and broker-dealer audit services.

Several commenters asserted that the amendment could reduce competition in the audit market. They noted that the increase in liability could discourage firms, especially non-U.S. firms, from participating in U.S. issuer and broker-dealer audits. One commenter argued that the amendment ''may inadvertently create barriers'' for smaller firms and those servicing emerging industries by elevating the risk profile of conducting audits.[205] Another commenter asserted that there has been a decline in PCAOB-registered firms auditing issuers and broker-dealers due to regulatory burdens.

The likelihood that defense costs cause substantial changes in the relevant markets is lowered by three factors. First, a firm may already defend against an allegation of negligent primary conduct (brought using the PCAOB's current authority) such that, in any additional cases brought under the amended rule, defending individuals facing a charge of negligent contributory conduct would likely involve common sets of facts and legal theories and could be done more efficiently (*i.e.,* at lower additional cost) as compared to a wholly novel proceeding. Second, a firm may already defend an individual against an allegation of primary violations, involving common sets of facts and legal theories related to an allegation against a firm. Third, the Commission's existing authority to sanction associated persons for negligent contributory conduct means that firms' profitability calculations should already factor in the risk of defending personnel against charges of this nature, albeit with a modestly greater frequency in light of the amended rule. Thus, in addition to the firm's defense, the incremental cost of defending an individual may not be as significant as it appears at first glance.[206]

While the Board agrees that there has been a decline in the number of firms performing audits of public companies, the Board notes that firms may decide to cease providing audits for any number of reasons, mostly strategic in nature.[207] While the amendment could lead some firms to exit the issuer audit market because of increased risk of higher expected litigation expenses (thus reducing competition), this exit might involve low-quality auditors and lead to better matching between auditors and clients.[208] While the

[200] According to the *2023 Trends Report,* the number of new CPA candidates decreased from 48,004 in 2016 to 30,251 in 2022.

[201] *See* CAQ–Edge Report at 15.

[202] See Drew Niehaus, Fixing the Crisis in Accounting: Five Steps to Attracting Tomorrow's CPAs, CPA Journal (Nov. 2022), and Mark Maurer, Job Security Isn't Enough to Keep Many Accountants from Quitting, Wall St. J. (Sept. 22, 2023), *available at https://www.wsj.com/articles/accounting-quit-job-security-675fc28f.*

[203] *See* Bureau of Labor Statistics, *Occupational Outlook Handbook: Accountants and Auditors, available at https://www.bls.gov/ooh/business-and-financial/accountants-and-auditors.htm#tab-6* (''In general, employment growth of accountants and auditors is expected to be closely tied to the health of the overall economy. As the economy grows, these workers will continue being needed to prepare and examine financial records. In addition, as more companies go public, there will be greater need for public accountants to handle the legally required financial documentation. The continued globalization of business may lead to increased demand for accounting expertise and services related to international trade and international mergers and acquisitions.'').

[204] *See, e.g.,* Najoura Elommal & Riadh Manita, *How Blockchain Innovation Could Affect the Audit Profession: A Qualitative Study,* 37 J. Innovation Econ. & Mgmt. 37, 38 (2022) (''According to Alles (2015), the use of advanced technologies and blockchain by audit clients would be the catalyst for the adoption of these technologies by auditors. Blockchain, associated with other digital technologies, could change the audit process by modifying the way in which the auditor accesses data, collects evidence, and analyzes data (Rozario, Thomas, 2019). Auditors have the choice only to integrate these technologies and to change their organization and their process at the risk of losing their legitimacy in the audit market.'').

[205] Comment Letter from Chamber of Digital Commerce at 1 (Nov. 2, 2023).

[206] One commenter stated that the assertions in the Proposal that defense costs would be lowered by an increase in the volume of cases to defend is not based in fact. It appears that the nature of the Board's assertion was misinterpreted; as discussed above, the Board believes that individuals and firms will incur additional litigation costs to defend against charges brought under the amended rule. However, the Board has considered the nature of those costs and how they would relate to the way that staff might investigate and make recommendations regarding these cases, and the frequency of those charges, and the Board believes that those factors diminish the size of the expected increase—*i.e.,* while costs will go up, they will go up less than if firms needed to defend a wholly new class of charges.

[207] Michael Ettredge, Juan Mao & Mary S. Stone, *Small Audit Firm De-registrations from the PCAOB-Regulated Audit Market: Strategic Considerations and Consequences,* Social Science Research Network (SSRN) (2022), *available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3572291.*

[208] One study suggests that PCAOB inspections incentivize low-quality auditors to exit the market, resulting in an overall improvement in audit quality. *See* Mark L. DeFond & Clive S. Lennox, *The Effect of SOX on Small Auditor Exits and Audit Quality,* 52 J. Acct. & Econ. 21, 39 (2011) (''We conclude that while the PCAOB inspections are intended to improve audit quality primarily

Continued

amendment may induce market shifts, the resulting landscape could be characterized by a higher concentration of more capable and compliant audit firms, mitigating the negative impacts on the competitive landscape.

iv. Other Distortions/Inefficiencies

One commenter expressed concern that the amendment could change the dynamics of the settlement negotiation process during enforcement cases and ''tip the scale'' in the PCAOB's favor.[209] The commenter further contended that the PCAOB may pursue weaker cases, which would divert its resources to less meritorious cases, while another commenter asserted its belief that the PCAOB will appropriately exercise its prosecutorial discretion. Some commenters asserted that the amendment could have negative effects on the PCAOB's inspections program. One commenter noted that the amendment could cause firms to be particularly reluctant to provide services to novel industries.

The Board emphasizes that the amendment is designed to enhance regulatory oversight and accountability, not to unfairly ''tip the scale'' against firms and their associated persons. The PCAOB is committed to using its enforcement resources efficiently, and the Board emphasizes that enforcement proceedings are based on substantive evidence and legal principles, thereby helping to maintain the integrity and effectiveness of the PCAOB's overall enforcement process to protect investors' interests. Moreover, the Board believes that enhancements to the PCAOB's enforcement program will serve as a natural complement to the inspections program; even today, with a primary liability regime based on negligence, the vast majority of inspection deficiencies do not result in enforcement proceedings. The Board does not anticipate that the incremental effects of the amendment to Rule 3502 will prompt significant changes in the nature of the inspections process that has developed over time.

The amendment is intended to strengthen the PCAOB's ability to address instances of negligence that may harm investors or undermine the integrity of the audit process, ensuring a more effective and transparent regulatory framework. On balance the Board believes that the amendment will enhance audit quality, not diminish it. Enhancements in audit quality will also benefit emerging industries: while the amendment does not specifically target these industries, it is precisely because these industries operate in evolving regulatory and legal frameworks that they may benefit from more thorough and diligent auditing practices. Therefore, the Board believes that, rather than deterring firms from engaging with innovative sectors, the amendment can serve to enhance the quality and effectiveness of audits in these industries, ultimately benefiting both participants in the emerging industries and investors.

*D. Alternatives Considered*

The Board considered two alternatives to the amendment, as discussed below.[210]

1. Alternative Articulations of the Standard of Liability

Rather than amending Rule 3502 as done, the Board considered rewriting Rule 3502 to mirror the language in the cease-and-desist provisions of the Exchange Act, 15 U.S.C. 78u–3(a).

The primary benefit of such an approach would be to facilitate interpretive alignment with the scope of the Commission's causing-liability regime, which may provide associated persons with more clarity on the nature of the legal risk. However, for more than a dozen years, the Board has developed a distinguishable body of practice under Rule 3502 through its enforcement program—including via the rule-based requirement that any contribution to a primary violation be ''direct[ ] and substantial[ ]''—and the amended rule will maintain that familiar practice while narrowly adjusting only the standard of liability.

In response to comments, the Board also considered other potential liability standards, including whether to adopt a framework that would require a showing of multiple acts of negligence to hold an individual liable for contributory conduct at the negligence level. Commenters noted that because Section 21C proceedings are usually brought in conjunction with Rule 102(e) proceedings, the Commission often pursues a multiple acts of negligence or a heightened form of negligence theory. Commenters also discussed their belief that it would be inequitable or inappropriate for the Board to hold individuals liable for one-time errors.

However, as discussed in section C above, while the Commission often chooses to bring Section 21C and Rule 102(e) matters together, nothing requires it to do so. Similarly, under the amendment, the Board may choose to bring a case that has repeated acts of negligence, so that an appropriate remedial sanction can be imposed. Or, in appropriate facts and circumstances, it may choose to bring a case that involves a single act of negligence. This optionality thus mirrors that available to the Commission under Section 21C. Requiring multiple instances of negligence, moreover, would not fully close the regulatory gap noted above, would not give the Board authority that is co-extensive with the Commission, and would not fully achieve the efficiency benefits that the amendment seeks to achieve.

2. Removing Additional Barriers to Contributory Liability

The Board also considered an alternative that would expand the Board's ability to hold persons liable for contributing to firm violations by changing the ''directly and substantially'' modifier that describes the relationship of an associated person's contribution to a firm's primary violation, including removing it altogether. This is currently an element of proof required for the Board to find a violation of Rule 3502.

Removing ''directly and substantially'' would enable the Board to use Rule 3502 to hold accountable any individual who took part in any way in the chain of events leading to a firm's violation, even if only remotely. The relationship between contributory conduct and the primary violation could be a discretionary factor to consider in bringing a proceeding in the first instance and when determining the appropriate sanction.

This alternative could improve audit quality by ensuring that all individuals with relevant professional responsibilities are appropriately motivated to perform their responsibilities with reasonable care. However, this could exacerbate the costs and unintended consequences discussed above in conjunction with the amendment. Therefore, this alternative might lead to excessive motivation for auditors to increase defensive efforts that do not contribute to audit quality (*e.g.,* excessive self-protective measures in anticipation of future litigation).

The amended rule maintains the criteria of nexus and magnitude (''directly and substantially'') for an associated person's contribution to a firm's violation, although it does not

through the remediation of poor audit practices, they also improve audit quality by incentivizing the lower quality auditors to exit the market.'').

[209] Comment Letter from U.S. Chamber of Commerce at 12.

[210] As discussed in section C above, the Proposal considered amending Rule 3502 to provide that an associated person that negligently contributes to a firm's violation need not be an associated person of the firm that commits the primary violation. The Board decided not to adopt this aspect of the Proposal.

require proof that the individual knew or was negligent in not knowing that their conduct would be a direct and substantial contributor. These requirements appropriately specify the conduct the Board considers actionable for ''contributing'' to a primary violation, as outlined above. This approach tailors the incentives to individuals with the most direct responsibility for firm compliance. In other words, the amendment continues to focus on individuals most likely influenced by increased litigation risk leading to improved firm compliance and audit quality. Conversely, individuals who are less involved would experience lower benefits in relation to costs and unintended consequences.

3. Nonenforcement Alternatives Suggested by Commenters

Several commenters asserted that an alternative to the amendment is for the Board to provide auditors with additional guidance, training, and tools illustrating successful and problematic practices. Commenters indicated that this could be achieved through enhanced communication, such as issuing interpretive guidance and publishing observations from enforcement activities, to educate auditors and to help them better understand accountability expectations for associated persons, or through implementing a real-time consultation process similar to the Commission's. One commenter also expressed appreciation of the PCAOB's Spotlight series that is published to help users of financial statements better understand the PCAOB's activities and observations.

Although the Board agrees that these alternative approaches are beneficial, devoting additional resources to activities buttressing these approaches, without addressing the existing regulatory gap, would not yield the benefits discussed above that are associated with providing the PCAOB with the appropriate tool to hold individuals accountable for failing to act reasonably and contributing directly and substantially to a firm's violation. An increase in the number of regulators that can pursue negligent contributory conduct increases the likelihood of the conduct being detected and deterred through a range of sanctions that can be imposed by the PCAOB, including training.

One commenter suggested an alternative to the amendment could be to adopt standards addressing the roles of individuals involved in designing and monitoring firms' systems of quality control. The commenter believes this approach would provide predictability in enforcement of PCAOB standards and would more effectively accomplish the PCAOB's goals. While addressing the conduct of individuals involved in designing and monitoring a firm's system of quality control is important, the scope of the amendment, and Rule 3502 generally, are broader than quality control.[211] As discussed previously, the amendment aims to address a specific gap in the PCAOB's regulatory framework related to liability standards for firms and associated persons, ensuring a more consistent and effective regulatory framework.

**Special Considerations for Audits of Emerging Growth Companies**

The amendment does not impose additional requirements on emerging growth company (EGC) audits. Accordingly, the Board believes that Section 103(a)(3)(C) of Sarbanes-Oxley does not apply. Nevertheless, the discussion of benefits, costs, and potential unintended consequences above generally applies to the audits of EGCs, and the Board includes this analysis for completeness.

Under Section 104 of the Jumpstart Our Business Startups Act (JOBS Act), rules adopted by the Board after April 5, 2012, generally do not apply to the audits of EGCs, as defined in Section 3(a)(80) of the Exchange Act, unless the Commission ''determines that the application of such additional requirements is necessary or appropriate in the public interest, after considering the protection of investors, and whether the action will promote efficiency, competition, and capital formation.'' [212] As a result of the JOBS Act, the rules and related amendments to PCAOB standards adopted by the Board are generally subject to a separate determination by the Commission regarding their applicability to audits of EGCs.

To inform consideration of the application of auditing standards to audits of EGCs, Board staff prepares a white paper annually that provides general information about the characteristics of EGCs.[213] As of November 15, 2022, PCAOB staff identified 3,031 companies that self-identified with the Commission as EGCs and filed audited financial statements in the 18 months preceding that date.[214]

EGCs are likely to be newer public companies, which may increase the importance to investors of the external audit to enhance the credibility of management disclosures. All else equal, the benefits of the higher audit quality resulting from the amendment may be more significant for EGCs than for non-EGCs, including improved efficiency of capital allocation, lower cost of capital, and enhanced capital formation. By increasing the likelihood that associated persons are held accountable for their negligent contributory roles in firm violations, the amendment to Rule 3502 aims to bolster investor confidence in the audit process. Because investors who lack confidence in a company's financial statements may require a larger risk premium that increases the cost of capital to companies, the improved audit quality resulting from applying the amendment to EGC audits could reduce the cost of capital to those EGCs.[215]

The amendment could impact competition in an EGC product market if the costs disproportionately affect the EGCs relative to their competitors. However, as discussed above, the costs associated with the amendment are expected to be small, particularly given the Commission's existing authority to sanction associated persons for single

[211] QC 1000, if approved by the Commission, would provide clear expectations for certain individuals serving in quality control roles. QC 1000 and Rule 3502 may overlap in some but not all circumstances because Rule 3502 applies to individuals more broadly than just quality control roles.

[212] *See* Public Law 112–106 (Apr. 5, 2012). Section 103(a)(3)(C) of Sarbanes-Oxley, as added by Section 104 of the JOBS Act, also provides that any rules of the Board requiring (1) mandatory audit firm rotation or (2) a supplement to the auditor's report in which the auditor would be required to provide additional information about the audit and the issuer's financial statements (auditor discussion and analysis) do not apply to an audit of an EGC. The amended Rule 3502 falls outside these two categories.

[213] For the most recent EGC report, see *White Paper on Characteristics of Emerging Growth Companies and Their Audit Firms at November 15, 2022* (February 20, 2024), *available at https://pcaobus.org/resources/other-research-projects* (''EGC White Paper'').

[214] The EGC White Paper uses a lagging 18-month window to identify companies as EGCs. Please refer to the ''Current Methodology'' section of the EGC White Paper for details. Using an 18-month window enables staff to analyze the characteristics of a fuller population in the EGC White Paper, but may tend to result in a larger number of EGCs being included for purposes of the present EGC analysis than would alternative methodologies. For example, an estimate using a lagging 12-month window would exclude some EGCs that are delinquent in making periodic filings. An estimate as of the measurement date would exclude EGCs that have terminated their registration or exceeded the eligibility or time limits. *See id.*

[215] For a discussion of how increasing reliable public information about a company can reduce risk premiums, see David Easley & Maureen O'Hara, *Information and the Cost of Capital,* 59 J. Fin. 1553, 1573 (2004) (''These findings suggest an important role for the accuracy of accounting information in asset pricing. Here, greater precision directly lowers a company's cost of capital because it reduces the riskiness of the asset to the uninformed.'').

acts of contributory negligence. Therefore, the amendment's impact on competition, if any, is expected to be limited. Overall, the amendment is expected to enhance audit quality and increase the credibility of financial reporting by EGCs, thereby fostering efficiency.

Some commenters agreed that the amendment should apply to audits of EGCs and that doing so would benefit such audits. One commenter remarked that there was no reason not to apply the amendment to audits of EGCs and that the principles, standards, and scope of enforcement against violations involving contributory negligence should be the same regardless of the scale and size of the entity and of the firm. Another commenter posited that excluding EGCs from the application of the amendment would be inconsistent with protecting the public interest.

As previously discussed, one commenter suggested that the amendment would have a greater impact on smaller firms with fewer resources to defend personnel and navigate an uncertain liability environment, and consequently, these firms are more likely to cease auditing entities that require PCAOB-registered auditors. The Board agrees that the amendment may have a greater impact on smaller firms to the extent that their individual auditors are investigated under the amended rule, and the firms are unable to absorb the direct costs and distractions. This would, in turn, impact EGCs because they are more likely than non-EGCs to engage small firms.[216] The Board believes that the amendment should apply uniformly to audits of EGCs to maintain high standards of audit quality and uphold investor protection across all entities.

Considering these comments and the reasons explained above, the Board will request that the Commission determine, to the extent that Section 103(a)(3)(C) of the Sarbanes-Oxley applies, that it is necessary or appropriate in the public interest, after considering the protection of investors and whether the amendment will promote efficiency, competition, and capital formation, to apply the amendment to audits of EGCs.

[216] Staff analysis indicates that, compared to exchange-listed non-EGCs, exchange-listed EGCs are approximately 2.6 times as likely to be audited by a firm that is not affiliated with the largest global networks, and approximately 1.3 times as likely to be audited by a triennially inspected firm. Source: EGC White Paper and S&P.

## III. Date of Effectiveness of the Proposed Rules and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Board consents, the Commission will:

(A) By order approve or disapprove such proposed rules; or

(B) Institute proceedings to determine whether the proposed rules should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rules are consistent with the requirements of Title I of the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/pcaob*); or
- Send an email to *rule-comments@sec.gov.* Please include PCAOB–2024–04 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to PCAOB–2024–04. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/pcaob*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules that are filed with the Commission, and all written communications relating to the proposed rules between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the PCAOB. Do not include personal identifiable information in 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 PCAOB–2024–04 and should be submitted on or before July 23, 2024.

For the Commission by the Office of the Chief Accountant.

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024–14487 Filed 7–1–24; 8:45 am]

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–100430; File No. PCAOB–2024–03]**

## Public Company Accounting Oversight Board; Notice of Filing of Proposed Rules on Amendments Related to Aspects of Designing and Performing Audit Procedures That Involve Technology-Assisted Analysis of Information in Electronic Form

June 26, 2024.

Pursuant to section 107(b) of the Sarbanes-Oxley Act of 2002 (''Sarbanes-Oxley,'' or the ''Act''), notice is hereby given that on June 20, 2024, the Public Company Accounting Oversight Board (the ''Board'' or the ''PCAOB'') filed with the Securities and Exchange Commission (the ''Commission'' or the ''SEC'') the proposed rules described in items I and II below, which items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rules from interested persons.

## I. Board's Statement of the Terms of Substance of the Proposed Rules

On June 12, 2024, the Board adopted *Amendments Related to Aspects of Designing and Performing Audit Procedures that Involve Technology-Assisted Analysis of Information in Electronic Form* (''proposed rules''). The text of the proposed rules appears in Exhibit A to the SEC Filing Form 19b–4 and is available on the Board's website at *https://pcaobus.org/about/rules-rulemaking/rulemaking-dockets/docket-052* and at the Commission's Public Reference Room.

**II. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules**

In its filing with the Commission, the Board included statements concerning the purpose of, and basis for, the proposed rules and discussed any comments it received on the proposed rules. The text of these statements may be examined at the places specified in Item IV below. The Board prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements. In addition, the Board is requesting that the Commission approve the proposed rules, pursuant to section 103(a)(3)(C) of the Act, for application to audits of emerging growth companies (''EGCs''), as that term is defined in section 3(a)(80) of the Securities Exchange Act of 1934 (''Exchange Act''). The Board's request is set forth in section D.

*A. Board's Statement of the Purpose of, and Statutory Basis for, the Proposed Rules*

(a) Purpose

The Board adopted amendments to AS 1105, *Audit Evidence,* and to AS 2301, *The Auditor's Responses to the Risks of Material Misstatement,* and conforming amendments to another PCAOB auditing standard (collectively, the ''amendments'' or ''final amendments''). The amendments are designed to improve audit quality and enhance investor protection by addressing the growing use of certain technology in audits.

In particular, the amendments update PCAOB auditing standards to more specifically address certain aspects of designing and performing audit procedures that involve analyzing information in electronic form with technology-based tools (*i.e.,* technology-assisted analysis). The amendments are designed to decrease the likelihood that an auditor who performs audit procedures using technology-assisted analysis will issue an auditor's report without obtaining sufficient appropriate audit evidence that provides a reasonable basis for the opinion expressed in the report.

Information from the PCAOB's research project on *Data and Technology* indicates that some auditors are expanding their use of technology-assisted analysis (often referred to in practice as ''data analysis'' or ''data analytics'') in the audit. Auditors use technology-assisted analysis in many different ways, including when responding to significant risks of material misstatement to the financial statements. For example, some auditors use technology-assisted analysis to examine the correlation between different types of transactions, compare company information to auditor-developed expectations or third-party information, or recalculate company information.

Existing PCAOB standards discuss certain fundamental auditor responsibilities, including addressing the risks of material misstatement to the financial statements by obtaining sufficient appropriate audit evidence. However, the standards do not specifically address certain aspects of using technology-assisted analysis in the audit. If not designed and executed appropriately, audit procedures that involve technology-assisted analysis may not provide sufficient appropriate audit evidence as required by the standards.

Having considered the expanded use of technology-assisted analysis by auditors, the Board proposed amendments in June 2023 to address certain aspects of designing and performing audit procedures that involve technology-assisted analysis. Commenters generally supported the objective of improving audit quality and enhancing investor protection by clarifying and strengthening requirements in AS 1105 and AS 2301 related to certain aspects of designing and performing audit procedures that involve technology-assisted analysis. In adopting the final amendments, the Board took into account the comments received.

The amendments further specify and clarify certain auditor responsibilities that are described in AS 1105 and AS 2301. The amendments are focused on addressing certain aspects of technology-assisted analysis, not specific matters relating to other technology applications used in audits (*e.g.,* blockchain or artificial intelligence) or the evaluation of the appropriateness of tools under the firm's system of quality control. The amendments are principles-based and therefore intended to be adaptable to the evolving nature of technology. In particular, the amendments:

- Specify considerations for the auditor's investigation of items identified when performing tests of details;
- Specify that if the auditor uses an audit procedure for more than one purpose, the auditor should achieve each objective of the procedure;
- Specify auditor responsibilities for evaluating the reliability of external information provided by the company in electronic form and used as audit evidence;
- Emphasize the importance of controls over information technology;
- Clarify the description of a ''test of details'';
- Emphasize the importance of appropriate disaggregation or detail of information to the relevance of audit evidence; and
- Update certain terminology in AS 1105 to reflect the greater availability of information in electronic form and improve the consistency of the use of such terminology throughout the standard.

The amendments will apply to all audits conducted under PCAOB standards. Subject to approval by the SEC, the amendments will take effect for audits of financial statements for fiscal years beginning on or after December 15, 2025.

*See* Exhibit 3 for additional discussion of the purpose of this project.

(b) Statutory Basis

The statutory basis for the proposed rules is Title I of the Act.

*B. Board's Statement on Burden on Competition*

Not applicable. The Board's consideration of the economic impacts of the proposed rules is discussed in section D below.

*C. Board's Statement on Comments on the Proposed Rules Received From Members, Participants or Others*

The Board initially released the proposed rules for public comment in PCAOB Release No. 2023–004 (June 26, 2023). The Board received 21 written comment letters relating to its initial proposed rules. *See* Exhibits 2(a)(B) and 2(a)(C). The Board has carefully considered all comments received. The Board's response to the comments it received, and the changes it made to the rules in response to the comments received, are discussed below.

Background

In 2010, the Board adopted auditing standards related to the auditor's assessment of and response to risk (the ''risk assessment standards''), including AS 1105 and AS 2301. Although the risk assessment standards were designed to apply to audits when auditors use information technology, the use of information in electronic form [1] and the

[1] In this document, the term ''information in electronic form'' encompasses items in electronic form that are described in PCAOB standards using terms such as ''information,'' ''data,'' ''documents,'' ''records,'' ''accounting records,'' and ''company's financial records.''

use of technology-based tools [2] by companies and their auditors to analyze such information has expanded significantly since these standards were adopted.

In light of the increased use of technology by companies and auditors, in 2017 the Board began a research project to assess the need for guidance, changes to PCAOB standards, or other regulatory actions.[3] Through this research the Board found that auditors have expanded their use of certain technology-based tools, including tools used to perform technology-assisted analysis (as described above, also referred to in practice as ''data analytics'' or ''data analysis'' [4]), to plan and perform audits. While the Board's research indicated that auditors are using technology-assisted analysis to obtain audit evidence, it also indicated that existing PCAOB standards could address more specifically certain aspects of designing and performing audit procedures that involve technology-assisted analysis. Consequently, under existing standards, there is a greater risk that when using technology-assisted analysis in designing and performing audit procedures, auditors may fail to obtain sufficient appropriate evidence in the audit.

The amendments in this release are intended to improve audit quality through principles-based requirements that apply to all audits conducted under PCAOB standards. They are designed to decrease the likelihood that an auditor who performs audit procedures using technology-assisted analysis will issue an auditor's report without obtaining sufficient appropriate audit evidence that provides a reasonable basis for the opinion expressed in the report. The remainder of this section of the release provides an overview of the rulemaking history, existing requirements, and current practice. In addition, it discusses reasons to improve the existing standards.

Rulemaking History

In June 2023, the Board proposed to amend AS 1105 and AS 2301 to address aspects of designing and performing audit procedures that involve technology-assisted analysis and that the Board's research indicated are not specified in existing PCAOB standards.[5] The proposed amendments were informed by the staff's research regarding auditors' use of technology, as described above.

The proposed amendments: (i) specified considerations for the auditor's investigation of items that meet criteria established by the auditor when designing or performing substantive audit procedures; (ii) specified that if an auditor uses audit evidence from an audit procedure for more than one purpose the procedure needs to be designed and performed to achieve each of the relevant objectives; (iii) provided additional details regarding auditor responsibilities for evaluating the reliability of external information maintained by the company in electronic form and used as audit evidence; (iv) clarified the differences between ''tests of details'' and ''analytical procedures,'' and emphasized the importance of appropriate disaggregation or detail of information to the relevance of audit evidence; and (v) updated certain terminology in AS 1105 to reflect the greater availability of information in electronic form and improve the consistency of the use of such terminology throughout the standard.

The Board received 21 comment letters on the proposal. Commenters included an investor-related group, registered public accounting firms (''firms''), firm-related groups, academics, and others. The Board considered all comments in developing the final amendments, and specific comments are discussed in the analysis that follows. Commenters generally supported the Board's efforts to modernize the auditing standards to specifically address certain aspects of designing and performing audit procedures that involve technology-assisted analysis, and some commenters offered suggestions to improve and clarify the proposed amendments.

Existing Requirements

The final amendments modify certain requirements of PCAOB standards relating to audit evidence and responses to risk (AS 1105 and AS 2301). AS 1105 explains what constitutes audit evidence and establishes requirements regarding designing and performing audit procedures to obtain sufficient appropriate audit evidence. AS 2301 establishes requirements regarding designing and implementing appropriate responses to identified and assessed risks of material misstatement.

The following discussion provides a high-level overview of the areas of the PCAOB standards that the amendments address. The discussion further below provides additional details regarding the specific requirements that the Board amended.

*Classification of Audit Procedures* (See Figure 1 below)—Under PCAOB standards, audit procedures can be classified into either risk assessment procedures or further audit procedures, which consist of tests of controls and substantive procedures. Substantive procedures include tests of details and substantive analytical procedures.[6] Existing standards provide examples of specific audit procedures [7] and describe what constitutes a substantive analytical procedure,[8] but do not describe what constitutes a test of details. PCAOB standards do not preclude the auditor from designing and performing audit procedures to accomplish more than one purpose. The purpose of an audit procedure determines whether it is a risk assessment procedure, test of controls, or substantive procedure.[9]

**Figure 1. Classification of Audit Procedures**

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[2] In this release, the term ''tool'' refers to specialized software that is used on audit engagements to examine, sort, filter, and analyze transactions and information used as audit evidence or which otherwise generates information that aids auditor judgment in the performance of audit procedures. Spreadsheet software itself without specific programming is not inherently a tool, but a spreadsheet may be built to perform the functions of a tool (examining, sorting, filtering, etc.), in which case it is included within the scope of this term. The PCAOB staff's analysis was limited to tools classified or described by the firms as data analytic tools. Tools may be either purchased by a firm or developed by a firm.

[3] *See* PCAOB's *Data and Technology* research project, *available at https://pcaobus.org/oversight/standards/standard-setting-research-projects/data-technology*.

[4] In this release, the terms ''data analysis'' or ''data analytics'' are used synonymously.

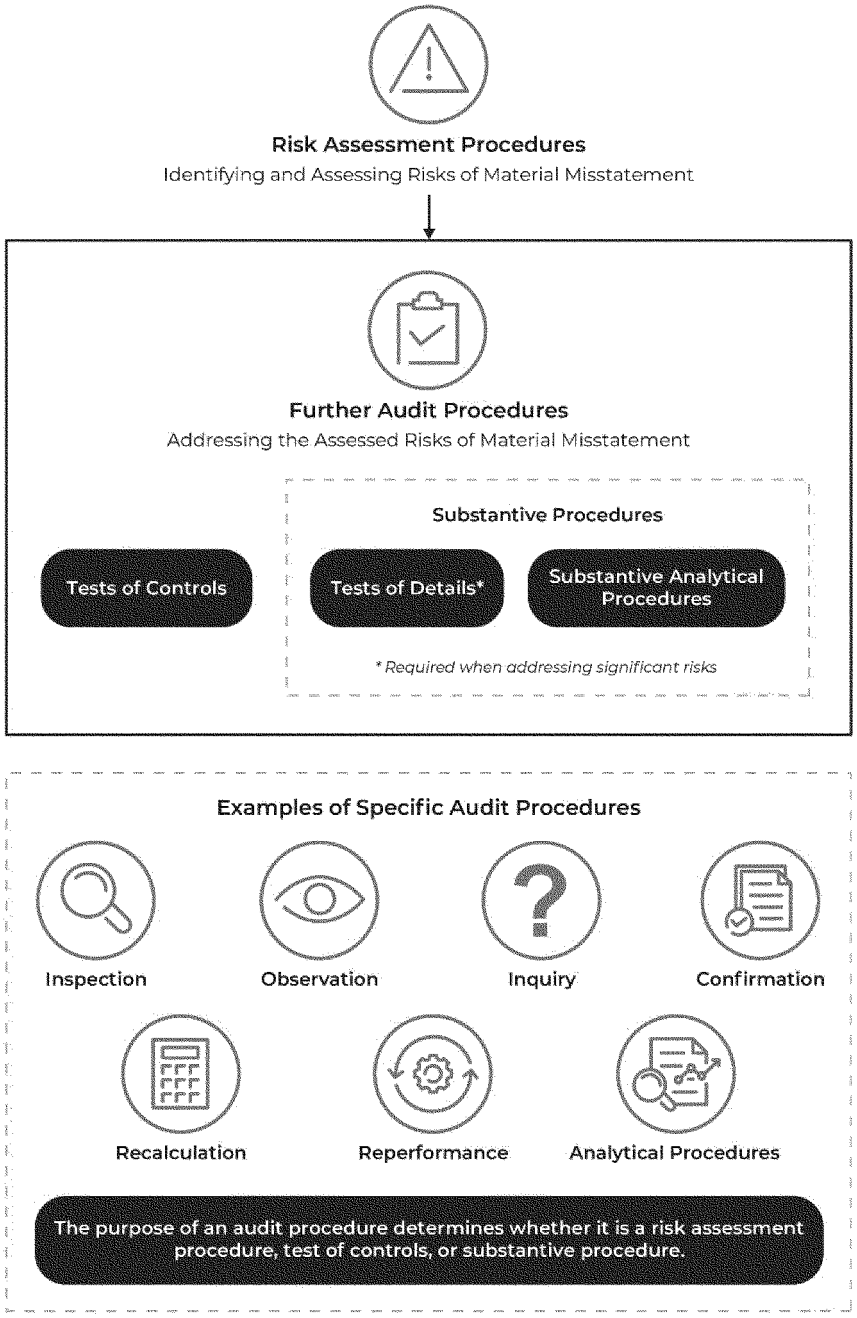
[5] Proposed Amendments Related to Aspects of Designing and Performing Audit Procedures that Involve Technology-Assisted Analysis of Information in Electronic Form, PCAOB Rel. No. 2023–004 (June 26, 2023) (''proposal'' or ''proposing release'').

[6] *See* AS 1105.13.

[7] *See* AS 1105.15–.21.

[8] See AS 2305, Substantive Analytical Procedures.

[9] *See* AS 1105.14.

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*Items Identified for Investigation in a Test of Details*—Designing substantive tests of details and tests of controls includes determining the means of selecting items for testing. Under existing standards, the alternative means of selecting items for testing include selecting specific items, selecting a sample that is expected to be representative of the population (*i.e.,* audit sampling), or selecting all items. The auditor may decide to select for testing specific items within a population because they are important to accomplishing the objective of the audit procedure or because they exhibit some other characteristic.[10] Existing PCAOB standards specify the auditor's responsibilities for planning, performing, and evaluating an audit sample,[11] but do not specify the auditor's responsibilities for addressing items identified when performing a test of details on specific items, or all items, within a population.

*Relevance and Reliability of Audit Evidence*—Under PCAOB standards, audit evidence is all the information, whether obtained from audit procedures or other sources, that is used by the auditor in arriving at the conclusions on which the auditor's opinion is based.[12] PCAOB standards require the auditor to plan and perform audit procedures to obtain sufficient appropriate audit evidence to provide a reasonable basis for their audit opinion. Sufficiency is the measure of the quantity of audit evidence, and appropriateness is the measure of its quality. To be appropriate, audit evidence must be both relevant and reliable in providing support for the auditor's conclusions.[13]

[10] *See* AS 1105.22–.27.

[11] See AS 2315, *Audit Sampling.*

[12] *See* AS 1105.02.

[13] *See* AS 1105.04–.06.

The relevance of audit evidence depends on the design and timing of the audit procedure. The reliability of audit evidence depends on the nature and source of the evidence and the circumstances under which it is obtained, such as whether the information is provided to the auditor by the company being audited and whether the company's controls over that information are effective.[14] In addition, when using information produced by the company as audit evidence, the auditor is responsible for evaluating whether the information is sufficient and appropriate for purposes of the audit.[15] Existing PCAOB standards do not specify auditor responsibilities regarding information the company received from one or more external sources and provided in electronic form to the auditor to use as audit evidence.

Current Practice

The Board's research indicated that audit procedures involving technology-assisted analysis are an important component of many audits. The use of technology-assisted analysis has expanded over the last decade as more accounting firms, including smaller firms, incorporate such analysis as part of their audit procedures. However, the investment in and use of technology-assisted analysis vary across registered firms and across individual audit engagements within a firm.[16]

The greater availability of both information in electronic form and technology-based tools to analyze such information has contributed significantly to the increase in the use of technology-assisted analysis by auditors. More companies use enterprise resource planning (''ERP'') and other information systems that maintain large volumes of information in electronic form, including information generated internally by the company and information that the company receives from external sources. Significant volumes of this information are available to auditors for use in performing audit procedures.

Powerful technology-based tools that process and analyze large volumes of information have become more readily available to auditors. As a result, auditors sometimes apply technology-assisted analysis to the entire population of transactions within one or more financial statement accounts or disclosures. The Board's research indicated that auditors primarily use technology-assisted analysis to identify and assess risks of material misstatement. Technology-assisted analysis enables the auditor to identify new risks or to refine the assessment of known risks. For example, by analyzing a full population of revenue transactions, an auditor may identify certain components of the revenue account as subject to higher risks or may identify new risks of material misstatement associated with sales to a particular customer or in a particular location.

Increasingly, some auditors also have been using technology-assisted analysis in audit procedures that respond to assessed risks of material misstatement, including in substantive procedures. For example, such analysis has been used to test the details of all items in a population, assist the auditor in selecting specific items for testing based on auditor-developed criteria, or identify items for further investigation when performing a test of details. The staff has observed that auditors' use of technology-assisted analysis occurs mostly in the testing of revenue and related receivable accounts, inventory, journal entries, expected credit losses, and investments.[17] As discussed below, some auditors use audit evidence obtained from such analysis to achieve more than one purpose.

Audit methodologies of several firms affiliated with global networks address the use of technology-assisted analysis by the firms' audit engagement teams. For example, the methodologies specify audit engagement teams' responsibilities for: (i) designing and performing audit procedures that involve technology-assisted analysis (*e.g.,* determining whether an audit procedure is a substantive procedure); (ii) evaluating analysis results (*e.g.,* whether identified items indicate misstatements or whether performing additional procedures is necessary to obtain sufficient appropriate audit evidence); and (iii) evaluating the relevance and reliability of information used in the analysis.

Commenters on the proposal generally agreed with the description of the current audit practice and the auditor's use of technology-assisted analysis. One of these commenters noted that, in addition, auditors can also use technology-assisted analysis to help understand a company's flow of transactions, especially given increases in the number and complexities of a company's information systems.

Reasons To Improve the Auditing Standards

The amendments in this release are intended to improve audit quality through principles-based requirements that apply to all audits.

1. Areas of Improvement

The amendments are designed to decrease the likelihood that an auditor who performs audit procedures using technology-assisted analysis will issue an auditor's report without obtaining sufficient appropriate audit evidence that provides a reasonable basis for the opinion expressed in the report. Observations from the PCAOB's *Data and Technology* research project indicate that some auditors are using technology-assisted analysis in audit procedures whereas others may be reluctant to do so due to perceived regulatory uncertainty. The research further suggests that clarifications to PCAOB standards could more specifically address certain aspects of designing and performing audit procedures that involve technology-assisted analysis. The Board's Investor Advisory Group has also noted that auditors' use of technology-assisted analysis is an area of concern due to auditors' potential overreliance on company-produced information, and that addressing the use of such analysis in the standards could be beneficial.[18]

Using technology-assisted analysis may enhance the effectiveness of audit procedures. For example, analyzing larger volumes of information and in more depth may better inform the auditor's risk assessment by providing different perspectives, providing more information when assessing risks, and exposing previously unidentified relationships that may reveal new risks. At the same time, inappropriate application of PCAOB standards when designing and performing audit procedures that involve technology-assisted analysis has the potential to compromise the quality of audits where the procedures are used. For example, PCAOB oversight activities have found instances of noncompliance with PCAOB standards related to evaluating the relevance and reliability of company-provided information and evaluating certain items identified in audit procedures involving technology-assisted analysis.[19]

[14] *See* AS 1105.07–.08.

[15] *See* AS 1105.10.

[16] *See also* further discussion below.

[17] *See* PCAOB, *Spotlight: Staff Update and Preview of 2021 Inspection Observations* (Dec. 2022), at 15, *available at https://pcaob-assets.azureedge.net/pcaob-dev/docs/default-source/documents/staff-preview-2021-inspection-observations-spotlight.pdf?sfvrsn=d2590627_2/.*

[18] *See* Proposing Release at 12 for additional discussion of investors' concerns.

[19] See, *e.g.,* PCAOB, Spotlight: Staff Update and Preview of 2020 Inspection Observations (Oct.

The amendments to existing PCAOB standards in this release address aspects of designing and performing audit procedures that involve technology-assisted analysis where the Board identified the need for additional specificity or clarity in the existing standards.[20] These aspects include areas where PCAOB oversight activities have identified instances of noncompliance with PCAOB standards and areas where auditors have raised questions during the Board's research regarding the applicability of PCAOB standards to the use of technology-assisted analysis. The discussion below describes the amendments in more detail. The discussion further below describes alternatives that the Board considered.

2. Comments on the Reasons To Improve

Commenters generally supported the Board's efforts to modernize its auditing standards to specifically address aspects of designing and performing audit procedures that involve technology-assisted analysis. Several commenters highlighted that auditors' use of technologies, including technology-assisted analysis, continues to grow, and one of these commenters noted that the proposal is an important step forward to address this rapidly changing environment. An investor-related group stated that PCAOB standards should directly address auditors' use of technology and data, and that the proposed amendments to AS 1105 and AS 2301 were responsive to their concern about auditor overreliance on technology-assisted analysis.

Commenters also generally supported the principles-based nature of the proposed amendments and the Board's decision not to require the use of technology-assisted analysis. One commenter, for example, noted that audit procedures performed using technology-based tools may not always provide sufficient appropriate audit evidence. An investor-related group, however, recommended that the Board consider requiring auditors to use certain (but unspecified) types of technology-based tools that financial research and investment management firms have used to analyze financial statements. As discussed further below, requiring the use of technology would have been outside the scope of the project. The Board retained the principles-based nature of the proposed amendments within the final amendments, so that the standards are flexible and can adapt to the continued evolution of technology.

Several commenters stated that the Board should consider the effect of auditors' and companies' use of technology more broadly on the audit. One commenter stated that technology will need to be an ongoing focus for the Board in its standard setting given the evolving nature of technology, and that broader change may be needed. This commenter also recommended a more holistic standard-setting approach that is interconnected with other PCAOB projects. Other commenters stated that as technology continues to evolve, the Board should continue to research and evaluate the need for standard setting related to other types of technology used in the audit, such as artificial intelligence. Academics emphasized the need for the PCAOB to be forward-thinking to regulate in this area.

As the Board stated in the proposal, these amendments address only one area of auditors' use of technology—certain aspects of designing and performing audit procedures that involve technology-assisted analysis. Other areas continue to be analyzed as part of the Board's ongoing research activities. In addition, the Board's Technology Innovation Alliance Working Group continues to advise the Board on the use of emerging technologies by auditors and preparers relevant to audits and their potential impact on audit quality.[21] These ongoing activities may inform future standard-setting projects.

Commenters also expressed a need for more guidance and illustrative examples. One of these commenters stated that additional explanatory materials or separate guidance could help maintain competition among firms. Another stated that insights from the PCAOB's research and oversight activities would benefit small and mid-sized accounting firms in identifying and selecting appropriate tools.

Throughout this release, where appropriate, the Board has incorporated examples and considerations for applying the final amendments. The examples and considerations highlight the principles-based nature of the amendments and emphasize that the nature, timing, and extent of the auditor's procedures will depend on the facts and circumstances of the audit engagement. In addition, the staff's ongoing research activities will continue to evaluate the need for staff guidance.

Discussion of the Final Amendments

Specifying Auditor Responsibilities When Performing Tests of Details

*See paragraphs .10 and .48 through .50 of AS 2301 of the amendments.*

1. Clarifying ''Test of Details''

The Board proposed to amend AS 1105.13 and .21 to address the differences between the terms ''test of details'' and ''analytical procedures,'' by clarifying the meaning of the term ''test of details.'' The proposed amendments stated that a test of details involves performing audit procedures with respect to individual items included in an account or disclosure, whereas analytical procedures generally do not involve evaluating individual items, unless those items are part of the auditor's investigation of significant differences from expected amounts. The Board adopted the proposed description of a ''test of details'' with certain modifications as discussed further below, including relocating the description from AS 1105 to new paragraph .48 in AS 2301.

Under PCAOB standards, the auditor's responses to risks of material misstatement involve performing substantive procedures for each relevant assertion of each significant account and disclosure, regardless of the assessed level of control risk.[22] Substantive procedures under PCAOB standards include tests of details and substantive analytical procedures.[23] Appropriately designing and performing an audit procedure to achieve a particular objective is key to appropriately addressing the risks assessed by the auditor. For significant risks of material misstatement, including fraud risks, the auditor is required to perform substantive procedures, including tests of details that are specifically responsive to the assessed risk.[24] PCAOB standards also state that it is unlikely that audit evidence obtained from substantive analytical procedures alone would be sufficient.[25]

2021), at 9, PCAOB, Spotlight: Staff Update and Preview of 2021 Inspection Observations (Dec. 2022), at 15, and PCAOB, Spotlight: Staff Update and Preview of 2022 Inspection Observations (July 2023), at 12, available at *https://pcaobus.org/resources/staff-publications*.

[20] Other PCAOB standard-setting projects may address other aspects of firms' and auditors' use of technology in performing audits. For example, see paragraphs .44h, .47h, and .51 of QC 1000, *A Firm's System of Quality Control,* PCAOB Rel. No. 2024–005 (May 13, 2024), which discusses a firm's responsibilities related to technological resources.

[21] *See PCAOB Technology Innovation Alliance Working Group, available at https://pcaobus.org/about/working-groups-task-forces/technology-innovation-alliance-working-group*.

[22] *See* AS 2301.36.

[23] *See* AS 1105.13.b(2).

[24] *See* AS 2301.11 and .13 (specifying the auditor's responsibilities for responses to significant risks, which include fraud risks).

[25] *See* AS 2305.09.

As discussed in the proposal, the use of ''data analytics'' or ''data analysis'' in practice and the use of the term ''analytical procedures'' in PCAOB standards have led to questions about whether an audit procedure involving technology-assisted analysis can be a test of details (*i.e.,* not an analytical procedure as described under PCAOB standards). The distinction is important because of the requirement in PCAOB standards that the auditor perform tests of details when responding to an assessed significant risk of material misstatement. Relying on analytical procedures alone to address an assessed significant risk is not sufficient.

Commenters on this topic supported clarifying the meaning of tests of details and that tests of details involve performing audit procedures at an individual item level. However, several commenters stated that with technology-assisted analysis, aspects of a substantive analytical procedure may also be performed at an individual item level. Some commenters provided examples where the auditor uses a technology-assisted analysis to develop an expectation of recorded amounts for individual items in an account and aggregates the individual amounts to compare to the aggregated amount recorded by the company.

One commenter suggested clarifying the term ''individual items'' given the varying forms and level of disaggregation of data obtained for analysis by the auditor. This commenter suggested further clarifying that consideration be given to the objective of the audit procedure, the nature of the procedure to be applied, and the evidence necessary to meet the objective of the audit procedure. Another commenter sought additional information related to circumstances where a procedure would not be considered a test of details because it was not applied to individual items in an account.

Some commenters, mostly firms, expressed a preference that the standards not compare tests of details to analytical procedures. For example:

- A firm-related group stated that the proposed clarification was unnecessarily nuanced.
- Another commenter stated that the proposed description of analytical procedures as compared to tests of details was not accurate and could cause confusion.
- Other commenters stated that analytical procedures are clearly defined in PCAOB standards and are well understood by auditors, and that comparing tests of details to analytical procedures is unnecessary.
- Some commenters suggested evaluating the proposed amendments together with the Board's standard-setting project to address substantive analytical procedures.

Other commenters stated that technology-assisted analysis continues to make classification of procedures between tests of details and analytical procedures more challenging because some procedures may exhibit characteristics of both types of procedures. These commenters suggested that the auditing standards focus on the sufficiency and appropriateness of evidence obtained from an audit procedure instead of clarifying the terminology of tests of details and analytical procedures. Some commenters also stated that the development of an expectation differentiates an analytical procedure from a test of details.

Having considered the comments received, the Board made several changes to the proposed description of a ''test of details.'' The final amendments state that a test of details involves performing audit procedures with respect to items included in an account or disclosure (*e.g.,* the date, amount, or contractual terms of a transaction). When performing a test of details, the auditor should apply audit procedures that are appropriate to the particular audit objectives to each item selected for testing.

First, the Board relocated the description of a ''test of details'' and related requirements to a new section of AS 2301, in new paragraph .48. The Board believes that describing a test of details within AS 2301 is appropriate because tests of details are performed as substantive procedures to address assessed risks of material misstatement. The description uses the term ''items included in an account or disclosure'' instead of ''individual items.'' The change in terminology was made to more closely align with the description of items selected for testing in existing AS 1105.22–.23.

Second, the Board revised the amendment to clarify that when performing a test of details, the auditor should apply the audit procedures that are appropriate to the particular audit objectives to each item selected for testing. This provision focuses the auditor on the objectives of the audit procedures being performed and is consistent with existing requirements for audit sampling.[26] The Board believes that an emphasis on the objectives of the audit procedures, regardless of the means of selecting items for testing in the test of details, continues to be important and is aligned with the final amendments to AS 1105.14 (using an audit procedure for more than one purpose), which are discussed below in this release.[27]

Lastly, the final amendments do not compare tests of details to analytical procedures, and the Board did not amend the existing description of analytical procedures in AS 1105.21. Because of the overlap between the description of analytical procedures and substantive analytical procedures, further potential amendments to the description of analytical procedures are being considered as part of the Board's standard-setting project to address substantive analytical procedures.[28] In addition, comments the Board received related to the auditor's use of substantive analytical procedures were taken into consideration in that project.

The final amendments are not intended to define ''items included in an account or disclosure'' because such a definition is impractical given the variety of accounts and disclosures subject to tests of details. The auditor would determine the level of disaggregation or detail of the items within the account or disclosure based on the facts and circumstances of the audit engagement, including the assessed risk and the relevant assertion intended to be addressed, and the objective of the procedure.

In addition, the Board considered the comments suggesting that the amendments focus on the sufficiency and appropriateness of evidence obtained from performing audit procedures instead of describing categories of procedures. Considering current practice and the nature of audit procedures performed currently, the Board continues to believe that the existing standards are sufficiently clear in describing auditors' responsibilities for obtaining and evaluating audit evidence. The Board's ongoing research has not identified specific examples of substantive analytical procedures that, by themselves, would provide sufficient appropriate audit evidence to respond

[26] *See* AS 2315.25.

[27] *See* discussion below.

[28] The Board has a separate standard-setting project on its short-term standard-setting agenda (*https://pcaobus.org/oversight/standards/standard-setting-research-projects*) related to substantive analytical procedures. In connection with that project, the Board has proposed changes to the auditor's responsibilities regarding the use of substantive analytical procedures, including the requirements described in AS 2305 and AS 1105. *See Proposed Auditing Standard—Designing and Performing Substantive Analytical Procedures and Amendments to Other PCAOB Standards,* PCAOB Rel. No. 2024–006 (June 12, 2024) (included in PCAOB Rulemaking Docket No. 56).

to a significant risk. Commenters also did not provide such examples. Therefore, the Board believes retaining the categories of procedures as tests of details and substantive analytical procedures continues to be appropriate.

2. Specifying Auditor Responsibilities When Investigating Items Identified

The Board proposed to add a new paragraph .37A to AS 2301 that specified matters for the auditor to consider when investigating items identified through using criteria established by the auditor in designing or performing substantive procedures on all or part of a population of items. Under the proposed paragraph, when the auditor establishes and uses criteria to identify items for further investigation, as part of designing or performing substantive procedures, the auditor's investigation should consider whether the identified items:

- Provide audit evidence that contradicts the evidence upon which the original risk assessment was based;
- Indicate a previously unidentified risk of material misstatement;
- Represent a misstatement or indicate a deficiency in the design or operating effectiveness of a control; or
- Otherwise indicate a need to modify the auditor's risk assessment or planned audit procedures.

The proposed requirement included a note providing that inquiry of management may assist the auditor and that the auditor should obtain audit evidence to evaluate the appropriateness of management's responses.

The Board adopted the proposed provisions with certain modifications as discussed further below, including relocating the requirements from proposed paragraph .37A to new paragraphs .49 and .50 in AS 2301. The Board also made a conforming amendment to paragraph .10 of AS 2301 to include a reference to paragraphs .48 through .50.

As discussed above, designing substantive tests of details and tests of controls includes determining the means of selecting items for testing. The alternative means of selecting items for testing consist of selecting all items; selecting specific items; and audit sampling. As discussed in the proposal, the Board's research has indicated that auditors use technology-assisted analysis to identify specific items within a population (*e.g.,* an account or class of transactions) for further investigation. For example, auditors may identify all revenue transactions above a certain amount, transactions processed by certain individuals, or transactions where the shipping date does not match the date of the invoice. Because technology-assisted analysis may enable the auditor to examine all items in a population, it is possible that the analysis may return dozens or even hundreds of items within the population that meet one or more criteria established by the auditor.

Considering current practice, the Board stated in the proposal that PCAOB standards should be modified to address the auditor's responsibilities in such scenarios more directly. The auditor's appropriate investigation of identified items is important both for identifying and assessing the risks of material misstatement and for designing and implementing appropriate responses to the identified risks.

Commenters were supportive of the principles-based nature of the proposed amendment and agreed with the Board's decision not to prescribe the nature, timing, or extent of investigation procedures. However, commenters also asked for further clarification, guidance, and examples to address different scenarios that the auditor encounters when 100 percent of a population is tested, given that certain requirements in proposed AS 2301.37A exist in the standards today. Some commenters said it was unclear how proposed AS 2301.37A was different from requirements in existing standards related to the auditor's ongoing risk assessment, and the auditor's responsibility to revise their risk assessment under certain scenarios and to evaluate the results of audit procedures. Several commenters noted that existing standards address auditors' responsibilities when investigating items under certain scenarios. These commenters observed, for example, that AS 2110, *Identifying and Assessing Risks of Material Misstatement,* applies when the auditor uses technology-assisted analysis to identify and assess risks of material misstatement, and AS 2110.74 and AS 2301.46 apply when the items identified by the auditor when using technology-assisted analysis indicate a new risk of misstatement or a need to modify the auditor's risk assessment. One commenter asked whether identifying items for further investigation was intended to describe only scenarios where specific items are selected for testing.

One commenter noted that the proposed amendment implied that technology-assisted analysis could be used only for purposes of risk assessment or selecting specific items for testing. Another commenter stated that it is important for the auditor's investigation of items to include determining whether there is a control deficiency.

Several commenters asked that the Board clarify whether sampling can be applied to items identified for investigation or whether the auditor is expected to test 100 percent of the identified items. Some commenters also asked the Board to clarify whether the evidence obtained would be considered sufficient and appropriate, or if the auditor would be required to perform further procedures, in situations where a technology-assisted analysis over an entire population (*e.g.,* matching quantities invoiced to quantities shipped) did not identify any items for investigation. One commenter recommended that the amendments be extended to address the auditor's responsibilities over other items in the population not identified for investigation. Two commenters asked the Board to clarify how the proposed amendment and existing standard would apply when the technology-assisted analysis is modified after the original analysis is complete.

Consistent with the proposal, the final requirements are principles-based and intended to be applied to all means of selecting items for a test of details (*e.g.,* selecting all items, selecting specific items, and audit sampling). The Board continues to believe that appropriately addressing the items identified by the auditor for further investigation in a test of details is an important part of obtaining sufficient appropriate audit evidence, because these items individually or in the aggregate may indicate misstatements or deficiencies in the design or operating effectiveness of a control. In response to comments received, the final amendments reflect several modifications from the proposal.

First, the Board reframed the requirements to focus on the auditor's investigation of items when performing a test of details as part of the auditor's response to assessed risks. The Board narrowed the requirement to apply only to tests of details because, as commenters noted, existing PCAOB standards describe the auditor's responsibility to investigate items identified when performing substantive analytical procedures.[29] In addition, the Board did not repeat the considerations related to the auditor's risk assessment that are required under existing PCAOB standards as described above. The Board believes these changes alleviate potential confusion about how the

[29] *See* AS 2305.20–.21 (providing that the auditor should evaluate significant unexpected differences when performing a substantive analytical procedure). *See also* PCAOB Rel. No. 2024–006 (proposing amendments to AS 2305).

requirements are intended to be applied. The Board also removed the proposed note requiring the auditor to obtain audit evidence when evaluating the appropriateness of management's responses to inquiries, because existing PCAOB standards already address this point by noting that inquiry alone does not provide sufficient appropriate evidence to support a conclusion about a relevant assertion.[30]

Second, the requirements have been relocated into two new paragraphs (.49 and .50) in AS 2301, which are designed to work together. Paragraph .49 applies to all tests of details, regardless of the means of selecting items used by the auditor. The requirement states that when performing a test of details, the auditor may identify items for further investigation. For example, an auditor may identify balances or transactions that contain, or do not contain, a certain characteristic or that are valued outside of a range. The final amendment emphasizes that when such items are identified, audit procedures that the auditor performs to investigate the identified items are part of the auditor's response to the risks of material misstatement. The auditor determines the nature, timing, and extent of such procedures in accordance with PCAOB standards. The final amendment also provides that the auditor's investigation of the identified items should include determining whether the items individually or in the aggregate indicate (i) misstatements that should be evaluated in accordance with AS 2810 or (ii) deficiencies in the company's internal control over financial reporting.

When the auditor identifies items for further investigation in a test of details, the final amendment does not prescribe the nature, timing, and extent of audit procedures to be performed regarding the identified items, including whether those procedures are performed on the items individually or in the aggregate. Prescribing specific procedures would be impracticable considering the multitude of possible scenarios encountered in practice. The nature of the identified items and likely sources of potential misstatements are examples of factors that would inform the auditor's approach. To comply with PCAOB standards, the nature, timing, and extent of the audit procedures performed, including the means of selecting items, should enable the auditor to obtain evidence that, in combination with other relevant evidence, is sufficient to meet the objective of the test of details.

In some cases, an auditor may be able to group the identified items (*e.g.,* items with a common characteristic) and perform additional audit procedures to determine whether the items indicate misstatements or control deficiencies by group.[31] In other cases, it may not be appropriate to group the items identified for investigation.[32] Further, the auditor's investigation could also identify new relevant information (*e.g.,* regarding the types of potential misstatements) and the auditor may need to modify the audit response.

When a test of details is performed on specific items selected by the auditor,[33] the final amendments discuss the auditor's responsibilities for addressing the remaining items in the population. When the auditor selects specific items in an account or disclosure for testing, new paragraph .50 provides that the auditor should determine whether there is a reasonable possibility that remaining items within the account or disclosure include a misstatement that, individually or when aggregated with others, would have a material effect on the financial statements.[34] If the auditor determines that there is a reasonable possibility of such a risk of material misstatement in the items not selected for testing, the auditor should perform substantive procedures that address the assessed risk.[35] As discussed in the proposing release, the auditor's responsibilities over other items in the population are described in existing PCAOB standards, and the final requirement (AS 2301.50) reminds the auditor of those responsibilities.

The final amendments do not specify, as suggested by some commenters, whether the evidence obtained would be considered sufficient and appropriate, or whether the auditor would be required to perform further procedures, in situations where a technology-assisted analysis over an entire population did not identify any items for investigation. Because facts and circumstances vary, it is not possible to specify scenarios that would provide sufficient appropriate audit evidence. Consistent with existing standards, for an individual assertion, different types and combinations of substantive procedures might be necessary to detect material misstatements in the respective assertions.[36] For example, in addition to performing a technology-assisted analysis of company-produced information to match quantities invoiced to quantities shipped, other audit procedures, such as examining a sample of information that the company received from external sources (*e.g.,* purchase orders and cash receipts), may be necessary to obtain sufficient appropriate audit evidence for the relevant assertion. The auditor would be required to document the purpose, objectives, evidence obtained, and conclusions reached from the procedures in accordance with the existing provisions of AS 1215, *Audit Documentation.*[37]

Specifying Auditor Responsibilities When Using an Audit Procedure for More Than One Purpose

*See paragraph .14 of AS 1105 of the amendments.*

The Board proposed to amend paragraph .14 of AS 1105 by adding a sentence to specify that if an auditor uses audit evidence from an audit procedure for more than one purpose, the auditor should design and perform the procedure to achieve each of the relevant objectives of the procedure.

The proposed amendment was intended to supplement existing PCAOB standards because the Board's research indicated that: (i) technology-assisted analysis could be used in a variety of audit procedures, including risk assessment and further audit procedures (such as tests of details and substantive analytical procedures); (ii) an audit procedure that involves technology-assisted analysis may provide relevant and reliable evidence for more than one purpose (*e.g.,* identifying and assessing risks of material misstatement and addressing assessed risks); and (iii) questions have been raised about whether the evidence obtained from an audit procedure that involves technology-assisted analysis can be used for more than one purpose. The Board adopted the amendment substantially as proposed, with certain modifications to clarify and simplify the sentence, as discussed below. As amended, the sentence added to paragraph .14 provides that ''[i]f the auditor uses an audit procedure for more than one

[30] *See* AS 1105.17 and AS 2301.39.

[31] For example, in a test of revenue, the auditor may discover that the identified differences between customer invoices and payments are caused by variations in the exchange rate, but such differences are both in accordance with the terms of the customer contracts and appropriately accounted for by the company. In this example, grouping the differences for the purpose of performing additional procedures may be appropriate.

[32] For example, in circumstances where the identified items are unrelated to each other, it may not be appropriate for the auditor to group these items for the purpose of performing additional procedures.

[33] *See* AS 1105.25–.27.

[34] *See* AS 2110.

[35] *See* AS 2301.08 and .36.

[36] *See* AS 2301.40.

[37] *See* AS 1215.04–.06.

purpose, the auditor should achieve each objective of the procedure.''

Under existing PCAOB standards, the purpose of an audit procedure determines whether it is a risk assessment procedure, test of controls, or substantive procedure.[38] Although AS 1105 describes specific audit procedures, it does not specify whether an audit procedure may be designed to achieve more than one purpose; nor does it preclude the auditor from designing and performing multi-purpose audit procedures.[39] In fact, other PCAOB standards have long permitted auditors to use audit evidence for more than one purpose through the performance of properly designed ''dual-purpose'' procedures in certain scenarios.[40]

Considering the variety of applications of technology-assisted analysis throughout the audit, the Board stated in the proposal that PCAOB standards could be modified to more specifically address when an auditor uses audit evidence from an audit procedure for more than one purpose, to facilitate the auditor's design and performance of audit procedures that provide sufficient appropriate audit evidence. The proposal explained that audit procedures involving technology-assisted analysis are not always multi-purpose procedures. For example, a technology-assisted analysis that is used to analyze a population of revenue transactions to identify significant new products may provide audit evidence only to assist the auditor with identifying and assessing risks (a risk assessment procedure). But if the procedure also involves obtaining audit evidence to address the risk of material misstatement associated with the occurrence of revenue, the procedure would be a multi-purpose procedure.

Commenters, including an investor-related group, supported the objective of the amendment to specify the auditor's responsibilities when using audit evidence for more than one purpose. One commenter stated that the proposed amendment appears to prohibit an auditor from using audit evidence obtained later in the audit. In that commenter's view, the amendment implied that the auditor must intend to use the audit procedure for more than one purpose, which could be viewed as contradicting the principle that risk assessment should continue throughout the audit.

Several commenters stated that the proposed amendment implied that, for an auditor to use audit evidence for more than one purpose, the auditor would need to know all of the purposes initially when designing the procedure. These commenters added that audit procedures that use technology-assisted analysis can be more iterative in nature and may not be designed for all the purposes that they ultimately fulfill through the nature of the evidence they generate. For example, one commenter noted that when using technology-assisted analysis to substantively test a population of transactions, the auditor may identify a sub-population of transactions that exhibit different characteristics than the rest of the population and use that information to modify the risk assessment of the sub-population. Another commenter noted that an audit procedure may be designed as a risk assessment procedure, but the technology-assisted analysis may provide audit evidence for assertions about classes of transactions or account balances or other evidence regarding the completeness and accuracy of information produced by the company used in the performance of other audit procedures. These commenters suggested that the amendment be revised by focusing on evaluating the audit evidence obtained from the procedure.

The proposed amendment was not intended to imply that the auditor should not evaluate or consider information obtained from an audit procedure that the auditor was not aware of when initially designing the procedure or that the auditor obtains after a procedure is completed. As noted in the proposal, an auditor may use audit evidence from an audit procedure that involves technology-assisted analysis to achieve one or more objectives, depending on the facts and circumstances of the company and the audit. Further, the auditor would be required to consider and evaluate such information under existing PCAOB standards. For example, as one commenter noted, existing AS 1105 states that audit evidence is all the information, whether obtained from audit procedures or other sources, that is used by the auditor in arriving at the conclusions on which the auditor's opinion is based.[41] Another commenter observed that existing PCAOB standards provide that the auditor's assessment of the risks of material misstatement, including fraud risks, continues throughout the audit.[42]

The Board continues to believe that in order for an auditor to use an audit procedure for more than one purpose (*i.e.,* as more than a risk assessment procedure, test of controls, or substantive procedure alone), the auditor would need to determine that each of the objectives of the procedure has been achieved. Therefore, after considering the comments received, the Board retained the requirement but removed the reference to ''design and perform the procedure.'' The auditor's responsibilities for designing and performing procedures are already addressed in AS 2110 and AS 2301. Therefore, the final amendment to paragraph .14 of AS 1105 states that ''[i]f the auditor uses an audit procedure for more than one purpose, the auditor should achieve each objective of the procedure.''

As noted in the proposal, the purpose, objective, and results of multi-purpose procedures should be clearly documented. Under existing PCAOB standards, audit documentation must contain sufficient information to enable an experienced auditor, having no previous connection with the engagement, to understand the nature, timing, extent, and results of the procedures performed, evidence obtained, and conclusions reached.[43] Accordingly, audit documentation should make clear each purpose of the multi-purpose procedure, the results of the procedure, the evidence obtained, the conclusions reached, and how the auditor achieved each objective of the procedure.

Commenters were supportive of acknowledging the auditor's documentation responsibilities when using audit evidence for more than one purpose. An investor-related group commented that the audit planning documentation should support how each procedure will achieve each objective and that the audit work papers should document that the work performed achieved each objective. Another commenter also concurred with the notion that the purpose, objective, and results of multi-purpose procedures should be clearly documented. One commenter noted it was unclear whether there are any incremental

[38] *See* AS 1105.14.

[39] This interpretation was highlighted in a 2020 PCAOB staff publication. *See* PCAOB, *Spotlight: Data and Technology Research Project Update* (May 2020), at 4, *available at https://pcaobus.org/Documents/Data-Technology-Project-Spotlight.pdf.*

[40] *See, e.g.,* AS 2110.39 (''The auditor may obtain an understanding of internal control concurrently with performing tests of controls if he or she obtains sufficient appropriate evidence to achieve the objectives of both procedures'') and AS 2301.47 (discussing performance of a substantive test of a transaction concurrently with a test of a control relevant to that transaction (a ''dual-purpose test'')).

[41] *See* AS 1105.02.

[42] *See, e.g.,* AS 2110.74 and AS 2301.46.

[43] *See* AS 1215.04–.06.

documentation expectations in comparison to current practice.

Under PCAOB standards, audit documentation should be prepared in sufficient detail to provide a clear understanding of its purpose, source, and the conclusions reached.[44] This applies also for procedures performed that involve technology-assisted analysis. Therefore, the Board believes that specifying further documentation requirements is unnecessary.

Some commenters suggested that the Board provide an example of using audit evidence from an audit procedure to achieve more than one purpose, including two commenters suggesting an example similar to examples issued by the American Institute of Certified Public Accountants (''AICPA'').[45] Given the evolving nature of the auditor's use of technology, the Board did not include a specific example in the text of the final amendments to AS 1105.14. The proposing release, however, discussed an example where a technology-assisted analysis of accounts related to the procurement process could both: (i) provide the auditor with insights into the volume of payments made to new vendors (*e.g.,* a risk assessment procedure to identify new or different risks); and (ii) match approved purchase orders to invoices received and payments made for each item within a population (*e.g.,* a test of details to address an assessed risk associated with the occurrence of expenses and obligations of liabilities).[46] The Board believes this example illustrates how auditors would apply the principles-based amendments consistently. If the procedure performed does not achieve each of the intended objectives, other procedures would need to be performed (*e.g.,* other substantive procedures to address assessed risks of material misstatement).

Lastly, two commenters suggested that the Board clarify that the specific audit procedures discussed in AS 1105.14 are not an all-inclusive list, to allow for the use of additional types of procedures, or combination of procedures, in the future as technology evolves. The Board believes the existing language is sufficiently clear because it does not indicate that the specific audit procedures described in the standard are the only types of audit procedures the auditor can perform.

[44] *See* AS 1215.04.

[45] Examples referenced by commenters included examples issued by the AICPA in AU–C 500, *Audit Evidence.*

[46] *See* Proposing Release at 19.

Specifying Auditor Responsibilities for Evaluating the Reliability of Certain Audit Evidence and Emphasizing the Importance of Appropriate Disaggregation or Detail of Information

*See paragraphs .07, .08, .10, .10A, .15, .19, and .A8 of AS 1105 of the amendments.*

1. Evaluating the Reliability of External Information Provided by the Company in Electronic Form

The Board proposed to add paragraph .10A to AS 1105 to specify the auditor's responsibility for performing procedures to evaluate the reliability of external information maintained by the company in electronic form when using such information as audit evidence. The proposed paragraph provided that the auditor should evaluate whether such information is reliable for purposes of the audit by performing procedures to: (a) obtain an understanding of the source of the information and the company's procedures by which such information is received, recorded, maintained, and processed in the company's information systems; and (b) test controls (including information technology general controls and automated application controls) over the company's procedures or test the company's procedures.

The Board adopted the amendments substantially as proposed with certain modifications discussed below. The Board also made a conforming amendment to footnote 5 of paragraph .A8 of AS 1105 to include a reference to paragraph .10A.

The Board noted in the proposal that, based on its research, auditors often obtain from companies, and use in the performance of audit procedures, information in electronic form. In many instances, companies have obtained the information from one or more external sources. PCAOB standards do not include specific requirements regarding information received by the company from external sources, maintained, and in many instances processed by the company, and then included in the information provided to the auditor in electronic form to be used as audit evidence.[47] Because this information is maintained and potentially can be modified by the company, the Board proposed to amend its standards to address this risk to the reliability of audit evidence that the auditor obtains through using this type of information.

[47] For example, the company may receive information from a customer in the form of a purchase order and provide that information to the auditor in electronic form.

Commenters on this topic, including an investor-related group, supported the Board's objective of addressing the risks that information the company receives from one or more external sources and provides to the auditor in electronic form to use as audit evidence may not be reliable and may have been modified by the company. However, several commenters also stated that further clarification of the requirements was needed:

- Some commenters asked for clarification about the information the company received from one or more external sources and ''maintained in its information systems'' in electronic form. A few of those commenters also asked whether the use of ''its information systems'' was intended to be the same as the ''information system relevant to financial reporting'' in AS 2110.[48] Several commenters suggested clarifying the proposed examples of the types of information subject to these requirements that were included in the proposed footnote to AS 1105.10A and providing more specific examples, such as a bank statement in PDF format.
- One commenter noted that the proposed amendment may not clarify the difference between maintaining the reliability of the external information received by the company and what the company does with that information after it is received. The commenter noted that after external information has been received, it is often recorded into the company's information system where it is moved, processed, and changed to the point that it is no longer considered external information, but rather information produced by the company and subject to transactional processes and controls. Another commenter stated that the requirements should not focus on accuracy and completeness because the information is provided to the company from an external source.
- A number of commenters stated that the proposed amendment, specifically the requirement in AS 1105.10A to test controls over procedures or test the company's procedures themselves, implied that the auditor had to test the effectiveness of internal controls in order for the information to be determined to be reliable. Many of these commenters asked for clarification of the distinction between testing the company's controls and testing the company's procedures. One commenter noted that certain smaller and mid-sized companies may not have implemented controls that can be tested. Some commenters added that,

[48] *See* AS 2110.28.

because the proposed amendments did not include ''where applicable'' related to information technology general controls (''ITGCs'') and automated application controls, the proposed amendments implied that ITGCs and automated application controls always needed to be tested and effective. Several of these commenters also provided examples of scenarios where ITGCs and automated application controls may not need to be tested, such as controls that reconcile information in the company's information systems to the information the company received from the external source. Commenters also asked whether information from an external source provided by the company can be tested directly (*i.e.,* not testing a company's controls) and stated that it would be helpful to clarify expectations of the auditor's work effort when evaluating the reliability of such information.

- One commenter indicated that it was unclear how the requirements of footnote 3 of AS 1105.10 and proposed AS 1105.10A interrelate when using information produced by a service organization. Footnote 3 of AS 1105 refers the auditor to responsibilities under AS 2601, *Consideration of an Entity's Use of a Service Organization,* and in an integrated audit, AS 2201, *An Audit of Internal Control Over Financial Reporting That Is Integrated with An Audit of Financial Statements,* when using information produced by a service organization as audit evidence.
- An investor-related group commented that, in addition to the requirements for the auditor to evaluate the reliability of external information provided by the company in electronic form, the auditor should also be required to evaluate the reliability of digital information maintained outside the company and used by the auditor as audit evidence. Another commenter suggested that the auditor's requirements should also address information obtained directly by the auditor from external sources.

In consideration of comments received, the Board made several modifications to the final amendments, which are described in more detail below. The final amendment (paragraph .10A) provides that the auditor should evaluate whether external information provided by the company in electronic form and used as audit evidence is reliable by:

a. Obtaining an understanding of (i) the source from which the company received the information; and (ii) the company's process by which the information was received, maintained, and, where applicable, processed, which includes understanding the nature of any modifications made to the information before it was provided to the auditor; and

b. Testing the information to determine whether it has been modified by the company and evaluating the effect of those modifications; or testing controls over receiving, maintaining, and processing the information (including, where applicable, information technology general controls and automated application controls).

As discussed above, the proposed amendments described auditor responsibilities related to evaluating the reliability of information in electronic form provided by the company to the auditor that the company received from external sources. Examples of such information include, but are not limited to, bank statements, customer order information, information related to cash receipts, and shipping information from third-party carriers provided to the auditor in electronic form.

The Board believes that a principles-based description of the information subject to the requirement that does not list specific types of information, as suggested by some commenters, is in the best interest of audit quality and investor protection. This approach is adaptable to evolving sources and forms of electronic information, considering continued advancements in technology. The Board has clarified the final amendment by removing the reference to ''maintained in the company's information systems,'' which confused some commenters. The use of this term in the proposal was intended to refer broadly to information in electronic form within a company that the company could provide to the auditor.

The Board has revised subparagraph (a) of the final amendment to replace the term ''company's procedures'' with ''company's process.'' In the proposal the Board used ''company's procedures'' to align with AS 2110.28(b), which describes the company's procedures to initiate, authorize, process, and record transactions. However, the Board believes use of the ''company's process'' is more consistent with AS 2110.30 and .31, which describe the company's business processes that the auditor is required to understand. The Board also believe that using ''company's process'' clarifies that the intent of the requirement is to understand the flow of the information from the time the company received it from the external source until the company provided it to the auditor. Additional refinements made to this requirement include (i) removing the word ''recorded'' because receiving, processing, and maintaining data would encompass recording it; and (ii) adding ''where applicable'' to address examples provided by commenters where companies receive information from external sources that may be maintained only—and not processed—by the company.

The Board also made revisions to clarify that, as part of understanding how the information received from external sources is processed by the company, the auditor should obtain an understanding of the nature of any modifications made to the information. This revision focuses the auditor on identifying the circumstances where the information may have been modified or changed by the company.

The Board did not intend to imply that internal controls are required to be tested and effective in order for the auditor to be able to determine that external information is reliable for purposes of the audit, as suggested by some commenters. Rather, the proposed amendment was meant to (i) clarify the auditor's responsibility for performing procedures to evaluate the reliability of audit evidence; and (ii) address the risk that the company may have modified the external information prior to providing it to the auditor for use as audit evidence.

The Board revised the final amendment in subparagraph (b) to require that the auditor (i) test the information to determine whether it has been modified by the company and evaluate the effect of those modifications; or (ii) test controls over receiving, maintaining, and where applicable, processing the information. As discussed in the proposing release, the auditor may determine the information has been modified by the company by either comparing the information provided to the auditor to (i) the information the company received from the external source; or (ii) information obtained directly by the auditor from external sources. Some commenters referred to comparing the information provided by the company to the information the company received from the external source, as testing the information ''directly'' for reliability.

For example, the auditor may obtain customer purchase order information from the company's information systems and compare this information to the original purchase order submitted by the customer to determine whether any modifications were made by the company. In another example, the auditor may obtain interest rate information from the company's information systems and compare it to the original information from the U.S. Department of Treasury. Under the final

amendments, if the auditor determines modifications were made by the company, the auditor would have to evaluate the effect of the modifications on the reliability of the information. For example, the auditor may determine that certain modifications (*e.g.,* formatting of the date of a transaction from the European date format to the U.S. date format) have not affected the reliability of the information. Conversely, the auditor may determine that inadvertent or intentional deletions, or improper alterations of key data elements by the company (*e.g.,* customer details, transaction amount, product quantity) have negatively affected the reliability of information.

Finally, the Board further clarified the amendment to indicate that if the auditor chooses to test controls instead of testing the information as described above, the auditor should test controls over the receiving, maintaining, and where applicable, processing of the information that are relevant to the auditor's evaluation of whether the information is reliable for purposes of the audit. This aligns with the Board's intent in the proposal that described testing controls over the company's procedures. Controls over processing the information would include internal controls over any modifications made by the company to the information.

Several commenters noted that in instances where controls over the information are ineffective, or are not implemented or formalized, the auditor may need to perform procedures other than testing internal controls to determine the reliability of the information provided by the company. In response to these comments, the Board believes it is important to remind auditors that PCAOB standards already address circumstances when the auditor encounters ineffective controls, or controls that are not implemented or formalized. It is important for the auditor to also understand the implications of such findings on the nature, timing, and extent of procedures that the auditor needs to perform in accordance with PCAOB standards.[49]

The Board also considered the comments related to specifying requirements for the auditor to evaluate the reliability of external information obtained directly by the auditor from external sources, which would include digital information maintained outside the company and used as audit evidence. Under existing standards, audit evidence must be reliable, and its reliability depends on the nature and the source of the evidence and the circumstances under which it is obtained.[50] In light of the existing requirements within AS 1105, the Board believes that the auditor's responsibilities to evaluate the reliability of information obtained from external sources are sufficiently clear and that further amendments to address information obtained by the auditor directly from external sources are not necessary. In addition, the Board considered but decided not to address in this project auditors' responsibilities related to using information produced by a service organization as audit evidence.[51]

Further, as discussed below, the Board's proposed amendment was intended to highlight the importance of controls over information technology. The Board considered the comments received, and the final amendment clarifies that ITGCs and automated application controls should be tested where applicable (*e.g.,* where controls are selected for testing or where a significant amount of information supporting one or more relevant assertions is electronically initiated, recorded, processed, or reported).[52] The Board believes testing ITGCs and automated application controls is important to mitigate the risk that the information provided by the company in electronic form is not reliable. In some cases, the auditor may already be testing the relevant ITGCs and automated application controls, while in other cases the auditor may need to test additional controls.

Consistent with the proposal, the Board did not prescribe the nature, timing, or extent of the auditor's procedures to evaluate the reliability of the external information. An auditor would design the procedures considering the wide variety of types of external information received by companies and differences in the processes for receiving, maintaining and, where applicable, processing such information. Further, the nature, timing, and extent of the auditor's procedures would depend on the purpose for which the auditor uses the information whose reliability is being evaluated. In general, performing audit procedures to address the risks of material misstatement involves obtaining more persuasive evidence than in performing risk assessment procedures.[53] Accordingly, evaluating the reliability of information used in substantive procedures and tests of controls would require more auditor effort than evaluating the reliability of information used in risk assessment procedures.

2. Emphasizing the Importance of Controls Over Information Technology

The Board proposed several amendments to AS 1105 to emphasize the importance of controls over information technology for the reliability of audit evidence. As noted above, auditors obtain from companies, and use in the performance of audit procedures, large volumes of information in electronic form. The reliability of such information is increased when the company's controls over that information—including, where applicable, ITGCs and automated application controls—are effective. The Board adopted the amendments to paragraph .10 of AS 1105 as proposed, and amendments to paragraphs .08 and .15 of AS 1105 substantially as proposed, with minor modifications as described below.

Commenters on this topic supported the objective of emphasizing the importance of controls over information technology in establishing reliability of information used as audit evidence. Several commenters opined that the proposed amendments, more specifically the proposed amendments to paragraph .15 of AS 1105, implied that internal controls, including ITGCs and automated application controls, would need to be tested and determined effective in order to determine that the information is reliable.

The proposed amendments were not intended to imply that (i) internal controls are required to be tested and effective in order for the auditor to be able to determine that information is reliable for purposes of the audit; or (ii) testing other relevant controls is less important or unnecessary. Rather, the proposed amendments were meant to highlight to the auditor that certain information is more reliable when internal controls are effective, and where applicable, those internal controls include ITGCs and automated

[49] *See, e.g.,* AS 1105.08, AS 2110.25 and .B1–.B6, and AS 2301.32–.34.

[50] See AS 1105.06 and AS 1105.08. See also PCAOB, Staff Guidance—Insights for Auditors Evaluating the Relevance and Reliability of Audit Evidence Obtained From External Sources (Oct. 2021), available at *https://assets.pcaobus.org/pcaob-dev/docs/default-source/standards/documents/evaluating-relevance-and-reliability-of-audit-evidence-obtained-from-external-sources.pdf?sfvrsn=48b638b_6.*

[51] *See* AS 2601 for the auditor's requirements related to the use of a service organization. The Board has a separate standard-setting project on its mid-term standard-setting agenda (*https://pcaobus.org/oversight/standards/standard-setting-research-projects*) related to the use of a service organization, which may result in changes to AS 2601 and the auditor's responsibilities regarding the use of a service organization.

[52] *See, e.g.,* AS 2301.17.

[53] *See generally* AS 2301.09(a), .18, and .39.

application controls, which is consistent with existing PCAOB standards.[54] The Board's standards also describe scenarios where the sufficiency and appropriateness of the audit evidence usually depends on the effectiveness of controls.[55] The amendments did not change these existing principles.

Further, in the proposing release the Board explained that the proposed amendments state ''where applicable'' in relation to the controls over information technology because information produced by the company may also include information that is not in electronic form, or information that is subject to manual controls. One commenter noted that this explanation was informative and suggested incorporating it into the amendments. Another commenter also recommended defining ''where applicable'' with clear factors or examples of when ITGCs and automated application controls would be applicable. Because of the wide variety of types and sources of information, and ways in which companies use information, it would be impracticable to specify scenarios where ITGCs and automated application controls would be applicable.

Having considered the above comments and the Board's intent to retain the existing principle in paragraph .08 of AS 1105 that certain information is more reliable when controls are effective, the Board modified paragraph .15 of AS 1105 within the final amendments to align the language with AS 1105.08. In addition, the final amendments to paragraph .08 were also aligned with the terminology in paragraph .10A of AS 1105 described above.

Lastly, separate from commenting on the proposed amendments to paragraph .08 of AS 1105 discussed above, some commenters suggested amendments to modernize the last bullet point of the paragraph, which describes that evidence from original documents is more reliable. Three commenters asserted that the information may exist in different forms (*e.g.,* paper or electronic form) and may be in a format other than a document (*e.g.,* unprocessed data). In the views of two of these commenters, no physical or original document exists when an electronic data transmission from a customer initiates a transaction in a company's ERP system. These commenters suggested modernizing the language to focus on the original form of the audit evidence and any subsequent conversion, copying, or other modifications. The Board considered the comments received but did not amend the language because the bullet points in paragraph .08 of AS 1105 are intended to be examples of factors that may affect the reliability of audit evidence. The existing language provides an example of one type of audit evidence—original documents that have not been converted, copied, or otherwise modified—which is consistent with the principles suggested by the commenters.

3. Emphasizing the Importance of Appropriate Disaggregation or Detail of Information

The Board proposed to amend paragraph .07 of AS 1105 to emphasize that the relevance of audit evidence depends on the level of disaggregation or detail of information necessary to achieve the objective of the audit procedure. Whether an auditor performs tests of details, substantive analytical procedures, or other tests, technology-assisted analysis may enable the auditor to analyze large volumes of information at various levels of disaggregation (*e.g.,* regional or global) or detail (*e.g.,* relevant characteristics of individual items such as product type or company division). The appropriate level of disaggregation or detail of information that the auditor uses as audit evidence is important for obtaining audit evidence that is relevant in supporting the auditor's conclusions.[56] Having considered the comments received, the Board adopted the amendment as proposed.

The level of disaggregation or detail that is appropriate depends on the objective of the audit procedure. For example, when testing the valuation assertion of residential loans that are measured based on the fair value of the collateral, disaggregated sales data for residential properties by geographic location would likely provide more relevant audit evidence than combined sales data for both commercial and residential properties by geographic location. In another example, when performing a substantive analytical procedure and analyzing the plausibility of relationships between revenue and other information recorded by the company, using revenue disaggregated by product type would likely be more relevant for the auditor's analysis and result in obtaining more relevant audit evidence than if the auditor used the amount of revenue in the aggregate.

Commenters on this topic were supportive of the proposed amendment and indicated that it aligned with current practice. Some of these commenters suggested providing examples, stating that examples would help auditors in understanding and applying the amendment. Consistent with the proposal, the final amendment does not prescribe an expected level of disaggregation or detail, as auditor judgment is needed to determine the relevance of information based on the objective of the audit procedure.

4. Updating Certain Terminology in AS 1105

The Board proposed to update certain terminology used to describe audit procedures for obtaining audit evidence in AS 1105, without changing the meaning of the corresponding requirements. For example, considering the greater availability and use of information in electronic form, the Board proposed to use the term ''information'' instead of the term ''documents and records'' in AS 1105.15 and .19. Further, to avoid a misinterpretation that only certain procedures could be performed electronically, the Board proposed to remove the reference to performing recalculation ''manually or electronically'' in AS 1105.19. For consistent terminology, the Board also proposed to replace the terms ''generated internally by the company'' in AS 1105.08 and ''internal'' in AS 1105.15 with the term ''produced by the company.'' Having considered the comments received, the Board adopted the amendments to paragraphs .08, .15, and .19 of AS 1105 as proposed.

Commenters on this topic supported the updates to certain terminology described above, and stated the updated terminology appears clear and appropriate. One commenter suggested modifying the terminology in paragraph .19 from ''checking'' to ''testing'' because testing more clearly describes an audit procedure that is being performed over the mathematical accuracy of information. Having considered the comment, the Board retained the existing terminology in paragraph .19 of ''checking'' to avoid a potential for confusion with test of details.

Effective Date

The Board determined that the amendments will take effect, subject to approval by the SEC, for audits of financial statements for fiscal years

[54] *See* existing AS 1105.08.

[55] *See, e.g.,* AS 2301.17.

[56] See, *e.g.,* PCAOB, Staff Guidance—Insights for Auditors Evaluating the Relevance and Reliability of Audit Evidence Obtained From External Sources (Oct. 2021) at 5, available at *https://assets.pcaobus.org/pcaob-dev/docs/default-source/standards/documents/evaluating-relevance-and-reliability-of-audit-evidence-obtained-from-external-sources.pdf?sfvrsn=48b638b_6.*

beginning on or after December 15, 2025.

In the proposing release, the Board sought comment on the amount of time auditors would need before the amendments become effective, if adopted by the Board and approved by the SEC. The Board proposed an effective date for audits with fiscal years ending on or after June 30 in the year after approval by the SEC.

Several, mostly larger firms and firm-related groups, supported an effective date of audits of financial statements for fiscal years beginning on or after December 15 at least one year following SEC approval, or for fiscal years ending on or after December 15 at least two years following SEC approval. Two commenters supported an effective date two years after SEC approval. These commenters indicated that this would give firms the necessary time to update firm methodologies, tools, and develop and implement training. In addition, several commenters highlighted that additional time would be needed because of the potential indirect impact on companies, especially if companies need to implement or formalize controls or processes around information received from one or more external sources, and auditors need to verify that the controls have been designed and implemented appropriately. Another commenter highlighted that the proposed effective date may be too soon to allow auditors to update methodologies, provide appropriate training and effectively implement the standards. In addition, multiple commenters, mainly accounting firms, suggested that the Board consider the effective dates for other standard-setting projects when determining the effective date for the amendments.

The Board appreciates the concerns and preferences expressed by the commenters. Having considered the requirements of the final amendments, the differences between the amendments and the existing standards, the Board's understanding of firms' current practices, and the effective dates for other Board rulemaking projects, the Board believes that the effective date, subject to SEC approval, for audits of financial statements for fiscal years beginning on or after December 15, 2025 will provide auditors with a reasonable time period to implement the final amendments, without unduly delaying the intended benefits resulting from these improvements to PCAOB standards, and is consistent with the Board's mission to protect investors and further the public interest.

### *D. Economic Considerations and Application to Audits of Emerging Growth Companies*

#### Economic Considerations

The Board is mindful of the economic impacts of its standard setting. This section describes the economic baseline, economic need, expected economic impacts of the final amendments, and alternative approaches considered. There are limited data and research findings available to estimate quantitatively the economic impacts of the final amendments. Therefore, the Board's economic discussion is largely qualitative in nature. However, where reasonable and feasible, the analysis incorporates quantitative information, including descriptive statistics on the tools that firms use in technology-assisted analysis.[57]

#### Baseline

The discussion above describes important components of the baseline against which the economic impact of the final amendments can be considered, including the Board's existing standards, firms' current practices, and observations from the Board's oversight activities. The discussion below focuses on two additional aspects of current practice that informed the Board's understanding of the economic baseline: (i) the PCAOB staff's analysis of the tools that auditors use in technology-assisted analysis; and (ii) research on auditors' use of technology-assisted analysis.

#### 1. Staff Analysis of Tools That Auditors Use in Technology-Assisted Analysis

PCAOB staff reviewed information provided by firms pursuant to the PCAOB's oversight activities regarding tools they use in technology-assisted analysis. The information identifies and describes tools used by audit engagement teams. The staff reviewed information provided by the U.S. global network firms (''GNFs'') as well as seven U.S. non-affiliated firms (''NAFs'').[58] The information was first provided for the 2018 inspection year and was available through the 2023 inspection year for the GNFs and NAFs analyzed.

Firms reported using both internally developed and externally purchased tools. Some of the externally purchased tools were customized by the firms. The nature and number of tools varied across firms, and their use varied with the facts and circumstances of specific audit engagements. Some firms describe their tools by individual use case or functionality based on how the tool has been tailored by the firm (*e.g.,* one tool to test accounts receivable and another tool to test inventory using the same software program), and other firms describe their tools grouped by software program, thus affecting the number of unique tools reported by the firms. Some firms consolidated some of their tools over time, thus reducing the number of unique tools they used, although the number of audit engagements on which tools are used has not decreased. For example, instead of having separate tools to perform technology-assisted analysis and analytical procedures performed as part of the auditor's risk assessment, some firms have consolidated both functions into one tool. Firms generally do not require the use of such tools on audit engagements.

The average number of tools used by audit engagement teams, as reported to the PCAOB by the U.S. GNFs, increased from approximately 13 to approximately 18 per firm, or approximately 38%, between 2018 and 2023. In the 2023 inspection year, U.S. GNFs reported that 90% of their tools are used for data visualization, summarization, tabulation, or modeling.[59] All the U.S. GNFs reported using tools to assist in: (i) identifying and selecting journal entries; and (ii) selecting samples for testing. The U.S. GNFs reported having tools that support both risk assessment (*e.g.,* assessing loan risk) and substantive procedures (*e.g.,* performing journal entry testing or fair value testing). The U.S. GNFs developed approximately 75% of the reported tools in-house while the rest were purchased externally. Furthermore, approximately 18% of the U.S. GNFs' tools used cloud computing. Less than 7% of the U.S. GNFs' tools used blockchain technology, artificial intelligence, or robotic process automation. All the U.S.

[57] As noted above, this release uses the term ''technology-assisted analysis'' in reference to the analysis of information in electronic form that is performed with the assistance of technology-based tools. Others, including firms and academics, may refer to such analysis as ''data analysis'' or ''data analytics.'' The Board's use of ''data analysis'' or ''data analytics'' was intended to align with terminology used by the source cited. The terms ''data analysis'' or ''data analytics'' should not be confused with the term ''analytical procedures'' that is used in PCAOB standards to refer to a specific type of audit procedure (*see* AS 1105.21) that may be performed with or without the use of information in electronic form or technology-based data analysis tools.

[58] The U.S. GNFs are BDO USA P.C., Deloitte & Touche LLP, Ernst & Young LLP, Grant Thornton LLP, KPMG LLP, and PricewaterhouseCoopers LLP. U.S. NAF firms include registered firms that are not global network firms.

[59] For example, some firms identified Microsoft Power BI and IDEA as tools used for data visualization, summarization, tabulation, or modelling.

GNFs' tools used company data and approximately 20% also used third-party data.

Compared to U.S. GNFs, the U.S. NAFs within the scope of the PCAOB staff's review reported to the PCAOB using fewer tools. In the 2023 inspection year, on average, the U.S. NAFs reported using approximately six tools per firm. For a subset of these firms, the average number of tools increased from approximately two tools per firm to approximately five tools per firm between 2020 and 2023.[60] The U.S. NAFs used the tools to visualize, summarize, and model data. Some of the U.S. NAFs reviewed use third-party software as their data analysis tools and used company data (*e.g.,* transactional and journal entry data) as inputs. One U.S. NAF firm developed an in-house tool to assist with determining the completeness and accuracy of journal entry data used for testing journal entries.

One commenter asserted that the PCAOB should have information on firms' use of technology-based tools, as well as firms' improper use of tools, through its oversight activities. Information obtained through PCAOB oversight activities regarding firms' use of technology-based tools is presented here, and information related to firms' improper use of tools is presented above. As described above, the nature and extent of the use of technology-based tools in an audit varies by firm and by individual audit engagement. The Board's rulemaking has been informed by all relevant information as described in this release.

2. Research on Auditors' Use of Technology-Assisted Analysis

Academic studies regarding the prevalence of technology-based tools used to analyze information in electronic form and the impacts of using such tools in audits are limited. However, several recent surveys provide insights regarding: (i) how auditors have been incorporating data analytics into their audit approaches; and (ii) potential impediments to auditors' further implementation of data analytics. One commenter referenced additional academic research that was not originally cited in the proposing release. The Board considered this research and included references to articles that are relevant to the analysis in this release.[61]

Regarding incorporating data analytics into audit approaches, the surveys indicate that while the use of data analytics presently may not be widespread, it is becoming more common in various aspects of the audit, primarily risk assessment and, to a lesser extent, substantive procedures. For example, a 2017 survey of U.S. auditors reported that auditors used data analytics in risk assessment and journal entry testing.[62] Also, a survey of Norwegian auditors, some of whom perform audits under PCAOB standards, reported that data analytics were not widely used and were used primarily as supplementary evidence. In this survey, the respondents indicated that data analytics were used primarily in risk assessment and various types of substantive procedures, including analytical procedures.[63] A 2018 to 2019 survey of auditors in certain larger New Zealand firms reported that auditors are more frequently encountering accessible, large company data sets (*i.e.,* data sets from the companies under audit). The respondents reported that third-party tools to process the data are increasingly available and allow auditors with less expertise in data analytics to make effective use of data.[64] A 2020 Australian study that focused on big data analytics found that the use of big data analytics has reduced auditor time spent on manual-intensive tasks and increased time available for tasks requiring critical thinking and key judgments.[65] A 2023 Canadian study that also focused on big data analytics found that big data analytics improves financial reporting quality.[66]

Earlier surveys reported qualitatively similar, though less prevalent, use of data analytics. For example, a 2016 survey of Canadian firms reported that 63% and 39% of respondents from large firms and small to mid-sized firms, respectively, had used data analytics, most commonly in the risk assessment and substantive procedures phases. Both groups reported that data analytics were used to provide corroborative evidence for assertions about classes of transactions for the period under audit. However, only smaller and mid-sized firms reported that data analytics were also used to provide primary evidence for assertions about classes of transactions for the period under audit and account balances at period end. Furthermore, only larger firms reported that data analytics were also used to provide corroborative evidence for assertions about account balances at period end.[67]

A survey of 2015 year-end audits performed by U.K. firms reported that the use of data analytics was not as prevalent as the market might expect, with the most common application being journal entry testing.[68] A 2015

[60] Due to changes in the data collection process and changes in firms' status as annually inspected, data is not available for all firms in all years. The overall 2023 estimate is based on data from seven U.S. NAFs, and the 2020–2023 trend data is based on data from five U.S. NAFs.

[61] Several of the referenced papers report the results of experiments examining the behavioral factors associated with auditors' use of data analytics. These papers consider nuances of auditor behavior in specific circumstances that may not be generalizable to other settings because the results are based on hypothetical, self-reported choices rather than real-world audit settings. However, their results may be useful for auditors to consider in their use and implementation of technology-assisted analysis. *See* Tongrui Cao, Rong-Ruey Duh, Hun-Tong Tan, and Tu Xu, *Enhancing Auditors' Reliance on Data Analytics Under Inspection Risk Using Fixed and Growth Mindsets,* 97 The Accounting Review 131 (2022). *See also* Jared Koreff, *Are Auditors' Reliance on Conclusions from Data Analytics Impacted by Different Data Analytic Inputs?,* 36 Journal of Information Systems 19 (2022). *See also* Dereck Barr-Pulliam, Joseph Brazel, Jennifer McCallen, and Kimberly Walker, *Data Analytics and Skeptical Actions: The Countervailing Effects of False Positives and Consistent Rewards for Skepticism,* available at SSRN 3537180 (2023). *See also* Dereck Barr-Pulliam, Helen L. Brown-Liburd, and Kerri-Ann Sanderson, *The Effects of the Internal Control Opinion and Use of Audit Data Analytics on Perceptions of Audit Quality, Assurance, and Auditor Negligence,* 41 Auditing: A Journal of Practice & Theory 25 (2022).

[62] *See* Ashley A. Austin, Tina D. Carpenter, Margaret H. Christ, and Christy S. Nielson, *The Data Analytics Journey: Interactions Among Auditors, Managers, Regulation, and Technology,* 38 Contemporary Accounting Research 1888 (2021). The survey also states:

> [A]uditors report that they strategically leverage data analytics to provide clients with business-related insights. However, regulators voice concerns that this pratice might impair auditor independence and reduce audit quality.

The final amendments are not intended to suggest that when using technology-assisted analysis in an audit, auditors do not need to comply with PCAOB independence standards and rules, and the independence rules of the SEC. Auditors are still expected to comply with these standards and rules when uing tehnology-asisted analysis on an audit engagement.

[63] *See* Aasmund Eilifsen, Finn Kinserdal, William F. Messier, Jr., and Thomas E. McKee, *An Exploratory Study into the Use of Audit Data Analytics on Audit Engagements,* 34 Accounting Horizons 75 (2020). The survey appears to have been performed around 2017–2018.

[64] *See* Angela Liew, Peter Boxall, and Denny Setiawan, *The Transformation to Data Analytics in Big-Four Financial Audit: What, Why and How?,* 34 Pacific Accounting Review 569 (2022).

[65] *See* Michael Kend and Lan Anh Nguyen, Big Data Analytics and Other Emerging Technologies: The Impact on the Australian Audit and Assurance Profession, 30 Australian Accounting Review 269 (2020).

[66] *See* Isam Saleh, Yahya Marei, Maha Ayoush, and Malik Muneer Abu Afifa, *Big Data Analytics and Financial Reporting Quality: Qualitative Evidence from Canada,* 21 Journal of Financial Reporting and Accounting 83 (2023).

[67] *See* CPA Canada, Audit Data Analytics Alert: Survey on Use of Audit Data Analytics in Canada (Sept. 2017) at 7, Exhibit 4 and 10, Exhibit 7.

[68] See Financial Reporting Council, Audit Quality Thematic Review: The Use of Data Analytics in the Audit of Financial Statements (Jan. 30, 2017) at 11.

survey of U.K. and EU auditors found that data analytics were being used in both risk assessment procedures and to perform certain specific audit procedures (*e.g.,* recalculation).[69] Finally, a 2014 survey of U.S. auditors reported that they often use information technology to perform risk assessment, analytical procedures, sampling, internal control evaluations, and internal control documentation. The respondents identified moderate use of data analytics in the context of client administrative or practice management.[70]

Regarding potential impediments to the implementation of data analytics, surveys indicate that some firms are reluctant to implement data analytics in their audit approach due to perceived regulatory risks. For example, one survey found that auditors were cautious about implementing data analytics due to a lack of explicit regulation. Respondents reported performing both tests of details that do not involve data analytics and those that do involve data analytics in audits under PCAOB standards.[71] Another survey found that auditors did not require the use of advanced data analytic tools partly due to uncertainty regarding how regulatory authorities would perceive the quality of the audit evidence produced. However, the respondents tended to agree that both standard setters and the auditing standards themselves allow information obtained from data analytics to be used as audit evidence.[72] A different survey found that some auditors were reluctant to implement data analytics because the auditing standards do not specifically address them.[73] These survey findings are consistent with other surveys that find auditors structure their audit approaches to manage regulatory risks arising from inspections, including risks associated with compliance with PCAOB standards.[74] One commenter on the proposed amendments cited a study which noted that ''uncertainty about regulators' response and acceptance of emerging technologies can hinder its [emerging technology's] adoption.'' [75] However, by contrast, another survey found that the audit regulatory environment was not commonly cited by respondents as an impediment to the use of data analytics.[76]

Overall, the research suggests that auditors' use of technology-assisted analysis in designing and performing audit procedures is becoming increasingly prevalent. Some commenters also acknowledged that the use of technology-assisted analysis is becoming more prevalent. An investor-related group provided examples of expanded use of technology by both companies and audit firms, including the use of large, searchable databases and the development of tools for analyzing large volumes of data. This provides a baseline for considering the potential impacts of the final amendments. The research also suggests that some auditors perceive regulatory risks when implementing data analytics. Some commenters acknowledged that regulatory uncertainty has been a factor in firms' hesitance to use technology-assisted analysis. This provides evidence of a potential problem that standard setting may address.

Need

Low-quality audits can occur for a number of reasons, including the following two reasons. First, the company under audit, investors, and other financial statement users cannot easily observe the procedures performed by the auditor, and thus the quality of the audit. This leads to a risk that, unbeknownst to the company under audit, investors, or other financial statement users, the auditor may perform a low-quality audit.[77]

Second, the federal securities laws require that an issuer retain an auditor for the purpose of preparing or issuing an audit report. While the appointment, compensation, and oversight of the work of the registered public accounting firm conducting the audit is, under Sarbanes-Oxley, entrusted to the issuer's audit committee,[78] there is nonetheless a risk that the auditor may seek to satisfy the interests of the company under audit rather than the interests of investors and other financial statement users.[79] This could arise, for example, through audit committee identification with the company or its management (*e.g.,* for compensation) or through management influence over the audit committee's supervision of the auditor, resulting in a *de facto* principal-agent relationship between the company and the auditor.[80] Effective auditing standards help address these risks by explicitly assigning responsibilities to the auditor that, if executed properly, are expected to result in high-quality audits that satisfy the interests of

[69] *See* George Salijeni, Anna Samsonova-Taddei, and Stuart Turley, *Big Data and Changes in Audit Technology: Contemplating a Research Agenda,* 49 Accounting and Business Research 95 (2019).

[70] *See* D. Jordan Lowe, James L. Bierstaker, Diane J. Janvrin, and J. Gregory Jenkins, *Information Technology in an Audit Context: Have the Big 4 Lost Their Advantage?,* 32 Journal of Information Systems 87 (2018). The authors do not define the term ''data analytics,'' and they present it as an application of information technology in the audit distinct from other audit planning and audit testing applications. However, the Board believes it is likely that some of the applications of information technology reported in the study would be impacted by the amendments and hence provide relevant baseline information.

[71] *See* Austin et al., *The Data Analytics Journey* 1910. For similar findings, *see also* Liew et al., *The Transformation* 579–580.

[72] *See* Eilifsen et al., *An Exploratory Study.* For similar findings, *see also* Felix Krieger, Paul Drews, and Patrick Velte, *Explaining the (Non-) Adoption of Advanced Data Analytics in Auditing: A Process Theory,* 41 International Journal of Accounting Information Systems 1 (2021).

[73] *See* Salijeni et al., *Big Data* 110.

[74] *See* Kimberly D. Westermann, Jeffrey Cohen, and Greg Trompeter, *PCAOB Inspections: Public Accounting Firms on ''Trial,''* 36 Contemporary Accounting Research 694 (2019). *See also* Lindsay M. Johnson, Marsha B. Keune, and Jennifer Winchel, *U.S. Auditors' Perceptions of the PCAOB Inspection Process: A Behavioral Examination,* 36 Contemporary Accounting Research 1540 (2019).

[75] *See* Dereck Barr-Pulliam, Helen L. Brown-Liburd, and Ivy Munoko, The Effects of Person-Specific, Task, and Environmental Factors on Digital Transformation and Innovation in Auditing: A Review of the Literature, 33 Journal of International Financial Management & Accounting 337 (2022). This literature review focuses on emerging technologies broadly. Accordingly, much of the research it discusses is not directly relevant to the baseline for these amendments. However, several of the studies it cites are relevant and have already been discussed in this subsection, for example, Austin et al., The Data Analytics Journey.

[76] *See* CPA Canada, *Audit Data Analytics,* at Exhibit 10.

[77] *See, e.g.,* Monika Causholli and W. Robert Knechel, *An Examination of the Credence Attributes of an Audit,* 26 Accounting Horizons 631, 632 (2012):

> During the audit process, the auditor is responsible or making decisions concerning risk assessment, total effort, labor allocation, and the timing and extent of audit procedures that will be implemented to reduce the residual risk of material misstatements. As a non-expert, the auditee may not be able to judge the appropriateness of such decisions. Moreover, the auditee may not be able to ascertain the extent to which the risk of material misstatement has been reduced even after the audit is completed. Thus, information asymmetry exists between the auditee and the auditor, the benefit of which acrues to the auditor. If such is the case, the auditor may have incentives to: under-audit, or expend less audit effort than is required to reduce the uncertainty about misstatements in the auditee's financial statements to the level that is appropriate for the auditee.

[78] *See* section 301 of Sarbanes-Oxley, 15 U.S.C 78f(m) (also requiring that the firm ''report directly to the audit committee''). As an additional safeguard, the auditor is also required to be independent of the audit client. *See* 17 CFR 210.2–01.

[79] *See, e.g.,* Joshua Ronen, *Corporate Audits and How to Fix Them,* 24 Journal of Economic Perspectives 189 (2010).

[80] *See id.; see also, e.g.,* Liesbeth Bruynseels and Eddy Cardinaels, *The Audit Committee: Management Watchdog or Personal Friend of the CEO?,* 89 The Accounting Review 113 (2014); Cory A. Cassell, Linda A. Myers, Roy Schmardebeck, and Jian Zhou, *The Monitoring Effectiveness of Co-Opted Audit Committees,* 35 Contemporary Accounting Research 1732 (2018); Nathan R. Berglund, Michelle Draeger, and Mikhail Sterin, *Management's Undue Influence over Audit Committee Members: Evidence from Auditor Reporting and Opinion Shopping,* 41 Auditing: A Journal of Practice & Theory 49 (2022).

audited companies, investors, and other financial statement users.

Economic theory suggests that technology is integral to the auditor's production function—*i.e.,* the quantities of capital and labor needed to produce a given level of audit quality. As technology evolves, so do the quantities of capital and labor needed to produce a given level of audit quality.[81] Auditing standards that do not appropriately accommodate the evolution of technology may therefore inadvertently deter or insufficiently facilitate improvements to the audit approach. Risk-averse auditors may be especially cautious about incorporating significant new technological developments into their audit approaches because they may be either unfamiliar with the technology or unsure whether a new audit approach would comply with the PCAOB's auditing standards. On the other hand, auditing standards that are too accommodative (*e.g.,* by not adequately addressing the reliability of information used in a technology-based analysis) may not sufficiently address potential risks to audit quality arising from new audit approaches.

As described above, since 2010, when the PCAOB released a suite of auditing standards related to the auditor's assessment of and response to risk, two key technological developments have occurred. First, ERP systems that structure and house large volumes of information in electronic form have become more prevalent among companies. For example, one study reports that the global ERP market size increased by 60% between 2006 and 2012.[82] As a result, auditors have greater access to large volumes of company-produced and third-party information in electronic form that may potentially serve as audit evidence. Second, the use of more sophisticated data analysis tools has become more prevalent among auditors.[83] As noted above, the PCAOB staff's analysis of the tools that firms use in technology-assisted analysis indicated that the number of such tools used by U.S. GNFs in audits increased by 38% between 2018 and 2023.[84] One commenter noted that the advancement of analytical tools has increased auditor capabilities in data preparation and data validation.

These recent technological developments have been changing the way technology-assisted analysis is used in audits, as discussed in more detail above. Although PCAOB standards related to the auditor's assessment of and response to risk generally were designed to apply to audits that use information technology, they may be less effective in providing direction to auditors if the standards do not address certain advancements in the use of technology-assisted analysis in audits. Modifying existing PCAOB standards through the final amendments addresses this risk, as discussed below. Many commenters, including an investor-related group, indicated there was a need for such standard setting given that the use of information in electronic form, and the use of technology-based tools by companies and their auditors to analyze such information, have expanded significantly since these standards were developed.

The remainder of this section discusses the specific problem that the final amendments are intended to address and how the amendments address it.

### 1. Problem To Be Addressed

Audit procedures that involve technology-assisted analysis may be an effective way to obtain persuasive audit evidence. Although the Board's research showed that auditors are using technology-assisted analysis to obtain audit evidence, it also indicated that existing PCAOB standards could address more specifically certain aspects of designing and performing audit procedures that involve technology-assisted analysis. As discussed in detail above, these aspects include specifying auditors' responsibilities when performing tests of details, using an audit procedure for more than one purpose, investigating certain items identified by the auditor when performing a test of details, and evaluating the reliability of information the company receives from one or more external sources that is provided to the auditor in electronic form and used as audit evidence.

Consequently, under existing standards, there is a risk that when using technology-based tools to design and perform audit procedures that involve technology-assisted analysis, an auditor may issue an auditor's report without having obtained sufficient appropriate audit evidence to provide a reasonable basis for the opinion expressed in the report. For example, if an auditor does not appropriately investigate certain items identified though technology-assisted analysis when performing a test of details, the auditor may not identify a misstatement that would need to be evaluated under PCAOB standards. In another example, if an auditor does not appropriately evaluate the level of disaggregation of certain information maintained by the company, the auditor would not be able to determine, under PCAOB standards, whether the evidence obtained is relevant to the assertion being tested.[85]

Furthermore, there is a risk that auditors may choose not to involve technology-assisted analysis in the audit procedures they perform, even if performing such procedures would be a more effective, and may also be a more efficient, way of obtaining audit evidence. For example, an auditor may choose not to perform a substantive procedure that involves technology-assisted analysis if the auditor cannot determine whether the procedure would be considered a test of details under existing standards.

### 2. How the Final Amendments Address the Need

The final amendments address the risk that the auditor may not obtain sufficient appropriate audit evidence when addressing one or more financial statement assertions. For example, the final amendments: (i) specify considerations for the auditor when items are identified for further investigation as part of performing a test of details;[86] (ii) specify procedures the auditor should perform to evaluate the reliability of information the company receives from one or more external

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[81] *See* Gregory N. Mankiw, *Principles of Economics* (6th ed. 2008) at 76 (discussing how technology shifts the supply curve).

[82] *See* Adelin Trusculescu, Anca Draghici, and Claudiu Tiberiu Albulescu, *Key Metrics and Key Drivers in the Valuation of Public Enterprise Resource Planning Companies,* 64 Procedia Computer Science 917 (2015).

[83] This may be caused in part by a decrease in the quality-adjusted cost of software (*i.e.,* the cost of software holding quality fixed). For example, *see* U.S. Bureau of Economic Analysis, ''Table 5.6.4. Price Indexes for Private Fixed Investment in Intellectual Property Products by Type'' *available at https://apps.bea.gov/iTable/?reqid=19&step=3&isuri=1&nipa_table_list=330&categories=survey&_gl=1*k50itr*_ga*MTMyMjk5NTAz MS4xNzA5ODQ0OTEx*_ga_J4698JNNFT*MTcwOTg0NDkxMS4xLjAuMTcwOTg0NDkxMS42MC4wLjA* (accessed June 3, 2024) (indicating that the price index for capital formation in software by the business sector has decreased by approximately 12% between 2010 and 2022). In preparing its price indices, the U.S. Bureau of Economic Analysis attempts to control for changes in product quality over time. Improvements to product quality may have contributed to some increase in the cost of software, including some of the software that can process large volumes of data.

[84] *See* discussion above. *See also* Lowe et al., *Information Technology* 95 (reporting an increase in the use of information technology in audits between 2004 and 2014).

[85] *See, e.g.,* Helen Brown-Liburd, Hussein Issa, and Danielle Lombardi, *Behavioral Implications of Big Data's Impact on Audit Judgment and Decision Making and Future Research Directions,* 29 Accounting Horizons 451 (2015) (discussing how irrelevant information may limit the value of data analysis). *See also* Financial Reporting Council, *Audit Quality.*

[86] *See* detailed discussion above.

sources and that is provided to the auditor in electronic form and used as audit evidence;[87] and (iii) clarify that if the auditor uses an audit procedure for more than one purpose, the auditor should achieve each objective of the procedure.[88]

The final amendments also address the risk that auditors may choose not to perform audit procedures involving technology-assisted analysis by: (i) specifying responsibilities when performing tests of details;[89] and (ii) clarifying that an audit procedure may be used for more than one purpose.[90] Collectively, the amendments should lead auditors to perceive less risk of noncompliance with PCAOB standards when using technology-assisted analysis.

Economic Impacts

This section discusses the expected benefits and costs of the final amendments and potential unintended consequences. In the proposing release, the Board noted that it expected the economic impact of the amendments, including both benefits and costs, to be relatively modest. Some commenters disagreed with the characterization of costs and benefits as ''modest,'' stating that both costs and benefits of technology-assisted analysis can be substantial. However, the Board did not attempt to describe the overall costs and benefits of the use of technology-assisted analysis, but rather the marginal impact of the final amendments. It is difficult to quantify the benefits and costs because the final amendments do not require the adoption of any specific tools for technology-assisted analysis or that the auditor perform technology-assisted analysis. Some firms may choose to increase their investments in technology, and others may choose to make minimal changes to their existing audit practices. In general, the Board expects that firms will incur costs to implement or expand the use of technology-assisted analysis if firms determine that the benefits of doing so justify the costs. The Board included qualitative references to the benefits and costs associated with the use of technology-assisted analysis, including those raised by commenters.

1. Benefits

The final amendments may lead auditors to design and perform audit procedures more effectively, because they clarify and strengthen requirements of AS 1105 and AS 2301 related to aspects of designing and performing audit procedures that involve technology-assisted analysis. More effective audit procedures may lead to higher audit quality, more efficient audits, lower audit fees, or some combination of the three. To the extent the amendments lead to higher audit quality, they should benefit investors and other financial statement users by reducing the likelihood that the financial statements are materially misstated, whether due to error or fraud.

An increase in audit quality should in turn benefit investors as they may be able to use the more reliable financial information to improve the efficiency of their capital allocation decisions (*e.g.,* investors may more accurately identify companies with the strongest prospects for generating future risk-adjusted returns and allocate their capital accordingly). Some commenters stated that the proposed amendments would benefit investors and the general public by reducing audit failures. One commenter stated that the analysis in the proposing release appeared to suggest that existing financial information and audits are ''less reliable.'' The Board's intent was not to suggest that existing audits are unreliable, but rather that the proposed amendments may increase audit quality, which should in turn increase investors' confidence in the information contained in financial statements. In theory, if investors perceive less risk in capital markets generally, their willingness to invest in capital markets may increase, and thus the supply of capital may increase. An increase in the supply of capital could increase capital formation while also reducing the cost of capital to companies.[91] The Board is unable to quantify in precise terms this potential benefit, which would depend both on how audit firms respond to the standard and on how their response affects audit quality, factors that are likely to vary across audit firms and across engagements. Auditors also are expected to benefit from the final amendments because the additional clarity provided by the amendments should reduce regulatory uncertainty and the associated compliance costs. Specifically, the final amendments should provide auditors with a better understanding of their responsibilities, which in turn should reduce the risk that auditors design and perform potentially unnecessary audit procedures (*e.g.,* potentially duplicative audit procedures).

Most commenters agreed that the proposed amendments would allow auditors to design and perform audit procedures more effectively, ultimately leading to higher quality audits. Some commenters identified specific benefits to audit quality resulting from increased use of technology-assisted analysis, such as the ability to automate some repetitive tasks and to improve the performance of risk assessment procedures and fraud and planning procedures. One commenter stated that the proposed amendments could result in the ineffective use of analytics if there is implicit pressure for firms to adopt technology-assisted analysis without appropriately preparing for its use, and another stated that the proposed amendments may not change the likelihood of not obtaining sufficient appropriate audit evidence. As discussed below, the final amendments are principles-based and are intended to clarify auditors' responsibilities when using technology-assisted analysis.

The following discussion describes the benefits of key aspects of the final amendments that are expected to impact auditor behavior. To the extent that a firm has already incorporated aspects of the amendments into its methodology, some of the benefits described below would be reduced.[92]

i. Decreasing the Likelihood of Not Obtaining Sufficient Appropriate Audit Evidence

The final amendments are expected to enhance audit quality by decreasing the likelihood that an auditor who performs audit procedures using technology-assisted analysis will issue an auditor's report without obtaining sufficient appropriate audit evidence that provides a reasonable basis for the opinion expressed in the report. For example, the final amendments specify auditors' responsibilities for investigating items identified when performing a test of details. In another example, the final amendments specify auditors' responsibilities for evaluating the reliability of certain information provided by the company in electronic form and used as audit evidence. As a result, auditors may be more likely to obtain sufficient appropriate audit evidence when designing and performing audit procedures that use

[87] *See* detailed discussion above.

[88] *See* detailed discussion above.

[89] *See* detailed discussion above.

[90] *See* detailed discussion above.

[91] *See, e.g.,* Hanwen Chen, Jeff Zeyun Chen, Gerald J. Lobo, and Yanyan Wang, *Effects of Audit Quality on Earnings Management and Cost of Equity Capital: Evidence from China,* 28 Contemporary Accounting Research 892 (2011); Richard Lambert, Christian Leuz, and Robert E. Verrecchia, *Accounting Information, Disclosure, and the Cost of Capital,* 45 Journal of Accounting Research 385 (2007).

[92] *See* discussion above.

technology-assisted analysis, resulting in higher audit quality. As described above, the higher audit quality should benefit investors and other financial statement users by reducing the likelihood that the financial statements are materially misstated, whether due to error or fraud. These potential benefits to audit quality apply both to audit engagements where auditors currently incorporate technology-assisted analysis into their audit approach and audit engagements where auditors have been previously reluctant to use technology-assisted analysis because of the risk of noncompliance.

ii. Greater Use of Technology-Assisted Analysis

The final amendments may lead to some increase in the use of technology-assisted analysis by auditors when designing and performing multi-purpose audit procedures and tests of details. For example, the final amendments clarify the description of a ''test of details.'' As a result of this clarification, auditors may make greater use of technology-assisted analysis when designing or performing tests of details because they may perceive a reduction in noncompliance risk.

Notwithstanding the associated fixed and variable costs, greater use of technology-assisted analysis by the auditor when designing or performing audit procedures may allow the auditor to perform engagements with fewer resources, which may increase the overall resources available to perform audits.[93] In economic terms, it may increase the supply of audit quality.[94] For example, obtaining sufficient appropriate audit evidence by using technology-assisted analysis may require fewer staff hours than obtaining the evidence manually. Current labor shortages of qualified individuals and decreases in accounting graduates and new CPA examination candidates amplify the value of gathering sufficient appropriate audit evidence with fewer staff hours.[95]

Apart from consideration of demands from the audited company, discussed in greater detail below, the efficiencies that may arise from greater utilization of technology-assisted analysis would be retained by the auditor in the form of higher profit. However, to better address regulatory, litigation, or reputational risks, the auditor may choose to redeploy engagement-level resources to other work. For example, auditors may shift staff resources to audit areas or issues that are more complex or require more professional judgment.[96]

As a result of the greater use of technology-assisted analysis by auditors, some companies may be able to obtain a higher level of audit quality or renegotiate their audit fee, or both. The outcome would likely vary by company depending on the competitiveness of the company's local audit market and the company's audit quality expectations. For example, negotiating power may be smaller for larger multinational companies, which may have fewer auditor choices, than for smaller companies, which may have more auditor choices. Furthermore, some companies may expect their auditor to reassign engagement team staff resources from repetitive or less complex audit procedures to more judgmental aspects of the audit. Other companies may expect the engagement team to perform the audit with fewer firm resources (*e.g.,* fewer billable hours). Some research suggests that most companies prefer audit fee reductions in response to their auditor's greater use of data analytics.[97]

Because the final amendments do not require the auditor to use technology-assisted analysis when designing and performing audit procedures, the associated benefits would likely be limited to cases where auditors determine that their benefits justify their costs, including any fixed costs required to update the auditor's approach (*e.g.,* update methodologies, provide training). The fixed costs may be significant; however, some firms may have incurred some of these costs already.[98] Moreover, despite the continued tendency of companies to adopt ERP systems to house their accounting and financial reporting data, some companies' data may remain prohibitively difficult to obtain and analyze, thus limiting the extent to which the auditor can use technology-assisted analysis.[99] Some survey research also suggests that some firms lack sufficient staff resources to appropriately deploy data analysis.[100] Collectively, these private costs may deter some auditors from incorporating technology-assisted analysis into their audit approach and thereby reduce the potential benefits associated with greater use of technology-assisted analysis.

Some commenters suggested that audit fees are unlikely to decrease as a result of increased use of technology-assisted analysis due primarily to the costs involved with using technology-assisted analysis. One commenter stated that the Board's analysis in the proposal focused on reducing costs (which could put downward pressure on audit fees), and suggested that the analysis should focus instead on enabling auditors to shift resources to higher risk areas of the audit, which should increase audit quality. Another commenter urged the PCAOB not to include commentary that relates the greater use of technology-assisted analysis to lower audit fees on the grounds that the proposing release underestimated the costs to smaller firms of designing, implementing, and operating technology-assisted analysis. The commenter added that such commentary could have the unintended effect of encouraging firms to reduce costs and therefore choose to use analytics ineffectively or choose not to implement technology-assisted analysis. A different commenter noted that the ''supposition that efficiencies would accrue to the firms, potentially impacting audit efficiencies or even audit fees, is beyond the Board's charge of improving audit quality.'' The Board acknowledged that there can be significant costs associated with the use of technology-assisted analysis, particularly with the initial implementation of technology-assisted analysis tools, which some firms may pass on to audited companies in the form of higher audit fees, at least in the short term. However, the Board noted that the final amendments do not require the use of technology-assisted analysis, and academic studies suggest that greater use of data analytics could reduce audit fees.[101]

[93] *See* below (discussing costs associated with greater use of technology-assisted analysis).

[94] For purposes of this discussion, ''audit quality'' refers to assurance on the financial statements provided by the auditor to the users of the financial statements. The ''supply of audit quality'' is the relationship between audit quality and incremental cost to the auditor. An ''increase in the supply of audit quality'' occurs when the incremental costs of audit quality decrease (*e.g.,* due to technological advances) and the auditor is able to profitably provide more audit quality at a given cost.

[95] *See, e.g.,* AICPA Private Companies Practice Section, 2022 PCPS CPA Top Issues Survey (2022); AICPA, 2021 Trends: A Report on Accounting Education, the CPA Exam and Public Accounting Firms' Hiring of Recent Graduates (2021).

[96] *See, e.g.,* Salijeni et al., *Big Data.*

[97] *See* Austin et al., The Data Analytics Journey.

[98] *See* discussion above, discussing increased availability of data analytic tools at larger firms and Austin et al., *The Data Analytics Journey* 1908.

[99] *See, e.g.,* Austin et al., The Data Analytics Journey 1906.

[100] *See, e.g.,* Saligeni et al., *Big Data* 108. *See also* CPA Canada, *Audit Data Analytics.* However, some more recent survey research suggests that auditors tend to agree that they have the technical expertise to deploy data analytics. *See* Eilifsen et al., *An Exploratory Study* 84.

[101] *See* Austin et al., The Data Analytics Journey 1891.

One commenter stated that the PCAOB should be ''agnostic'' about the use of audit technology and should focus on audit quality rather than audit efficiency. The Board believes that the PCAOB's focus on audit quality does not preclude it from considering the effect of audit efficiency on the Board's stakeholders. Furthermore, audit efficiencies in one area may allow auditors to redeploy resources to other audit areas that are more complex or require more professional judgment, resulting in increased audit quality.

2. Costs

To the extent that firms make changes to their existing audit approaches as a result of the final amendments, they may incur certain fixed costs (*i.e.,* costs that are generally independent of the number of audits performed), including costs to: update audit methodologies, templates, and tools; prepare training materials; train their staff; and develop or purchase software. GNFs and some NAFs are likely to update their methodologies using internal resources, whereas other NAFs are likely to purchase updated methodologies from external vendors.

In addition, firms may incur certain engagement-level variable costs. For example, the final amendments related to evaluating whether certain information provided by the company in electronic form and used as audit evidence is reliable could require additional time and effort by engagement teams that use such information in performing audit procedures. This additional time, and therefore the resulting variable costs, may be less on integrated audits or financial-statement audits that take a controls reliance approach because, in these cases, internal controls over the information, including ITGCs and automated application controls, may already be tested. As another example, some firms may incur software license fees that vary by the number of users. To the extent that auditors incur higher costs to implement the amendments and can pass on at least part of the increased costs through an increase in audit fees, audited companies may also incur an indirect cost.

Some commenters stated that they do not believe the fixed and variable cost increases will be modest as stated in the proposal, and that the evolution of technology-assisted analysis may render tools and training obsolete, requiring renewed investment at regular intervals. One of these commenters referenced increased resource costs such as the need to investigate items identified through technology-assisted analysis. One commenter stated that the proposing release mischaracterized the costs to NAFs of implementing technology-assisted analysis. This commenter noted that costs could include a learning curve for new technology adoption, increased costs of hiring engagement team members with appropriate skill sets, obtaining reliable data, and the development or purchase of software tools. Another stated that some audit firms already use technology, so both costs and benefits would be modest for those firms. As the Board discussed in the proposal and as reiterated above, the final amendments do not require the use of technology-assisted analysis. Therefore, the costs discussed by these commenters would occur only if firms determined it was in their best interest to incur them.

Some aspects of the final amendments may result in more or different costs than others. The following discussion describes the potential costs associated with specific aspects of the amendments.

i. Potential Additional Audit Procedures and Implementation Costs

The final amendments clarify and specify auditor responsibilities when designing and performing audit procedures that involve technology-assisted analysis. As a result, some auditors may perform incremental procedures to comply with the final amendments, which may lead to incremental costs. For example, in addition to applying technology-assisted analysis when testing specific items in the population, some auditors may address the items not selected for testing by performing other substantive procedures if the auditor determines that there is a reasonable possibility of a risk of material misstatement in the items not selected for testing (*i.e.,* the remaining population). To the extent that auditors currently do not fulfill their responsibilities under existing PCAOB standards related to the remaining population when there is a reasonable possibility of a risk of material misstatement, those firms may incur one-time costs to update firm methodologies and ongoing costs related to fulfilling their responsibilities. In another example, an auditor may determine that incremental procedures are necessary to evaluate the reliability of external information provided by the company in electronic form.. These incremental procedures may apply to audit engagements where auditors currently incorporate technology-assisted analysis into their audit approach, and audit engagements where auditors have been reluctant to use technology-assisted analysis due to the risk of noncompliance.

At the firm level, some firms may incur relatively modest fixed costs to update their methodologies and templates (*e.g.,* documentation templates) or customize their technology-based tools. Firms may also need to prepare training materials and train their staff. Firms may incur relatively modest variable costs if they determine that additional time and effort on an individual audit engagement is necessary in order to comply with the final amendments. For example, a firm may incur additional variable costs to investigate items identified when performing a test of details.

ii. Greater Use of Technology-Assisted Analysis

As discussed above, the final amendments do not require the use of technology-assisted analysis in an audit. However as noted above, the final amendments may lead to some increase in the use of technology-assisted analysis by auditors when designing and performing multi-purpose audit procedures and tests of details. The greater use of technology-assisted analysis by the auditor may allow the auditor to perform engagements with fewer resources. However, this potential efficiency benefit would likely be offset, in part, by fixed and variable costs to the audit firm. Fixed costs may be incurred to incorporate technology-assisted analysis into the audit approach. For example, some firms may purchase, develop, or customize new tools.[102] Some firms may choose to hire programmers to develop tools internally. Firms may also incur fixed costs to obtain an understanding of companies' information systems.[103] Some commenters stated that the costs to research, develop, and implement technology-assisted analysis can be significant. They also stated that rapid technological advancements require continual investment by audit firms to keep pace. Because the final amendments do not require the adoption of technology-assisted analysis, any such investments by firms would be made only if they determine that the benefits justify the costs.

Relatively modest variable costs may be incurred to use technology-assisted

[102] *See* Financial Reporting Council, *Audit Quality. See also* Austin et al., *The Data Analytics Journey* 1908.

[103] *See* Eilifsen et al., *An Exploratory Study* 71 (discussing how audit data analytics are used less often when the company does not have an integrated ERP/IT system). *See also* Financial Reporting Council, *Audit Quality.*

analysis on individual audit engagements. For example, firms may incur variable costs associated with preparing company data for analysis or updating their technology-based tools. Several commenters stated that there are costs associated with obtaining or preparing data in a format that can be utilized by specific tools for technology-assisted analysis. In another example, a firm may incur variable costs to obtain specialized expertise for using technology-assisted analysis on audit engagements. For example, a firm data analytics specialist may be used on an audit engagement to automate certain aspects of data preparation or design and perform a custom technology-assisted analysis. One commenter noted that the investigation of items identified by technology-assisted analysis requires resources such as the involvement of personnel who are skilled in interpreting the results of technology-assisted analysis. As a result, according to the commenter, the use of technology-assisted analysis may not necessarily reduce costs and may increase costs. As discussed above, auditors may increase audit fees due to costs associated with the use of technology-assisted analysis, passing along some of those costs to audited companies.

Several factors may limit the costs associated with greater use of technology-assisted analysis in an audit. First, the costs would likely be incurred by a firm only if it determined that the private benefits to it would exceed the private costs. Second, some firms have already made investments to incorporate technology-assisted analysis in audits. Finally, the cost of software that can process and analyze large volumes of data has been decreasing.[104]

3. Potential Unintended Consequences

In addition to the benefits and costs discussed above, the final amendments could have unintended economic impacts. The following discussion describes potential unintended consequences considered by the Board and, where applicable, factors that mitigate them. These include actions taken by the Board as well as the existence of other countervailing forces.

i. Reduction in the Use of Technology-Assisted Analysis

It is possible that, as a result of the final amendments, some auditors could reduce their use of technology-assisted analysis. This could occur if the final amendments were to lead firms to conclude that the private benefits would not justify the private costs of involving technology-assisted analysis in their audit approach. For example, the final amendments specify considerations for investigating items identified by the auditor when performing a test of details and procedures for evaluating the reliability of certain information the company receives from one or more external sources and used as audit evidence. As discussed above, such additional responsibilities could lead to fixed costs at the firm level and variable costs at the engagement level. As a result, some auditors may choose not to use audit procedures that involve technology-assisted analysis.

Several factors would likely mitigate any negative effects associated with this potential unintended consequence. First, the Board believes that any decrease in the use of technology-assisted analysis would likely arise from a reduction in the performance of audit procedures that would not have contributed significantly to providing sufficient appropriate audit evidence. This development would therefore probably benefit, rather than detract from, audit quality. For example, currently some auditors might not appropriately investigate items identified when using technology-assisted analysis in performing tests of details. The amendments specify auditors' responsibilities for investigating the items identified. If auditors view the requirement as too costly to implement, they may instead choose to perform audit procedures that do not involve the use of technology-assisted analysis. If the other procedures chosen by the auditor provide sufficient appropriate audit evidence, the reduction in the performance of audit procedures that involve technology-assisted analysis (where auditors did not appropriately investigate items identified) would benefit audit quality.

Second, any reduction in the use of technology-assisted analysis resulting from certain of the amendments, such as in the above scenario, may be offset by the greater use of technology-assisted analysis in other scenarios. For example, as discussed above, the final amendments clarify the description of a ''test of details.'' As a result, auditors may make greater use of technology-assisted analysis in performing tests of details because they may perceive a reduction in noncompliance risk.

Finally, because the final amendments are principles-based, auditors will be able to tailor their work subject to the amendments to the facts and circumstances of the audit. For example, the amendments do not prescribe procedures for investigating items identified when performing a test of details. Rather, the auditor will be able to structure the investigation based on, among other things, the type of analysis and the assessed risks of material misstatement.[105]

Some commenters stated that the proposed amendments could potentially deter auditors from using technology-assisted analysis; in contrast, others said that the proposed amendments could potentially pressure auditors to use technology-assisted analysis. As outlined above, the final amendments, consistent with the proposal, do not require the use of technology-assisted analysis, and the Board believes that auditors will use technology-assisted analysis to the extent that it allows them to perform audit procedures in a more efficient or effective manner. Some commenters expressed appreciation for PCAOB standards that allow auditors to employ appropriate audit procedures based on the facts and circumstances of the audit engagement. They agreed with the scalable, principles-based approach that allows for use of technology-assisted analysis to the extent that it is effective and efficient, taking into consideration the firm size, company size, and other circumstances of the audit engagement.

ii. Inappropriately Designed Multi-Purpose Audit Procedures

It is possible that some auditors could view the final amendments as allowing any audit procedure that involves technology-assisted analysis to be considered a multi-purpose procedure. Auditors who hold this view may fail to design and perform audit procedures that provide sufficient appropriate audit evidence. This potential unintended consequence would be mitigated by: (i) existing requirements of PCAOB standards; and (ii) the amendment to paragraph .14 of AS 1105.

Existing PCAOB standards address auditors' responsibilities for designing and performing procedures to identify, assess, and respond to risks of material misstatement and obtaining sufficient appropriate audit evidence.[106] Auditor responsibilities established by existing PCAOB standards apply to the performance of both audit procedures that are designed to achieve a single objective and audit procedures that are designed to achieve multiple objectives. Further, existing standards specify auditor responsibilities in certain scenarios that involve multi-purpose audit procedures. For example, existing PCAOB standards provide that an audit

[104] *See* discussion above.

[105] *See* discussion above.

[106] *See, e.g.,* AS 2110 and AS 2301.

procedure may serve as both a risk assessment procedure and a test of controls provided that the auditor meets the objectives of both procedures.[107] In another example, existing PCAOB standards provide that audit procedures may serve as both a test of controls and a substantive procedure provided that the auditor meets the objectives of both procedures.[108]

In addition, the amendment to paragraph .14 of AS 1105 would further mitigate the risk that auditors fail to design and perform multi-purpose audit procedures. The amendment would emphasize the auditor's responsibility to achieve particular objectives specified in existing PCAOB standards when using audit evidence from an audit procedure for multiple purposes.

iii. Disproportionate Impact on Smaller Firms

It is possible that the costs of the final amendments could disproportionately impact smaller firms. As discussed in Section IV.C.2 above, increased use of technology-assisted analysis may require incremental investment and specialized skills. Smaller firms have fewer audit engagements over which to distribute fixed costs (*i.e.,* they lack economies of scale). As a result, smaller firms may be less likely than larger firms to increase their use of technology-assisted analysis when designing and performing multi-purpose audit procedures and tests of details. Although the final amendments do not require auditors to use technology-assisted analysis, a choice not to use it may negatively impact smaller firms' ability to compete with larger firms (*e.g.,* if using technology-assisted analysis is expected by prospective users of the auditor's report). One commenter stated that the costs of using technology-assisted analysis could be significant and cause audits performed by small and mid-sized accounting firms to be uneconomical.

This potential unintended negative consequence would be mitigated by several factors. First, the fixed costs associated with the amendments may be offset by engagement-level efficiencies which may increase the competitiveness of smaller firms. Second, as discussed above, the costs associated with acquiring and incorporating technology-based analytical tools into firms' audit approaches have been decreasing and may continue to decrease. Third, while reduced competition may result in higher audit fees,[109] it may also reduce companies' opportunity to opinion shop, thereby positively impacting audit quality.[110] In contrast, some literature suggests that reduced competition may have a negative effect on audit quality.[111]

Finally, any negative impact on the smaller firms' ability to compete with larger firms would likely be limited to smaller and mid-sized companies because smaller firms may lack the economies of scale and multi-national presence to compete for the audits of larger companies. Indeed, there is some evidence that smaller and larger audit firms do not directly compete with each other in some segments of the audit market [112] although some research suggests that smaller and larger firms do compete locally in some cases.[113]

Alternatives Considered

The development of the final amendments involved considering numerous alternative approaches to addressing the problems described above. This section explains: (i) why standard setting is preferable to other policy-making approaches, such as providing interpretive guidance or enhancing inspection or enforcement efforts; (ii) other standard-setting approaches that were considered; and (iii) key policy choices made by the Board in determining the details of the amendments.

1. Why Standard Setting Is Preferable to Other Policy-Making Approaches

The Board's policy tools include alternatives to standard setting, such as issuing interpretive guidance or increasing the focus on inspections or enforcement of existing standards. The Board considered whether providing guidance or enhancing inspection or enforcement efforts would be effective mechanisms to address concerns associated with aspects of designing and performing audit procedures that involve technology-assisted analysis. One commenter stated that PCAOB staff guidance would be preferable to standard setting to communicate the requirements. Several commenters stated that additional guidance and examples would be helpful for auditors when applying existing standards and the proposed amendments when performing audit procedures that involve technology-assisted analysis.

Interpretive guidance inherently provides additional information about existing standards. Inspection and enforcement actions take place after insufficient audit performance (and potential investor harm) has occurred. Devoting additional resources to interpretive guidance, inspections, or enforcement activities, without improving the relevant performance requirements for auditors, would at best focus auditors' performance on existing standards and would not provide the benefits associated with improving the standards, which are discussed above.

The In contrast, some literature suggests that reduced competition may have a negative effect on audit quality.amendments, by contrast, are designed to improve PCAOB standards by adding further clarity and specificity to existing requirements. For example, the amendments specify auditor responsibilities for evaluating the reliability of external information provided by the company in electronic form and used as audit evidence. In another example, the amendments clarify auditor responsibilities when the auditor uses an audit procedure for more than one purpose.

2. Other Standard-Setting Approaches Considered

The Board considered, but decided against, developing a standalone standard that would address designing and performing audit procedures that involve technology-assisted analysis. Addressing the use of technology-assisted analysis in a standalone standard could further highlight the auditor's responsibilities relating to using technology-assisted analysis. However, a new standalone standard would also unnecessarily duplicate many of the existing requirements, because existing PCAOB standards are already designed to be applicable to audits performed with the use of

[107] *See* AS 2110.39.

[108] *See* AS 2301.47.

[109] *See, e.g.,* Joshua L. Gunn, Brett S. Kawada, and Paul N. Michas, *Audit Market Concentration, Audit Fees, and Audit Quality: A Cross-Country Analysis of Complex Audit Clients,* 38 Journal of Accounting and Public Policy 1 (2019).

[110] *See, e.g.,* Nathan J. Newton, Julie S. Persellin, Dechun Wang, and Michael S. Wilkins, *Internal Control Opinion Shopping and Audit Market Competition,* 91 The Accounting Review 603 (2016); Nathan J. Newton, Dechun Wang, and Michael S. Wilkins, *Does a Lack of Choice Lead to Lower Quality?: Evidence from Auditor Competition and Client Restatements,* 32 Auditing: A Journal of Practice & Theory 31 (2013).

[111] *See, e.g.,* Jeff P. Boone, Inder K. Khurana, and K.K. Raman, *Audit Market Concentration and Auditor Tolerance for Earnings Management,* Contemporary Accounting Research 29 (2012); Nicholas J. Hallman, Antonis Kartapanis, and Jaime J. Schmidt, *How Do Auditors Respond to Competition? Evidence From the Bidding Process,* Journal of Accounting and Economics 73 (2022).

[112] See, *e.g.,* GAO Report No. GAO–03–864, Public Accounting Firms: Mandated Study on Consolidation and Competition (July 2003).

[113] *See, e.g.,* Kenneth L. Bills and Nathaniel M. Stephens, *Spatial Competition at the Intersection of the Large and Small Audit Firm Markets,* 35 Auditing: A Journal of Practice and Theory 23 (2016).

technology, including technology-assisted analysis.

Further, as the discussion above explains in greater detail, the Board's research indicates that auditors are using technology-assisted analysis in audit procedures. Rather than developing a new standalone standard, the final amendments use a more targeted approach that includes amending certain requirements of the standards where the Board's research has indicated the need for providing further clarity and specificity regarding designing and performing audit procedures that involve technology-assisted analysis.

3. Key Policy Choices

i. Investigating Certain Items Identified by the Auditor

As discussed above, auditors may use technology-assisted analysis to identify items within a population (*e.g.,* transactions in an account) for further investigation when performing a test of details.[114] The auditor's investigation may include, for example, examining documentary evidence for items identified through the analysis, or designing and performing other audit procedures to determine whether the items identified individually or in the aggregate indicate misstatements or deficiencies in the company's internal control over financial reporting.

The Board considered but did not prescribe specific audit procedures to investigate items identified by the auditor in the way described in the above examples. Instead, the final amendments specify that audit procedures that the auditor performs to investigate the identified items are part of the auditor's response to the risk of material misstatement. The auditor determines the nature, timing, and extent of such procedures in accordance with PCAOB standards. The Board also considered, but did not prescribe, specific audit procedures to address items not selected for a test of details (*i.e.,* remaining items in the population) when the auditor's means of selecting items was selecting specific items. Although certain audit procedures may be effective to address the assessed risk under certain circumstances, other audit procedures may be more effective under different circumstances. Because of the wide range of both the analyses that the auditor may perform to identify items for further investigation, and the potentially appropriate audit procedures that the auditor may perform to investigate them, the Board believes that an overly prescriptive standard could in certain cases lead auditors to perform audit procedures without considering the facts and circumstances of the audit engagement.

ii. Describing a New Specific Audit Procedure

The Board considered but did not describe (or define), technology-assisted analysis or similar terms (*e.g.,* data analysis or data analytics) in AS 1105 as a new specific audit procedure. Although describing technology-assisted analysis as a specific audit procedure might clarify certain auditor responsibilities, it could also create confusion and unnecessarily constrain the potential use of such analyses in the audit. As the Board's research indicates, and as commenters have stated, auditors already incorporate technology-assisted analysis in various types of audit procedures (*e.g.,* inspection, recalculation, reperformance, analytical procedures) that are used for various purposes (*e.g.,* identifying risk or responding to risk). In addition, describing technology-assisted analysis or similar terms would present challenges because the meaning of such terms may vary depending on the context and may further evolve as technology evolves.

iii. Requiring Auditors' Use of Technology

The final amendments, consistent with existing PCAOB standards, are principles-based and are intended to be applicable to all audits conducted under PCAOB standards. An investor-related group commented that the Board should consider requiring that auditors use certain types of technology-based tools that financial research and investment management firms have used to assess and verify the accuracy and completeness of financial statements, in order to improve audit quality and help detect fraud. In contrast, some commenters noted that requiring the use of certain technology could have unintended consequences for smaller companies and affect the ability of smaller firms to compete. As one commenter noted, clients of small and mid-sized accounting firms may rely on other processes appropriate to their size to manage their operations and financial reporting, and the use of technology-assisted analysis may not be as cost-effective in those circumstances. Another commenter noted that it is important that PCAOB standards continue to enable auditors to employ audit procedures that are appropriate based on the engagement-specific facts and circumstances, recognizing that technology-assisted analysis may not be the most effective option and therefore its use should not be expected on all audits. That commenter emphasized the need for the proposed amendments to be scalable for firms (and the companies they audit) of all sizes and with varying technological resources. Several other commenters stated that the principles-based nature of the proposed amendments was important, so that they can be applicable to all PCAOB-registered firms and the audits they conduct under PCAOB standards, regardless of the size of the firm or complexity of the issuer.

The Board considered the views of commenters, including those of investors, and the Board decided not to require auditors' use of technology as part of these amendments, which would have been outside the scope of the project. Maintaining a principles-based approach to these amendments is appropriate due to the ever-evolving nature of technology; requiring the use of specific types of technology, based on how they are used currently, could quickly become outdated. In addition, as discussed above, the Board's Technology Innovation Alliance Working Group continues to advise the Board on the use of emerging technologies by auditors and preparers relevant to audits and their potential impact on audit quality. These ongoing activities may inform future standard-setting projects.

Application of the Proposed Rules to Audits of Emerging Growth Companies

Pursuant to section 104 of the Jumpstart Our Business Startups (''JOBS'') Act, rules adopted by the Board subsequent to April 5, 2012, generally do not apply to the audits of emerging growth companies (*i.e.,* EGCs), as defined in section 3(a)(80) of the Exchange Act, unless the SEC ''determines that the application of such additional requirements is necessary or appropriate in the public interest, after considering the protection of investors, and whether the action will promote efficiency, competition, and capital formation.'' [115] As a result of the JOBS Act, the rules and related amendments to PCAOB standards that the Board adopts are generally subject to a

[114] *See* detailed discussion above.

[115] *See* Public Law 112–106 (Apr. 5, 2012). *See also* section 103(a)(3)(C) of Sarbanes-Oxley, as added by section 104 of the JOBS Act (providing that any rules of the Board requiring: (1) mandatory audit firm rotation; or (2) a supplement to the auditor's report in which the auditor would be required to provide additional information about the audit and the financial statements of the issuer (auditor discussion and analysis), shall not apply to an audit of an EGC. The amendments do not fall within either of these two categories).

separate determination by the SEC regarding their applicability to audits of EGCs.

To inform consideration of the application of auditing standards to audits of EGCs, the PCAOB staff prepares a white paper annually that provides general information about characteristics of EGCs.[116] As of the November 15, 2022, measurement date in the February 2024 EGC White Paper, PCAOB staff identified 3,031 companies that self-identified with the SEC as EGCs and filed with the SEC audited financial statements in the 18 months preceding the measurement date.[117]

As discussed above, auditors are expanding the use of technology-assisted analysis in audits. The final amendments, as discussed above, address aspects of designing and performing audit procedures that involve technology-assisted analysis. The proposed rules are principles-based and are intended to be applied in all audits performed pursuant to PCAOB standards, including audits of EGCs.

The discussion of benefits, costs, and unintended consequences of the proposed rules above is generally applicable to all audits performed pursuant to PCAOB standards, including audits of EGCs. The economic impacts on an individual EGC audit would depend on factors such as the auditor's ability to distribute implementation costs across its audit engagements, whether the auditor has already incorporated technology-assisted analysis into its audit approach, and electronic information acquisition challenges (*e.g.,* information availability, legal restrictions, or privacy concerns). EGCs are more likely to be newer companies, which are typically smaller in size and receive lower analyst coverage. These factors may increase the importance to investors of the higher audit quality resulting from the proposed rules, as high-quality audits generally enhance the credibility of management disclosures.[118]

However, as discussed above, the use of technology-assisted analysis appears to be less prevalent among NAFs than GNFs. Therefore, since EGCs are more likely than non-EGCs to be audited by NAFs, the impacts of the proposed rules on EGC audits may be less than on non-EGC audits.[119]

The proposed rules could impact competition in an EGC's product market if the indirect costs to audited companies disproportionately impact EGCs relative to their competitors. However, as discussed above, the costs associated with the proposed rules are expected to be relatively modest. Therefore, the impact of the proposed rules on competition, if any, is likewise expected to be limited.

Overall, the proposed rules are expected to enhance the efficiency and quality of EGC audits that implement technology-assisted analysis and contribute to an increase in the credibility of financial reporting by those EGCs. To the extent the proposed rules improve EGCs' financial reporting quality, they may also improve the efficiency of capital allocation, lower the cost of capital, and enhance capital formation. For example, higher financial reporting quality may allow investors to more accurately identify companies with the strongest prospects for generating future risk-adjusted returns and reallocate their capital accordingly. Investors may also perceive less risk in EGC capital markets generally, leading to an increase in the supply of capital to EGCs. This may increase capital formation and reduce the cost of capital to EGCs. We are unable to quantify in precise terms this potential benefit, which would depend both on how audit firms respond to the standard and on how their response affects audit quality, factors that are likely to vary across audit firms and across engagements.

Furthermore, if certain of the proposed rules did not apply to the audits of EGCs, auditors would need to address differing audit requirements in their methodologies, or policies and procedures, with respect to audits of EGCs and non-EGCs. This could create the potential for additional confusion.

Two commenters on the proposal specifically supported the application of the amendments to EGCs. One of those commenters stated that excluding EGCs from the proposal would be inconsistent with protecting the public interest.

Accordingly, and for the reasons explained above, the Board will request that the Commission determine that it is necessary or appropriate in the public interest, after considering the protection of investors and whether the action will promote efficiency, competition, and capital formation, to apply the proposed rules to audits of EGCs.

## III. Date of Effectiveness of the Proposed Rules and Timing for Commission Action

Within 45 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Board consents, the Commission will:

(A) By order approve or disapprove such proposed rules; or

(B) Institute proceedings to determine whether the proposed rules should be disapproved.

## IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rules are consistent with the requirements of Title I of the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/pcaob*); or
- Send an email to *rule-comments@sec.gov.* Please include PCAOB–2024–03 on the subject line.

[116] See PCAOB, White Paper on Characteristics of Emerging Growth Companies and Their Audit Firms at November 15, 2022 (Feb. 20, 2024) (''EGC White Paper''), available at *https://pcaobus.org/resources/other-research-projects.*

[117] The EGC White Paper uses a lagging 18-month window to identify companies as EGCs. Please refer to the ''Current Methodology'' section in the white paper for details. Using an 18-month window enables staff to analyze the characteristics of a fuller population in the EGC White Paper but may tend to result in a larger number of EGCs being included for purposes of the present EGC analysis than would alternative methodologies. For example, an estimate using a lagging 12-month window would exclude some EGCs that are delinquent in making periodic filings. An estimate as of the measurement date would exclude EGCs that have terminated their registration, or that have exceeded the eligibility or time limits. *See id.*

[118] Researchers have developed a number of proxies that are thought to be correlated with information asymmetry, including small company size, lower analyst coverage, larger insider holdings, and higher research and development costs. To the extent that EGCs exhibit one or more of these properties, there may be a greater degree of information asymmetry for EGCs than for the broader population of companies, which increases the importance to investors of the external audit to enhance the credibility of management disclosures. *See, e.g.,* Steven A. Dennis and Ian G. Sharpe, *Firm Size Dependence in the Determinants of Bank Term Loan Maturity,* 32 Journal of Business Finance & Accounting 31 (2005); Michael J. Brennan and Avanidhar Subrahmanyam, *Investment Analysis and Price Formation in Securities Markets,* 38 Journal of Financial Economics 361 (1995); David Aboody and Baruch Lev, *Information Asymmetry, R&D, and Insider Gains,* 55 The Journal of Finance 2747 (2000); Raymond Chiang and P. C. Venkatesh, *Insider Holdings and Perceptions of Information Asymmetry: A Note,* 43 The Journal of Finance 1041 (1988); Molly Mercer, *How Do Investors Assess the Credibility of Management Disclosures?,* 18 Accounting Horizons 185 (2004).

[119] Staff analysis indicates that, compared to exchange-listed non-EGCs, exchange-listed EGCs are approximately 2.6 times as likely to be audited by an NAF and approximately 1.3 times as likely to be audited by a triennially inspected firm. Source: EGC White Paper and Standard & Poor's.

*Paper Comments*

• Send paper comments in triplicate to Vanessa A. Countryman, Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to PCAOB–2024–03. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/pcaob*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules that are filed with the Commission, and all written communications relating to the proposed rules between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of such filing will also be available for inspection and copying at the principal office of the PCAOB. Do not include personal identifiable information in 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 PCAOB–2024–03 and should be submitted on or before July 23, 2024.

For the Commission, by the Office of the Chief Accountant.

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024–14488 Filed 7–1–24; 8:45 am]

**BILLING CODE 8011–01–P**

## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–100436; File No. SR–CboeBYX–2024–023]**

## Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Amend Its Fee Schedule To Clarify Its Certification Port Fees

June 26, 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 June 13, 2024, Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'') filed with the Securities and Exchange Commission (the ''Commission'') the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

### I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Cboe BYX Exchange, Inc. (the ''Exchange'' or ''BYX'' or ''BYX Equities'') is filing with the Securities and Exchange Commission (''Commission'') a proposed rule change to amend its Fee Schedule. The text of the proposed rule change is provided in Exhibit 5.

The text of the proposed rule change is also available on the Exchange's website (*http://markets.cboe.com/us/equities/regulation/rule_filings/BYX/*), at the Exchange's Office of the Secretary, and at the Commission's Public Reference Room.

### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The Exchange proposes to amend its Fees Schedule to clarify its fees for Certification Logical Port fees.[3]

By way of background, the Exchange offers a variety of logical ports, which provide users with the ability within the Exchange's System to accomplish a specific function through a connection, such as order entry, data receipt or access to information. Specifically, the Exchange offers Logical Ports,[4] Purge Ports,[5] Multicast PITCH GRP Ports and Multicast PITCH Spin Server Ports.[6] For each type of the aforementioned logical ports that is used in the production environment, the Exchange also offers corresponding ports which provide Members and non-Members access to the Exchange's certification environment to test proprietary systems and applications (*i.e.,* ''Certification Logical Ports''). The certification environment facilitates testing using replicas of the Exchange's production environment process configurations which provide for a robust and realistic testing experience. For example, the certification environment allows unlimited firm-level testing of order types, order entry, order management, order throughput, acknowledgements, risk settings, mass cancelations, and purge requests. The Exchange currently provides free of charge one Certification Logical Port per port type offered in the production environment (*i.e.,* Logical Ports, Purge, Multicast PITCH GRP, and Multicast PITCH Spin Server Ports) and a monthly fee of $250 per Certification Logical Port for any additional Certification Logical Ports.[7]

The Exchange proposes to make clear in the notes section under the Logical Port Fees section of the Fees Schedule that the Certification Logical Port fees only apply if the corresponding logical port type is also in the production environment. For example, if the Exchange intends to adopt a new port type that has not yet been launched in the live production environment, any certification port for that port type will be free until such time that the proposed new port is in the production environment. Once any new logical port type is in the live production environment, Members and Non-Members will only be entitled to one

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange initially filed this proposed rule change on May 31, 2024 for June 3, 2024 effectiveness (SR–CboeBYX–2024–018). On June 13, 2024, the Exchange withdrew that filing and submitted this filing.

[4] Logical Ports include FIX and BOE ports (used for order entry), drop logical port (which grants users the ability to receive and/or send drop copies) and ports that are used for receipt of certain market data feeds.

[5] Purge Ports are dedicated ports that permit a user to simultaneously cancel all or a subset of its orders in one or more symbols across multiple logical ports by requesting the Exchange to effect such cancellation.

[6] Spin Ports and GRP Ports are used to request and receive a retransmission of data from the Exchange's Multicast PITCH data feeds.

[7] For example, if a Member maintains 3 FIX Certification Logical Ports, 1 Purge Certification Logical Port, and 1 set of Multicast PITCH Spin Server Certification Logical Port, the Member will be assessed $500 per month for Certification Logical Port Fees (*i.e.,* 1 FIX, 1 Purge and 1 set of Multicast PITCH Spin Server Certification Logical Ports × $0 and 2 FIX Certification Logical Ports × $250).

free certification logical port for that port type, and any additional certifications ports of that type will be assessed the regular monthly $250 per port charge.

The Exchange notes that purchasing additional Certification Logical Ports continues to be voluntary and not required in order to participate in the production environment, including live production trading on the Exchange. Additionally, Members and non-Members are not required to purchase any particular production logical port in order to receive a corresponding Certification Logical Port free of charge.[8] Further, the Exchange also notes that other exchanges similarly assess fees related to their respective testing environments.[9]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with the Securities Exchange Act of 1934 (the ''Act'') and the rules and regulations thereunder applicable to the Exchange and, in particular, the requirements of section 6(b) of the Act.[10] Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5) [11] requirements that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Additionally, the Exchange believes the proposed rule change is consistent with section 6(b)(4) of the Act,[12] which requires that Exchange rules provide for the equitable allocation of reasonable dues, fees, and other charges among its Members and other persons using its facilities.

As noted above, the Exchange's certification environment provides a robust and realistic testing experience using a replica of the Exchange's production environment process configurations. This environment enables market participants to manage risk more effectively through testing software development changes in certification prior to implementing them in the live trading environment, thereby reducing the likelihood of a potentially disruptive system failure in the live trading environment, which has the potential to affect all market participants. The Exchange believes this is especially true when testing a new port type that has not yet launched in the production environment. As such, the Exchange believes it's reasonable to only assess the Certification Logical Port fee to ports that are also available in the production environment as to not discourage the testing of new ports ahead of any respective launch date. The Exchange also believes applying the Certification Logical Port fee is reasonable once such ports are available in the production environment because while such ports will no longer be completely free, Members and non-Members will continue to be entitled to receive free of charge one Certification Logical Port for such port. The Exchange continues to believe one Certification Logical Port per logical port type will be sufficient for most Members or Non-Members and indeed anticipates that the majority of users will not purchase additional Certification Logical Ports. For those who wish to obtain additional Certification Logical Ports based on their respective business needs, such as those wishing to test across various diverse systems within their own infrastructure, they are able to do so for a modest fee. Indeed, the decision to purchase additional ports is optional and no market participant is required or under any regulatory obligation to purchase excess Certification Logical Ports in order to access the Exchange's certification environment.[13] Further, the Exchange has observed that market participants that do choose to purchase additional Certification Logical Ports maintain significantly fewer Certification Logical Ports as compared to the corresponding logical ports they use in the production in environment.

The Exchange believes the proposal to make clear that the Certification Logical Port fee applies only to logical ports that are in the production environment is equitable and not unfairly discriminatory because it applies uniformly to all market participants that choose to obtain additional Certification Logical Ports and all market participants will have further clarity as to which certification ports are subject to the current fee. The Exchange also believes the proposed change is reasonable, equitable and not unfairly discriminatory because it is designed to encourage market participants to avail themselves of Certification Logical Ports for new port types before they launch to become acclimated with the new connectivity offering ahead of going live in the trading environment. The Exchange believes the proposal to add this language to the notes section in the Fees Schedule also provides clarity in the rules as to when the Certification Logical Port fee applies and reduces potential confusion.

*B. Self-Regulatory Organization's Statement on Burden on Competition*

The Exchange does not believe that the proposed rule change will impose any burden on intramarket or intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that the proposed rule change will impose any burden on intramarket competition because as the proposed change applies uniformly to all market participants. Additionally, the Exchange does not believe that the proposed fee creates an undue burden on competition because the Exchange will continue to offer free of charge one Certification Logical Port per each logical port type once offered in the production environment. Also as discussed, the purchase of additional ports is optional and based on the business needs of each market participant. Moreover, such market participants will continue to benefit from access to the certification environment, which the Exchange believes provides a robust and realistic testing experience via a replica of the production environment, which may be especially critical during the time leading up to the launch of a new port type in the production environment.

The Exchange does not believe that the proposed rule changes will impose any burden on intermarket competition that is not necessary or appropriate in furtherance of the purposes of the Act. Particularly, the proposed change applies only to the Exchange's certification environment. Additionally, the Exchange notes that it operates in a highly competitive market. Members

[8] For example, a Member may obtain a Certification Purge Port free of charge, even if that Member has not otherwise purchased a Purge Port for the live production environment. Certification Logical Ports are not automatically enabled, but rather must be proactively requested by Members or Non-Members.

[9] *See e.g.,* Nasdaq Stock Market LLC, Equity 7, Pricing Schedule, Section 130. *See also* MIAX Options Exchange Fee Schedule, Section 4, Testing and Certification Fees.

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

[12] 15 U.S.C. 78f(b)(4).

[13] Although many Members and Non-Members use Certification Logical Ports on a daily basis, the Exchange notes frequency of use of Certification Logical Ports varies by user and depends on their respective business needs. To the extent a Member or Non-Member purchases additional Certification Logical Ports and their needs later change, or they determines they no longer wish to maintain excess Certification Logical Ports, the Member or Non-Member is free to cancel such ports for the following month(s).

have numerous alternative venues that they may participate on and direct their order flow, including 15 other equities exchanges, as well as a number of alternative trading systems and other off-exchange venues, where competitive products are available for trading. Indeed, participants can readily choose to send their orders to other exchanges, and, additionally off-exchange venues, if they deem overall fee levels at those other venues to be more favorable. Moreover, the Commission has repeatedly expressed its preference for competition over regulatory intervention in determining prices, products, and services in the securities markets. Specifically, in Regulation NMS, the Commission highlighted the importance of market forces in determining prices and SRO revenues and, also, recognized that current regulation of the market system ''has been remarkably successful in promoting market competition in its broader forms that are most important to investors and listed companies.'' [14] The fact that this market is competitive has also long been recognized by the courts. In *NetCoalition* v. *Securities and Exchange Commission,* the D.C. Circuit stated as follows: ''[n]o one disputes that competition for order flow is 'fierce.' . . . As the SEC explained, '[i]n the U.S. national market system, buyers and sellers of securities, and the broker-dealers that act as their order-routing agents, have a wide range of choices of where to route orders for execution'; [and] 'no exchange can afford to take its market share percentages for granted' because 'no exchange possesses a monopoly, regulatory or otherwise, in the execution of order flow from broker dealers'. . . .''.[15] Accordingly, the Exchange does not believe its proposed fee change imposes any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

The Exchange neither solicited nor received comments on the proposed rule change.

[14] *See* Securities Exchange Act Release No. 51808 (June 9, 2005), 70 FR 37496, 37499 (June 29, 2005).

[15] *NetCoalition* v. *SEC,* 615 F.3d 525, 539 (D.C. Cir. 2010) (quoting Securities Exchange Act Release No. 59039 (December 2, 2008), 73 FR 74770, 74782–83 (December 9, 2008) (SR–NYSEArca–2006–21)).

**III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [16] and paragraph (f) of Rule 19b–4 [17] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act. If the Commission takes such action, the Commission will institute proceedings to determine whether the proposed rule change should be approved or disapproved.

**IV. Solicitation of Comments**

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

*Electronic Comments*

- Use the Commission's internet comment form (*https://www.sec.gov/rules/sro.shtml*); or
- Send an email to *rule-comments@sec.gov.* Please include file number SR–CboeBYX–2024–023 on the subject line.

*Paper Comments*

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street NE, Washington, DC 20549–1090.

All submissions should refer to file number SR–CboeBYX–2024–023. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's internet website (*https://www.sec.gov/rules/sro.shtml*). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street NE, Washington, DC 20549, on official business days between the hours of 10 a.m. and 3 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. Do not include personal identifiable information in submissions; you should submit only information that you wish to make available publicly. We may redact in part or withhold entirely from publication submitted material that is obscene or subject to copyright protection. All submissions should refer to file number SR–CboeBYX–2024–023 and should be submitted on or before July 23, 2024.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[18]

**Sherry R. Haywood,**

*Assistant Secretary.*

[FR Doc. 2024–14518 Filed 7–1–24; 8:45 am]

**BILLING CODE 8011–01–P**

[16] 15 U.S.C. 78s(b)(3)(A).

[17] 17 CFR 240.19b–4(f).

[18] 17 CFR 200.30–3(a)(12).

## DEPARTMENT OF STATE

**[Public Notice: 12443]**

### Notice of Determinations; Culturally Significant Objects Being Imported for Exhibition—Determinations: ''We Live in Painting: The Nature of Color in Mesoamerican Art'' Exhibition

**SUMMARY:** Notice is hereby given of the following determinations: I hereby determine that certain objects being imported from abroad pursuant to agreements with their foreign owners or custodians for temporary display in the exhibition ''We Live in Painting: The Nature of Color in Mesoamerican Art'' at the Los Angeles County Museum of Art, Los Angeles, California; the Nelson-Atkins Museum of Art, Kansas City, Missouri; and at possible additional exhibitions or venues yet to be determined, are of cultural significance, and, further, that their temporary exhibition or display within the United States as aforementioned is in the national interest. I have ordered that Public Notice of these determinations be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Reed Liriano, Program Coordinator, Office of the Legal Adviser, U.S. Department of State (telephone: 202–632–6471; email: *section2459@state.gov*). The mailing address is U.S. Department of State, L/PD, 2200 C Street NW (SA–5), Suite 5H03, Washington, DC 20522–0505.

**SUPPLEMENTARY INFORMATION:** The foregoing determinations were made

pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.;* 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, Delegation of Authority No. 236–3 of August 28, 2000, and Delegation of Authority No. 523 of December 22, 2021.

**Nicole L. Elkon,**

*Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2024–14548 Filed 7–1–24; 8:45 am]

**BILLING CODE 4710–05–P**

## OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

### Notice of Korea's Completion of Applicable Procedures To Give Effect to a Modification to the Rules of Origin of the U.S.-Korea Free Trade Agreement and Announcement of Effective Date

**AGENCY:** Office of the United States Trade Representative.

**ACTION:** Notice.

**SUMMARY:** In June 2020, the President proclaimed a modification to the rules of origin for certain Korean woven fabrics under the United States-Korea Free Trade Agreement (KORUS) and specified that the modification would go into effect the first day of the month following the date on which the U.S. Trade Representative published a notice that Korea has completed its applicable procedures to give effect to a corresponding modification to its rules of origin to be applied to goods of the United States. Korea notified the United States that it had completed its applicable procedures on April 19, 2024. Accordingly, this notice announces the effective date for that modification.

**DATES:** The modification to the rules of origin are applicable as of August 1, 2024.

**FOR FURTHER INFORMATION CONTACT:** Scott Pietan, Deputy Assistant U.S. Trade Representative for Korea, at 202–395–9646 or *scott_pietan@ustr.eop.gov.*

**SUPPLEMENTARY INFORMATION:** The United States entered into KORUS on June 30, 2007. Congress approved KORUS in section 101(a) of the United States-Korea Free Trade Agreement Implementation Act (Pub. L. 112–41, 125 Stat. 428) (KORUS Implementation Act or Act). Section 202 of the KORUS Implementation Act provides rules for determining whether goods imported into the United States originate in the territory of a KORUS party and thus are eligible for the tariff and other treatment contemplated under the KORUS. Section 202 of the Act also authorizes the President to proclaim, as a part of the Harmonized Tariff Schedule of the United States (HTSUS), the rules of origin set out in the KORUS, and to modify previously proclaimed rules of origin, subject to the consultation and layover requirements of section 104 of the Act. Presidential Proclamation 8783 of March 6, 2012 (77 FR 14265) proclaimed the tariff modifications and rules of origin necessary or appropriate to carry out the KORUS in the HTSUS.

In 2018, the Government of Korea submitted requests to modify certain textile rules of origin based on commercial availability of specific inputs. Following public comment on the proposed rules changes (83 FR 52418, October 17, 2018), the United States and Korea reached agreement to modify the rule of origin concerning certain woven fabrics of HTSUS heading 5408. Pursuant to the KORUS Implementation Act, the U.S. International Trade Commission (USITC) conducted an economic impact review and concluded that the impact on U.S. imports, exports and production of the proposed modifications would be negligible. *See* USITC Pub. 4917: *https://www.usitc.gov/publications/tariff_affairs/pub4917.pdf.* The Industry Trade Advisory Committee on Textiles and Clothing did not object to the proposed modifications. Congress also did not object during the consultation and layover process.

In Proclamation 10053 of June 29, 2020 (85 FR 39821, July 1, 2020), the President determined that it was necessary to modify the HTSUS in order to reflect the agreement between the United States and Korea related to the KORUS rules of origin and proclaimed a modification to the HTSUS as set forth in Annex VI of USITC Publication 5060—*https://www.usitc.gov/publications/tariff_affairs/pub5060.pdf.* Pursuant to Annex VI, this modification is effective the first day of the month following the date on which the U.S. Trade Representative publishes a notice that Korea has completed its applicable procedures to give effect to a corresponding modification to be applied to goods of the United States.

On April 19, 2024, Korea notified the United States that it had completed its applicable domestic procedures to give effect to a corresponding modification to the KORUS rules of origin for certain fabrics of heading 5408 with respect to goods of the United States. Pursuant to Presidential Proclamation 10053 this change takes effect August 1, 2024.

**Katherine White,**

*Chief Textiles and Apparel Negotiator, Office of the United States Trade Representative.*

[FR Doc. 2024–14094 Filed 7–1–24; 8:45 am]

**BILLING CODE 3390–F4–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Docket No.: FAA–2023–2559; Summary Notice No. 2024–2]**

### Petition for Exemption; Summary of Petition Received; Scott Morris

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

**ACTION:** Notice.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number and must be received on or before July 22, 2024.

**ADDRESSES:** Send comments identified by docket number FAA–2023–2559 using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.
- *Privacy:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these

comments, without edit, including any personal information the commenter provides, to *http://www.regulations.gov*, as described in the system of records notice (DOT/ALL–14 FDMS), which can be reviewed at *http://www.dot.gov/privacy*.

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Sean O'Tormey at 202–267–4044, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC.

**Dan Ngo,**

*Manager, Part 11 Petitions Branch, Office of Rulemaking.*

**Petition for Exemption**

*Docket No.:* FAA–2023–2559.
*Petitioner:* Scott Morris.
*Section of 14 CFR Affected:* § 61.129(a)(4).

*Description of Relief Sought:* The petitioner is seeking relief from § 61.129(a)(4) as the petitioner has a medical color deficiency resulting in a night flight restriction and therefore is seeking to fly the cross-country flight specified under § 61.129(a)(4)(i) solo during daylight conditions and then do the night requirements of § 61.129(a)(4)(ii) performing the duties of pilot in command with an instructor on-board.

[FR Doc. 2024–14497 Filed 7–1–24; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Docket No.: FAA–2023–0901; Summary Notice No. 2024–28]**

### Petition for Exemption; Summary of Petition Received; Veteran Drone Services LLC

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

**ACTION:** Notice.

**SUMMARY:** This notice contains a summary of a petition seeking relief from specified requirements of Federal Aviation Regulations. The purpose of this notice is to improve the public's awareness of, and participation in, the FAA's exemption process. Neither publication of this notice nor the inclusion nor omission of information in the summary is intended to affect the legal status of the petition or its final disposition.

**DATES:** Comments on this petition must identify the petition docket number and must be received on or before July 22, 2024.

**ADDRESSES:** Send comments identified by docket number [FAA–2023–0901] using any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at (202) 493–2251.

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

*Docket:* Background documents or comments received may be read at *http://www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC 20590–0001, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

**FOR FURTHER INFORMATION CONTACT:** Jake Troutman, (202) 683–7788, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85.

Issued in Washington, DC.

**Dan A. Ngo,**

*Manager, Part 11 Petitions Branch, Office of Rulemaking.*

**Petition for Exemption**

*Docket No.:* FAA–2023–0901.
*Petitioner:* Veteran Drone Services LLC.
*Section(s) of 14 CFR Affected:* 61.3(a)(1)(i), 61.3(c)(1), 61.23(a)(2), 91.7(a), 91.119(c), 91.121, 91.151(b), 91.209(a)(1), 91.403(b), 91.405(a), 91.407(a)(1), 91.409(a)(1), 91.409(a)(2), 91.417(a), 91.417(b), 137.19(c), 137.19(d), 137.19(e)(2)(ii), 137.19(e)(2)(iii), 137.19(e)(2)(v), 137.31, 137.33, 137.41(c), and 137.42.

*Description of Relief Sought:* Veteran Drone Services LLC requests exemption for commercial agricultural-related services using unmanned aircraft systems (UAS), weighing more than 55 pounds (lbs.), to allow for the remote pilot to hold a minimum of a driver's license in lieu of a third-class medical certificate.

[FR Doc. 2024–14499 Filed 7–1–24; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

**[Docket No. 2020–0752]**

### Service Difficulty Report; Agency Information Collection Activities: Requests for Comments; Clearance of a Renewed Approval of Information Collection: 49 U.S.C. 44701/Service Difficulty Report

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice and request for comments.

**SUMMARY:** In accordance with the Paperwork Reduction Act of 1995, FAA invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves operators or repair stations report any malfunctions and defects to the Administrator. The information collected allows the FAA to evaluate its certification standards, maintenance programs, and regulatory requirements. It is also the basis for issuance of Airworthiness Directives designed to prevent unsafe conditions and accidents.

**DATES:** Written comments should be submitted by September 3, 2024.

**ADDRESSES:** Please send written comments:

*By Electronic Docket: www.regulations.gov* (Enter docket number into search field).

*By Mail:* Attn: Automation Systems Management Branch, AFS–950, 13873 Park Center Road, Suite 165 Herndon, VA 20171.

**FOR FURTHER INFORMATION CONTACT:** Andrew Seliga by email at: *Andrew.Seliga@faa.gov;* phone: (703) 230–7664.

**SUPPLEMENTARY INFORMATION:**

*Public Comments Invited:* You are asked to comment on any aspect of this information collection, including (a) Whether the proposed collection of information is necessary for FAA's performance; (b) the accuracy of the estimated burden; (c) ways for FAA to enhance the quality, utility and clarity of the information collection; and (d) ways that the burden could be minimized without reducing the quality of the collected information. The agency will summarize and/or include your comments in the request for OMB's clearance of this information collection.

*OMB Control Number:* 2120–0663.

*Title:* Service Difficulty Report.

*Form Numbers:* FAA Form 8070–1, FAA Form 8010–4.

*Type of Review:* Renewal of an information collection.

*Background:* This collection affects certificate holders operating under 14 CFR part 121, 125, 135, and 145 who are required to report service difficulties and malfunction or defect reports. The data collected identifies mechanical failures, malfunctions, and defects that may be a hazard to the operation of an aircraft. The FAA uses this data to identify trends that may facilitate the early detection of airworthiness problems. When defects are reported which are likely to exist on other products of the same or similar design, the FAA may disseminate safety information to a particular section of the aviation community.

*Respondents:* Approximately 60,000 respondents.

*Frequency:* Information is collected on occasion.

*Estimated Average Burden per Response:* 15 minutes.

*Estimated Total Annual Burden:* 15,000.

Issued in Washington DC, on June 26, 2024.

**Sandra L. Ray,**

*Aviation Safety Inspector, AFS–260.*

[FR Doc. 2024–14504 Filed 7–1–24; 8:45 am]

**BILLING CODE 4910–13–P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

**[FHWA Docket No. FHWA–2023–0005]**

### Surface Transportation Project Delivery Program; Arizona Department of Transportation Final FHWA Audit Report

**AGENCY:** Federal Highway Administration (FHWA), Department of Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** The Moving Ahead for Progress in the 21st Century Act established the Surface Transportation Project Delivery Program (referred to as National Environmental Policy Act (NEPA) Assignment Program), which allows a State to assume FHWA's environmental responsibilities for environmental review, consultation, and compliance under NEPA. When a State assumes these Federal responsibilities, the State becomes solely responsible and liable for carrying out the responsibilities it has assumed, in lieu of FHWA. This program mandates annual audits during each of the first 4 years of State participation to ensure compliance with program requirements. This is the third audit of the Arizona Department of Transportation's (ADOT) performance of its responsibilities under the NEPA Assignment Program. This notice announces the final third audit report for ADOT.

**FOR FURTHER INFORMATION CONTACT:** Owen Lindauer, Ph.D., RPA, Office of Project Development and Environmental Review, (202) 633–2655, *owen.lindauer@dot.gov,* Federal Highway Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590, or Ms. Michelle Andotra, Office of the Chief Counsel, (404) 562–3679, *michelle.andotra@dot.gov,* Federal Highway Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590. Office hours are from 8:00 a.m. to 4:30 p.m., EST, Monday through Friday, except Federal holidays.

**SUPPLEMENTARY INFORMATION:**

#### Electronic Access

An electronic copy of this notice may be downloaded from the specific docket page at *www.regulations.gov.*

#### Background

The Surface Transportation Project Delivery Program, codified at Title 23, United Sates Code (U.S.C.), section 327, commonly known as the NEPA Assignment Program, allows a State to assume FHWA's environmental responsibilities for review, consultation, and compliance for Federal-aid highway projects. When a State assumes these Federal responsibilities, the State becomes solely liable for carrying out the responsibilities it has assumed, in lieu of FHWA. The ADOT published its application for NEPA assumption on June 29, 2018, and solicited public comment. After considering public comments, ADOT submitted its application to FHWA on November 16, 2018. The application served as the basis for developing a memorandum of understanding (MOU) that identifies the responsibilities and obligations that ADOT would assume. The FHWA published a notice of the draft MOU in the **Federal Register** on February 11, 2019, at 84 FR 3275, with a 30-day comment period to solicit the views of the public and Federal Agencies. After the close of the comment period, FHWA and ADOT considered comments and proceeded to execute the MOU. Effective April 16, 2019, ADOT assumed FHWA's responsibilities under NEPA, and the responsibilities for other Federal environmental laws described in the MOU.

Section 327(g) of Title 23, U.S.C., requires the Secretary to conduct annual audits to ensure compliance with the MOU during each of the first 4 years of State participation and, after the fourth year, monitor compliance. The FHWA must make the results of each audit available for public comment. The FHWA published a notice in the **Federal Register** at 88 FR 67424 on September 29, 2023, soliciting comments for 30 days pursuant to 23 U.S.C. 327(g). As a result of the notice one non-substantive comment was submitted. The FHWA removed what was Observation #4 because, on reflection, ADOT's Section 4(f) manual adequately explained the expected documentation. This notice makes available the final report of ADOT's third audit under the program. The final audit report is available for download at *www.regulations.gov* under FHWA–2023–0005.

*Authority:* Section 1313 of Public Law 112–141; Section 6005 of Public Law 109–59; 23 U.S.C. 327; 23 CFR 773.

**Shailen P. Bhatt,**

*Administrator, Federal Highway Administration.*

**Surface Transportation Project Delivery Program FHWA Audit #3 of the Arizona Department of Transportation**

**Executive Summary**

This is Audit #3 of the Arizona Department of Transportation's (ADOT) assumption of

National Environmental Policy Act (NEPA) responsibilities under the Surface Transportation Project Delivery Program. Under the authority of Title 23, United States Code (U.S.C.), Section 327, ADOT and the Federal Highway Administration (FHWA) executed a memorandum of understanding (MOU) on April 16, 2019, to define ADOT's NEPA responsibilities and liabilities for Federal-aid highway projects and other related environmental reviews for highway projects in Arizona. This MOU covers environmental review responsibilities for projects that require the preparation of environmental assessments (EA), environmental impact statements (EIS), and unlisted (identified as individual by ADOT) categorical exclusions (CE).

The FHWA conducted a third audit of ADOT's performance according to the terms of the MOU from March 28 to April 1, 2022. Prior to the audit, the FHWA audit team reviewed ADOT's environmental manuals and procedures, NEPA project files, ADOT's response to FHWA's pre-audit information request (PAIR), and ADOT's NEPA Assignment Self-Assessment Report. During the third audit, the audit team conducted interviews with staff from ADOT's Environmental Planning (EP), Civil Rights Office, Communications, Construction Districts, Contracts & Specifications, as well as the Gila River Indian Community Tribal Historic Preservation Office (THPO), the Hopi THPO, the Salt River Pima-Maricopa Indian Community THPO, the Arizona State Historic Preservation Officer (SHPO), and the Arizona Attorney General's Office (AGO), and prepared preliminary audit results. The audit team presented these preliminary results to ADOT leadership on April 1, 2022.

The audit team found that ADOT has carried out the responsibilities it assumed consistent with the intent of the MOU and ADOT's application. The ADOT continues to develop, revise, and implement procedures and processes required to deliver its NEPA Assignment Program. This report describes several general observations and successful practices, as well as identified non-compliance observations where ADOT must implement corrective actions prior to the next audit. While ADOT has expressed lack of full agreement on some of the past audit observations, the audit team does recognize that ADOT continues to act on those past observations. By doing so, ADOT continues to assure successful program assignment.

**Background**

The purpose of the audits performed under the authority of 23 U.S.C. 327 is to assess a State's compliance with the provisions of the MOU as well as all applicable Federal statutes, regulations, policies, and guidance. The FHWA's review and oversight obligation requires FHWA to collect information to evaluate the success of the NEPA Assignment Program; to evaluate a State's progress toward achieving its performance measures as specified in the MOU; and to collect information for the administration of the NEPA Assignment Program. This report summarizes the results of the third audit in Arizona and ADOT's progress towards meeting the program review objectives identified in the MOU.

**Scope and Methodology**

The overall scope of this audit review is defined both in statute (23 U.S.C. 327) and the MOU (Part 11). The definition of an audit is one where an independent, unbiased body makes an official and careful examination and verification of accounts and records. Auditors who have special training with regard to accounts or financial records may follow a prescribed process or methodology in conducting an audit of those processes or methods. The FHWA considers its review to meet the definition of an audit because it is an unbiased, independent, official, and careful examination and verification of records and information about ADOT's assumption of environmental responsibilities.

The audit team consisted of NEPA subject matter experts (SME) from FHWA Headquarters, Resource Center, Office of the Chief Counsel, and staff from FHWA's Arizona Division. This audit is an unbiased official action taken by FHWA, which included an audit team of diverse composition, and followed an established process for developing the review report and publishing it in the **Federal Register**.

The audit team reviewed six NEPA Assignment Program elements: program management; documentation and records management; quality assurance/quality control (QA/QC); performance measures; legal sufficiency; and training. The audit team considered four additional focus areas for this review: the procedures contained in 40 CFR part 93 for project-level conformity; the procedures contained in Section 4(f) of the U.S. Department of Transportation Act of 1966, codified at 49 U.S.C. 303 and 23 U.S.C. 138 (otherwise known as Section 4(f)); environmental justice evaluations (Environmental Justice per Executive Order (E.O.) 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, and Tribal consultation per the National Historic Preservation Act (NHPA) of 1966, 36 CFR 800 *et seq.,* E.O. 13175, Consultation with Indian Tribal governments); and additionally, ADOT's environmental commitment tracking process. This report concludes with a status update for FHWA's observations from the first and second audit reports.

The audit team conducted a careful examination of ADOT policies, guidance, and manuals pertaining to NEPA responsibilities, as well as a representative sample of ADOT's project files. Other documents, such as ADOT's PAIR responses and ADOT's Self-Assessment Report, also informed this review. In addition, the audit team interviewed ADOT, Arizona AGO, Tribal THPO staff, as well as the Arizona SHPO via videoconference.

The timeframe defined for this third audit includes highway project environmental approvals completed between January 1 and December 31, 2021. During this timeframe, ADOT completed NEPA approvals and documented NEPA decision points for six projects. Due to the small sample size, the audit team reviewed all six projects. This consisted of one Tier 1 EIS, one EA with a Finding of No Significant Impact, and four unlisted CEs. The FHWA also reviewed information pertaining to project tracking and mitigation commitment compliance for all projects that have been processed by ADOT since the initiation of the NEPA Assignment Program.

The PAIR submitted to ADOT contained 25 questions covering all 6 NEPA Assignment Program elements. The audit team developed specific follow-up questions for the interviews with ADOT staff and others based on ADOT's responses to the PAIR. The audit team conducted a total of 23 interviews. Interview participants included staff from ADOT, Tribal THPOs, the Arizona AGO, as well as the Arizona SHPO.

The audit team compared ADOT manuals and procedures to the information obtained during interviews and project file reviews to determine if ADOT's performance of its MOU responsibilities is in accordance with ADOT procedures and Federal requirements. The audit team documented individual observations and successful practices during the interviews and reviews, and combined these under the six NEPA Assignment Program elements. The audit results are described below by program element.

**Overall Audit Opinion**

The audit team found ADOT has carried out the responsibilities it has assumed consistent with the intent of the MOU and ADOT's application. The FHWA is notifying ADOT of five non-compliance observations identified in this audit that require ADOT to take corrective action. The ADOT must address these non-compliance observations and continue making progress on non-compliance observations in the previous audits prior to the next audit. By addressing the observations cited in this report, ADOT will continue to ensure a successful program.

**Successful Practices and Observations**

Successful practices are practices that the team believes are positive and encourages ADOT to consider continuing or expanding the use of those practices in the future. The audit team identified successful practices in this report.

Observations are items the audit team would like to draw ADOT's attention to, and for which ADOT may consider improving processes, procedures, and/or outcomes. The team identified nine general observations in this report.

Non-compliance observations are instances where the audit team finds the State is not in compliance or is deficient with regard to a Federal regulation, statute, guidance, policy, State procedure, or the MOU. Non-compliance may also include instances where the State has failed to secure or maintain adequate personnel and/or financial resources to carry out the responsibilities they have assumed. The FHWA expects the State to develop and implement corrective actions to address all non-compliance observations. The audit team identified five non-compliance observations in this report.

*Program Management*

Successful Practice #1

The ADOT's PAIR response indicated, and interviews confirmed, that ADOT EP is

working with the ADOT Civil Rights Office (CRO) to develop an environmental justice standard work process. This will establish the roles and responsibilities between the two ADOT offices and ensure the CRO's technical review of the environmental justice analysis is completed.

Observations

Non-Compliance Observation #1: Incomplete Reporting to the Federal Infrastructure Permitting Dashboard

The ADOT is responsible for inputting project information for assigned projects into the Federal Infrastructure Permitting Dashboard (Dashboard), per MOU Section 8.5.1. During the audit, the audit team reviewed the Dashboard and found that it did not include Federal permit and authorization information for any of the applicable projects assigned to ADOT beyond NHPA Section 106 consultation. The audit team confirmed during interviews that ADOT had identified the need for additional permits and authorizations for these projects but had not uploaded the permit information in the Dashboard because those activities were planned far in the future. Per the Office of the Secretary of Transportation Dashboard reporting standards, ADOT is required to identify all Federal permits and authorizations that are anticipated to be needed for the project to complete construction, and to input target and actual milestone completion dates for those permits and authorizations. Target dates for milestones shall be based upon the best available information. The ADOT must take corrective action to address this issue by the next audit.

Observation #1: Deficiencies and Gaps in ADOT's Manuals and Procedures

The audit team reviewed ADOT's manuals and procedures. Section 4.2.4 of the MOU specifies that ADOT must implement procedures to support appropriate environmental analysis and decisionmaking under NEPA and associated laws and regulations. The audit team identified the following deficiencies in ADOT's manuals and procedures which may result in incomplete project documentation or analysis and increase the risk for non-compliance:

- In Audit #2, the audit team identified an observation that the ADOT EA/EIS Manual does not contain complete procedures for EA or EIS-level re-evaluations. The EA/EIS Manual instead points to the ADOT Categorical Exclusion (CE) Manual for direction, therefore the process for EA/EIS re-evaluations continues to be incomplete and not well-defined. The FHWA requested the correction of the EA or EIS-level re-evaluation section of the EA/EIS Manual in Audit #2. To date, ADOT has not made the correction as requested by FHWA, therefore, this is a continuing observation.
- The ADOT EA/EIS Manual and the current 2017 ADOT Public Involvement Plan approved prior to NEPA assignment do not contain procedures detailing the criteria ADOT uses to make the determination on when to hold public hearings for EA-level projects and what criteria will be used to make determinations on whether to hold a public hearing when one is requested, as specified in 23 CFR 771.111(h)(2)(iii). The ADOT has indicated in its response to the PAIR and in interviews that they are in the process of updating the ADOT Public Involvement Plan to include more specificity on, and fulfilling the requirements for, public involvement under NEPA. The procedures should also be referenced in the ADOT EA/EIS Manual.

The ADOT acknowledged the need for improvement regarding manuals/guidance and version control. The FHWA recommended that ADOT revisit their current procedures for updating manuals/guidance, from use of amendment tables to use of document dates to reflect the latest/most current version.

Observation #2: Improvements to Tribal Engagement Warranted

Interviews with ADOT staff and THPOs identified the need for improvements to Tribal consultation practices. The THPOs expressed frustration that ADOT's approach to engagement with the Tribes was lacking outside of Section 106, and engagement completed under Section 106 did not constitute meaningful engagement.

The ADOT should develop procedures that identify their responsibilities to coordinate and consult with Tribes in all phases of project development from planning through construction. The FHWA recommends:

- ADOT improve transparency regarding project information;
- ADOT provide the Tribes with any SHPO Section 4(f) consultation as part of the Tribal consultation package for individual projects; and
- All ADOT personnel with visibility on projects or who participate in meetings with Tribes complete sensitivity training as well as training regarding the Federal Government's relationship to Tribes under Government-to-Government consultation, per MOU Section 3.2.3.

The FHWA recommendations listed above are outlined in the FHWA/ADOT Tribal Consultation Letter Agreement executed on August 5, 2022. The ADOT accepted FHWA's recommendations and added a Tribal Liaison position.

Non-Compliance Observation #2: Responsibilities Under the 327 MOU Assigned to Additional Divisions Independent of ADOT EP

Based on interviews of ADOT staff, the PAIR responses, and review of ADOT's 327 application, it was identified that ADOT divisions outside of EP have responsibilities under NEPA Assignment. These divisions have not been identified or addressed in the ADOT EP procedures, manuals, or plans. These responsibilities include environmental commitment tracking, environmental review in the field, and completion of the necessary training associated with those responsibilities. The ADOT must take corrective actions to develop and implement procedures to apply the 327 MOU provisions to all divisions of ADOT, per MOU Section 1.1.2 and ADOT Final Application for Assumption of FHWA NEPA Responsibilities, by the next audit.

Non-Compliance Observation #3: Deficiencies in Environmental Commitment Tracking

The ADOT was unable to provide FHWA with a process manual or any type of consolidated report which documents the tracking of environmental commitments made during the environmental review process. The ADOT was unable to identify a meaningful tracking and monitoring system for environmental commitments and mitigation compliance. The ADOT has stated that this NEPA requirement is the responsibility of the ADOT district offices, which are outside the supervisory authority of ADOT's EP Office. Per MOU Section 1.1.2 and the ADOT Final Application for Assumption of FHWA NEPA Responsibilities, ADOT is responsible for environmental commitment tracking and all divisions that have identified and assumed FHWA NEPA responsibilities must comply with all provisions of the 327 MOU and ADOT's NEPA application requesting assignment. The ADOT must take corrective actions to address the tracking of environmental commitments and mitigation compliance by the next audit.

The ADOT does complete monitoring of environmental commitments associated with contractor responsibilities that have funding line items. This is completed using their Field Automated System (FAST) payment system, but that is only a small subset of project commitments. The ADOT EP has begun taking measures to establish a procedure or mechanism for tracking environmental commitments and mitigation compliance, including hiring an Environmental Commitments Coordinator and through development of the Environmental, Permits, Issues, and Commitments Tracking sheet.

*Documentation and Records Management*

Successful Practice #2

The ADOT staff identified a Historic Preservation Team tracking spreadsheet maintained by ADOT's Cultural Resources Program Manager. This spreadsheet is used to track and verify that all cultural resource environmental commitments on projects are implemented from identification to completion. If ADOT finds this tracking method to be effective, they could consider implementing it more widely to other environmental commitments throughout their program.

Observations

Non-Compliance Observation #4: Incomplete Project File Submission and Standard Folder Structure Issues

Pursuant to MOU Sections 8.2.2 and 8.2.3, FHWA requested all project files pertaining to the NEPA approvals and documented NEPA decision points to be completed during the audit review period. The audit team found several inconsistencies between ADOT's procedures for maintaining project files and the project file documentation provided to FHWA. The FHWA continues to experience issues when attempting to access the files ADOT provided for the audit, as they are either not in a format that can be

opened, or they are inaccessible because they are saved as a link to the internal ADOT system and not the actual document. The MOU Sections 11.1.2 and 11.1.3 detail ADOT's responsibilities to provide FHWA any information FHWA reasonably considers necessary to ensure that ADOT is adequately carrying out the responsibilities assigned, and ADOT's agreement to cooperate with FHWA in conducting audits including providing access to all necessary information.

The ADOT's procedures specify utilizing a standard folder structure for all projects and saving all project documentation and supporting information in the project files. The project files submitted by ADOT were incomplete, did not include all supporting documentation, and the files were not organized in accordance with the ADOT standard folder structure. It is unclear how ADOT is maintaining electronic project files and administrative records in compliance with its procedures and the terms of the 23 U.S.C. 327 MOU as they apply to records retention. The ADOT must take corrective action by the time of the next audit to ensure that the complete project file is provided to FHWA upon request. The documentation must support all determinations made. It is FHWA's expectation that documentation to support a project's decision will be included in ADOT's project files. The ADOT will also provide complete documentation to FHWA upon request.

Observation #3: Minor Edits Needed To Resolve Deficiency in Section 4(f) Evaluation of Archaeological Resources

The ADOT's Section 4(f) Manual (Sections 3.3 and 3.4.2) and FHWA regulations, policies, and guidance provide information on determining the applicability of Section 4(f) to archaeological resources and determining if there is an exception, or potential use. The ADOT's Section 4(f) Manual (Sections 5.2 and 5.3) specify procedures for documenting Section 4(f) uses of archaeological sites, exceptions per 23 CFR 774.13(b), and ''no use'' determinations.

During Audit #1, FHWA identified inconsistencies with ADOT's Section 4(f) evaluation and documentation of archaeological sites. In Audit #2, the audit team observed similar inconsistencies during the project file reviews and identified procedural deficiencies relating to ADOT's Section 4(f) evaluation and documentation. In response to the Audit #2 finding, ADOT updated their Section 106 Federal-aid Programmatic Agreement Manual (which also contains the Section 4(f) guidance) with new preservation in place language. The FHWA recommends the following edits to the new language (identified in italics and strikeouts):

''By law, transportation projects involving federal *actions and/or funding* require assessment in accordance with Section 4(f) of the Department of Transportation Act (PL 89–670) and its implementing regulations at 23 CFR part 774. In compliance with this statute, ADOT is obligated to assess archaeological sites ~~from a purely Western, science-based perspective.~~ In doing so, ADOT has found that Site X derives its primary statutory importance from its data potential, the nature and extent of which do not warrant preservation in place. If your office has no objection to this finding, ADOT will determine, *in* accordance with 23 CFR 774.13, that site X meets the archaeological exception from Section 4(f) consideration. ~~ADOT understands and acknowledges that while legally necessary, Western approaches to the identification, interpretation, and valuation of *archaeological sites* Native American places are but one of many voices regarding the significance of these resources.~~ As part of the ongoing Section 106 consultation process, ADOT has sought, and continues to seek information from *the State Historic Preservation Office (SHPO), Section 106 Consulting Parties, Tribes, and the public, as necessary,* ~~affiliated tribes~~ with regard to this and other affected cultural resources.''

Observation #4: Continued Improvement in Air Quality Conformity Communication

The ADOT has made progress regarding the level of communication and coordination with FHWA on project-level air quality conformity analysis. The ADOT should continue to build on that progress and keep the lines of communication open among all the interagency consultation partners. It would be good practice for ADOT to share re-evaluations requiring conformity determinations with interagency consultation partners for their input before requesting an FHWA conformity determination.

Observation #5: Inconsistent Use and Absence of the 327 MOU Disclosure Statement

Section 3.1.3 of the MOU specifies that ADOT shall disclose the disclosure statement to the public, Tribes, and agencies as part of agency outreach and public involvement procedures. The audit team project file reviews found inconsistent use of the disclosure statement on agency correspondence and technical reports, as well as absence of the statement in public involvement materials. The audit team found no consistent process or procedure for inclusion of the 327 MOU disclosure statement in the ADOT manuals/guidance as required by MOU Section 3.1.3. The ADOT should strive to achieve consistency in the placement of disclosure statements in documents.

Non-Compliance Observation #5: Deficiencies in Analysis of Environmental Impacts on Low-Income and Minority Populations (Environmental Justice)

The ADOT's EA/EIS Manual, CE Manual, and FHWA E.O., policies, and guidance provide information on completing the environmental justice analysis required for projects. The FHWA identified inconsistencies in ADOT's Section EA/EIS Manual, CE Manual, PAIR response, and interview responses regarding how ADOT completes environmental justice analyses. The methodology described by ADOT is not in compliance with FHWA policy and guidance because ADOT analyzes the effect prior to identifying environmental justice populations in the project area. In addition, the CE Manual describes evaluating census data, but no additional sources for environmental justice population identification. The CE Manual also infers a default position that there will be no disproportionately high and adverse impacts on low-income or minority populations with CE-level projects. The audit team observed similar inconsistencies during the project file reviews for this audit and identified the same environmental justice analysis procedural deficiencies in the project documentation, as well as project files with little or no analysis documentation. In addition, there were inconsistent degrees of coordination with the ADOT CRO, who, according to the CE Manual and the PAIR response, is to be consulted on all environmental justice analyses. Based on these findings and a review of the ADOT Training Plan, additional environmental justice training is needed, and ADOT's manuals and procedures should be brought into compliance with FHWA requirements. The ADOT must take corrective action to ensure that environmental justice analysis and assessments are in compliance with E.O. 12898, DOT Order 5610.2C, and FHWA policy and guidance by the next audit.

*Quality Assurance/Quality Control*

Observations

Observation #6: QA/QC Procedures Lack Assessment of Compliance

The ADOT has procedures in place for QA/QC which are described in the ADOT QA/QC Plan and the ADOT Project Development Procedures. When implemented, ADOT focuses on completeness of the project files, not the accuracy or technical merits of the decisions documented by those files. The ADOT does not check for compliance of the decisionmaking and it is therefore unclear how the project-level QC reviews inform the program. These observations were also found with Audits #1 and #2. The audit team continues to be unable to fully assess the implementation of project-level QC procedures. The ADOT does not appear to have a process in place for assessing the effectiveness of its QA/QC procedures to identify opportunities to improve the processes and procedures in their program, in ways that could help ensure better compliance with MOU requirements.

Observation #7: QA/QC Procedures Do Not Inform the Performance Measures

It is unclear how the QA/QC procedures, such as the use of QC checklists, are informing ADOT about the technical adequacy of the environmental analyses conducted for projects (MOU Section 10.2.1.B.c) and how the timing of QA/QC reviews influences timeliness and efficiency in completion of the NEPA analysis. The QA/QC process as documented does not include a review of the adequacy of the technical analyses completed. The current performance measures do not provide QA/QC completion dates to create meaningful datasets that allow assessment of the timeliness of QA/QC actions. The FHWA recommends that a column be added to the current performance data matrix that measures the adequacy of technical documentation, as well as date columns for the completion of the draft QC, final QC, and QA checklists.

*Performance Measures*

Successful Practice #3

The ADOT Environmental Programs Manager identified team-level internal performance measures used by ADOT EP to track timelines on biological decisions, improve coordination with U.S. Fish and Wildlife Service, and inform the prioritization of projects. The ADOT EP has made beneficial documentation changes based on these internal leading performance measures for the quality and timeliness of biological consultation. These could serve as an example of meaningful metrics that could be integrated into the performance measures that ADOT is currently tracking.

Observations

Observation #8: Incomplete Development and Implementation of Performance Measures To Evaluate the Quality of ADOT's Program

The audit team reviewed ADOT's development and implementation of performance measures to evaluate their program as required in the MOU (Part 10.2.1). The ADOT's QA/QC Plan, PAIR response, and self-assessment report identified several performance measures and reported the data for the review period. The ADOT's reporting data primarily dealt with increasing efficiencies and reducing project delivery schedules rather than measuring the quality of relationships with agencies and the general public, and decisions made during the NEPA process. The metrics ADOT has developed are not being used to provide a meaningful or comprehensive evaluation of the overall program. The FHWA was unable to determine how the ADOT QA/QC process is informing the improvement of the NEPA procedures used by ADOT, nor how it demonstrates meeting their performance measures. One area of concern is the lack of dates on key actions and when determinations are made. The FHWA recommends that ADOT evaluate the current performance measures matrix of other NEPA Assignment States DOTs (such as Utah and Ohio) to assist in making meaningful changes in their current performance measures tracking. This observation was also made in Audit #1 and Audit #2.

*Legal Sufficiency*

The ADOT had completed one formal legal sufficiency review of an assigned environmental document during the audit period. The EIS received a formal legal sufficiency finding, which was included in the project file. Currently, ADOT retains the services of two Assistant Attorneys General (AAG) for NEPA Assignment reviews and related matters. The assigned AAGs have received formal and informal training in environmental law matters. The ADOT and the AGO also have the option to procure outside counsel in accordance with 23 U.S.C. 327(a)(2)(G), but this was not necessary during the audit period.

Successful Practice #4

The ADOT seeks to involve lawyers early in the environmental review phase, with AAGs participating in project coordination team meetings and reviews of early drafts of environmental documents. The AAGs will provide legal guidance at any time ADOT requests it throughout the project development process. For formal legal sufficiency reviews, the process includes a submittal package from ADOT's NEPA program manager containing a request for legal sufficiency review. Various ADOT manuals set forth legal sufficiency review periods, and the AAGs coordinate with ADOT to ensure timely completion of legal sufficiency reviews. In addition, one of the AAGs has recently taken an active role in Tribal matters, including participating in meetings with Tribes and handling legal questions related to Tribal issues.

*Training*

Observation #9: Training Gaps

The audit team reviewed ADOT's 2021 Training Plan and ADOT's PAIR responses pertaining to its training program. The ADOT's EP staff training matrix indicates that, while ADOT identifies the availability of staff needing training, many staff have not taken advantage of the opportunity for training, including other ADOT divisions subject to the 327 MOU provisions. The ADOT's training plan identifies that the training interval for some topics, such as the NEPA Assignment Program, is only once per staff member regardless of the period of time since the previous round of training. Staff may benefit from regular ''refresher'' type training, especially as regulatory requirements and policy may change over time.

**Status of Previous General Observations and Non-Compliance Observations From the Audit #2 Report**

This section describes the actions ADOT has taken (or is taking) in response to observations made during the second audit. The ADOT was provided the second audit draft report for review and provided comments to FHWA on August 2, 2021.

Observation #1: Deficiencies and Gaps in ADOT's Manuals and Procedures

During Audit #2, the audit team identified deficiencies in ADOT's manuals and procedures which may result in incomplete project documentation or analysis and increase the risk for non-compliance. The first was in the ADOT CE Checklist Manual and the EA/EIS Manual, specifically the process for re-evaluations for EAs and EISs was not well-defined. Although the team observed some improvements to the manuals in Audit #3, the deficiency identified in Audit #2 was not resolved and is an observation again in Audit #3. The other was the ADOT Section 4(f) Manual, documentation forms, and desk reference/matrix containing information inconsistent with FHWA guidance and regulation. The deficiencies identified in Audit #2 were addressed by ADOT, but additional issues were identified by the audit team in Audit #3.

Non-Compliance Observation #1: Deficiencies in Section 4(f) Evaluation of Archaeological Resources

The audit team observed similar inconsistencies as were observed in Audit #1 during the project file reviews for Audit #2 and identified procedural deficiencies relating to ADOT's Section 4(f) evaluation. The consultation letter sent to the Arizona SHPO did not state ADOT's intent to apply the archaeological exception to sites or include other Section 4(f) information regarding the sites identified. In Audit #3, the audit team acknowledges changes were made to ADOT's Section 106 Federal-aid Programmatic Agreement Manual, but FHWA provided corrections to the draft language for ADOT to incorporate.

Non-Compliance Observation #2: Deficiencies in Analysis of Right-of-Way Impacts

The ADOT's procedures (ADOT EA/EIS Manual) and FHWA's regulations, policies, and guidance provide information on how to consider right-of-way impacts in the NEPA analysis. The FHWA's regulations, policies, and guidance provide additional information for how early property acquisitions should be considered with the right-of-way impacts analysis. In Audit #2 for the 327 MOU, the audit team found one project file did not demonstrate that early acquisition of properties and previous relocations were adequately addressed in the impact analysis in the NEPA document. The ADOT submitted a letter to FHWA on April 28, 2022, detailing the steps ADOT will take within 60 days as a corrective action to address the right-of-way non-compliance observation. On May 23, 2022, ADOT submitted to FHWA updated procedures regarding right-of-way impacts in their NEPA analyses and FHWA provided technical assistance to ADOT regarding these procedures. This corrective action by ADOT resolves the non-compliance observation.

Observation #3: Inconsistencies in Interagency Consultation Documentation

After completing the project file review in Audit #2, the audit team found several inconsistencies with ADOT's documentation of compliance with interagency consultation requirements (per 40 CFR 93.105). It is unclear if interagency consultation occurred for some projects since the project files did not include information on agency responses, concurrence, and the comment resolution process. Therefore, it is unknown if the interagency consultation agencies had an opportunity to participate in consultation or if ADOT provided them an opportunity to review and comment on the materials as required by 40 CFR 93.105 and MOU Section 7.2.1. During Audit #3, the audit team found an increased amount of documentation providing evidence of interagency consultation efforts by ADOT in the project files reviewed.

Observation #4: Incomplete Development and Implementation of Performance Measures

During Audit #2, the audit team reviewed ADOT's performance measures and reporting data submitted for the review period and concluded that ADOT had made progress toward developing and implementing its performance measures. For Audit #3, FHWA continues to identify this program objective as an area of concern, described in the

observations above, and will continue to evaluate this area in subsequent audits.

**Finalizing This Report**

The FHWA provided a draft of the audit report to ADOT for a 14-day review and comment period, as well as notification of the non-compliance observations. The ADOT provided comments which the audit team considered in finalizing the draft audit report. The audit team acknowledges that ADOT has begun to address some of the observations identified in this report and recognizes ADOT's efforts toward improving their program. The FHWA is publishing this notice in the **Federal Register** for the final audit report. The FHWA considered the results of this audit in preparing the scope of the next annual audit. The next audit report will include a summary that describes the status of ADOT's corrective and other actions taken in response to this audit's conclusions.

[FR Doc. 2024–14501 Filed 7–1–24; 8:45 am]

**BILLING CODE 4910–22–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2023–0029]**

### Denial of Motor Vehicle Defect Petition, DP21–002

**AGENCY:** National Highway Traffic Safety Administration, (NHTSA), Department of Transportation.

**ACTION:** Denial of a petition for a defect investigation

**SUMMARY:** This notice sets forth the reasons for the denial of a petition, DP21–002, submitted by Mr. Gerald James to the Administrator of NHTSA by a letter dated September 30, 2021. The petition requests that NHTSA initiate an investigation into ''severe oil leaks'' from the oil pressure switch that could lead to engine failures experienced by operators of Model Year (MY) 2015–2017 Kia Sorento vehicles equipped with 3.3L V6 engines. After conducting a technical review of: customer complaints submitted by the petitioner; an inspection of petitioner's vehicle; consumer complaint information in NHTSA's database; information provided by Kia North America (Kia) in response to our requests regarding vehicle design and complaints/claims received by Kia; and component testing performed by NHTSA's Vehicle Research and Test Center, NHTSA's Office of Defects Investigation has concluded that it is unlikely that any investigation opened by granting this petition would result in an order concerning the notification and remedy of a safety-related defect. Therefore, upon full consideration of the information presented in the petition and the potential risks to safety, the petition is denied.

**FOR FURTHER INFORMATION CONTACT:** Mr. Michael Lee, Vehicle Division C, Office of Defects Investigation, NHTSA 1200 New Jersey SE, Washington, DC 20590. Telephone: 202–366–5236. Email: *Michael.Lee@dot.gov.*

**SUPPLEMENTARY INFORMATION:**

**Introduction**

Interested persons may petition NHTSA requesting that the Agency initiate an investigation to determine whether a motor vehicle or an item of replacement equipment does not comply with an applicable motor vehicle safety standard or contains a defect that relates to motor vehicle safety. 49 U.S.C. 30162(a)(2); 49 CFR 552.1. Upon receipt of a properly filed petition, the Agency conducts a technical review of the petition, material submitted with the petition, and any additional information. 49 U.S.C. 30162(a)(2); 49 CFR 552.6. The technical review may consist solely of a review of information already in the possession of the Agency, or it may include the collection of information from the motor vehicle manufacturer and/or other sources. After conducting the technical review and considering appropriate factors, which may include, but are not limited to, the nature of the complaint, allocation of Agency resources, Agency priorities, the likelihood of uncovering sufficient evidence to establish the existence of a defect and the likelihood of success in any necessary enforcement litigation, the Agency will grant or deny the petition. *See* 49 U.S.C. 30162(a)(2); 49 CFR 552.8.

**Background Information**

In a letter dated September 30, 2021, Mr. Gerald James (the petitioner) requested that NHTSA conduct an investigation of Model Year 2015–2017 Kia Sorento vehicles equipped with 3.3L V6 ''Lambda'' engines for ''severe oil leaks'' from the oil pressure switch that could ''lead to engine failure'' with little warning to the driver. Mr. James based this request on his own experience and data found in NHTSA's Vehicle Owner Questionnaire (VOQ) database. NHTSA reviewed the material cited by the petitioner, information submitted by Kia, NHTSA's testing, and other pertinent information in NHTSA databases.

**Summary of Petition**

The petitioner reported that his model year (MY) 2016 Kia Sorento equipped with a 3.3L Lambda engine experienced oil leaking from the oil pressure switch (OPS) leaving visible oil trails. This caused the front end of the vehicle ''to tremble as if it was going to stall.'' The petitioner alleged that a leaking OPS could result in engine failure with little warning/indication to the driver. The petitioner further noted that it is a widespread issue among other Kia Sorento vehicles, as evidenced by similar consumer complaints on NHTSA's website.

**Office of Defects Investigation Analysis**

On December 16, 2021, the Office of Defects Investigation (ODI) and Kia performed a joint inspection of the petitioner's vehicle, which was towed to a Kia dealership where it could be observed, documented, and provided with a new revised OPS to replace the allegedly defective component. ODI and Kia agreed the OPS was leaking oil and observed oil in the crevices atop the engine block. After the vehicle received the new replacement part, it was returned to the petitioner via a tow truck. The original part that was removed from the subject vehicle was retained by ODI for further analysis, if deemed needed.

On February 23, 2022, Kia submitted its analysis of the claims made in the petition. Kia provided a failure mode analysis of the original design OPS noting two potential failure modes that can allow oil to leak through the body of the pressure switch. During an internal manufacturer investigation, the OPS was revised due to the two potential failure modes. The analysis found that fatigue damage and rubber washer contraction at low temperatures within the OPS could cause oil to leak internally in the sensor's diaphragm. Production changes were applied to the MY 2017 Kia Cadenza, MY 2019 Kia Sorento, and MY 2019 Kia Sedona. Kia also provided computer aided design (CAD) drawings to show the potential oil path from a leaking OPS to the top of the engine block and then through a weep hole designed for entrapped liquid residing on the engine block to flow down to the plastic under-bumper tray below. The CAD drawings also estimated the amount of liquid that can be collected on top of the engine block to be about 145 mL. Kia provided a visual representation of a trail of oil like that submitted by the petitioner, which was replicated using about 80 mL or just over half the amount that can accumulate atop the engine block. Based on its testing as described below, ODI believes the trail of oil indicated by the petitioner to be old oil spilled over or leaked down rather than fresh oil leaked from the OPS to the ground.

On April 4, 2022, the Vehicle Research and Test Center (VRTC) performed testing of the petitioner's component (OPS) based on the testing protocol consistent with Kia's specifications for the subject vehicle. The testing involved the petitioner's original OPS in a controlled system to replicate the subject vehicle's oil pressure, flow, and temperature to determine the leak or flow rate of oil emanating from the switch by collecting the volume of oil loss over time. VRTC calculated that 236 mL of oil loss could occur under usage conditions consisting of driving 55 minutes a day for 6 months (the manufacturer recommended oil change interval of every 6 months or 7500 miles). Based on the estimated leak rate and the known amount of oil in the engine at the 'full' oil dipstick level and 'low' oil dipstick level, it would take about 19 oil change intervals for the engine oil level to drop from the 'full' dipstick level to the level resulting in illumination of the vehicle malfunction indicator lamp (MIL) and about 12 oil change intervals for the engine oil level to drop from the 'low' dipstick level to the level resulting in illumination of the MIL. VRTC conducted additional testing and confirmed that the OPS can operate as intended, despite leaking oil, to illuminate the vehicle's MIL to alert the driver of low oil pressure.

In April of 2022, Kia issued a warranty extension program that extended the coverage of the OPS from 5 years/60,000 miles to 15 years/150,000 miles for MY 2014–2018 Sorento, MY 2014–2016 Cadenza, and MY 2015–2018 Sedona vehicles, all equipped with the 3.3L Lambda engines. The extended warranty coverage includes the diagnosis and repair and covers customers experiencing oil leaking from the engine or if the engine oil pressure warning light stays illuminated after the engine is turned on.

As of May 5, 2023, NHTSA reviewed its internal data on MY 2016–2018 Kia Sorento vehicles equipped with 3.3L Lambda engines (population of 161,519 vehicles), which identified no consumer complaints or field reports that allege engine failure or stalling related to the petitioner's allegation of OPS failures. ODI's review of the field data, warranty data, and technical analysis provided by Kia identified no engine failures or vehicle stalling caused by OPS failure/leaking on the subject vehicles. Based on this and VRTC's testing described above, ODI believes the risk of a vehicle stalling and/or of a non-crash engine fire caused by an OPS failure is unlikely.

After a thorough review of the material submitted by the petitioner, information already in NHTSA's possession, testing performed by VRTC, technical information provided by Kia, the potential risks to safety implicated by the petitioner's allegation, NHTSA believes it is unlikely that any investigation opened by granting this petition would result in an order concerning the notification and remedy of a safety-related defect. Therefore, upon full consideration of the information presented in the petition and the potential risks to safety, the petition is denied.

*Authority:* 49 U.S.C. 30162(d) and 49 CFR part 552; delegation of authority at 49 CFR 1.95(a).[1]

**Eileen Sullivan,**

*Associate Administrator, Enforcement.*

[FR Doc. 2024–14570 Filed 7–1–24; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF TRANSPORTATION

### National Highway Traffic Safety Administration

**[Docket No. NHTSA–2024–0026]**

### Receipt of Petitions for Renewal of Temporary Exemptions From Shoulder Belt Requirement for Side-Facing Seats on Motorcoaches

**AGENCY:** National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

**ACTION:** Notice of receipt of petitions for renewal of temporary exemptions; request for comment.

**SUMMARY:** NHTSA has received almost identical petitions from 13 final-stage manufacturers of ''entertainer-type motorcoaches,'' seeking renewal of temporary exemptions from a shoulder belt requirement of Federal Motor Vehicle Safety Standard (FMVSS) No. 208, ''Occupant crash protection,'' for side-facing seats on motorcoaches. The petitioners seek to renew their exemptions that allow them to install Type 1 seat belts (lap belt only) at side-facing seating positions, instead of Type 2 seat belts (lap and shoulder belts) required by FMVSS No. 208. Each petitioner states that, absent the requested exemption, it will otherwise be unable to sell a vehicle whose overall level of safety or impact protection is at least equal to that of a nonexempted vehicle. NHTSA is publishing this document to notify the public of the receipt of the petitions and to request comment on them, in accordance with statutory and administrative provisions.

**DATES:** If you would like to comment, you should submit your comment not later than September 3, 2024.

**FOR FURTHER INFORMATION CONTACT:** Callie Roach, Office of the Chief Counsel, NCC–200, National Highway Traffic Safety Administration, 1200 New Jersey Avenue SE, Washington, DC 20590. Telephone: (202) 366–2992; Fax: (202) 366–3820.

**ADDRESSES:** You may submit your comment, identified by the docket number in the heading of this document, by any of the following methods:

- *Federal eRulemaking Portal:* Go to *http://www.regulations.gov.* Follow the online instructions for submitting comments.
- *Fax:* (202) 493–2251.
- *Mail:* U.S. Department of Transportation, Docket Operations, M–30, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.
- *Hand Delivery:* 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. To be sure someone is there to help you, please call (202) 366–9322 before coming.

*Instructions:* All submissions must include the agency name and docket number.

Note that all comments received will be posted without change to *http://www.regulations.gov,* including any personal information provided. Please see the Privacy Act discussion below. NHTSA will consider all comments received before the close of business on the comment closing date indicated above. To the extent possible, NHTSA will also consider comments filed after the closing date.

*Docket:* For access to the docket to read background documents or comments received, go to *http://www.regulations.gov* at any time or to 1200 New Jersey Avenue SE, West Building Ground Floor, Room W12–140, Washington, DC 20590, between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays. Telephone: (202) 366–9826. To be sure someone is there to help you, please call (202) 366–9322 before coming.

*Privacy Act:* In accordance with 5 U.S.C. 553(c), DOT solicits comments from the public to better inform its rulemaking process. DOT posts these comments, without edit, to *www.regulations.gov,* as described in the system of records notice, DOT/ALL–14 FDMS, accessible through

[1] The authority to determine whether to approve or deny defect petitions under 49 U.S.C. 30162(d) and 49 CFR part 552 has been further delegated to the Associate Administrator for Enforcement.

*www.dot.gov/privacy.* To facilitate comment tracking and response, the agency encourages commenters to provide their name, or the name of their organization; however, submission of names is completely optional. Whether or not commenters identify themselves, all timely comments will be fully considered. If you wish to provide comments containing proprietary or confidential information, please see below.

*Confidential Business Information:* If you wish to submit any information under a claim of confidentiality, you must submit your request directly to NHTSA's Office of the Chief Counsel. Requests for confidentiality are governed by part 512. NHTSA is currently treating electronic submission as an acceptable method for submitting confidential business information to the agency under part 512. If you would like to submit a request for confidential treatment, you may email your submission to Dan Rabinovitz in the Office of the Chief Counsel at *Daniel.Rabinovitz@dot.gov* or you may contact Dan for a secure file transfer link. At this time, you should not send a duplicate hardcopy of your electronic CBI submissions to DOT headquarters. If you claim that any of the information or documents provided to the agency constitute confidential business information within the meaning of 5 U.S.C. 552(b)(4), or are protected from disclosure pursuant to 18 U.S.C. 1905, you must submit supporting information together with the materials that are the subject of the confidentiality request, in accordance with part 512, to the Office of the Chief Counsel. Your request must include a cover letter setting forth the information specified in our confidential business information regulation (49 CFR 512.8) and a certificate, pursuant to § 512.4(b) and part 512, appendix A. In addition, you should submit a copy, from which you have deleted the claimed confidential business information, to the docket at the address given above.

**SUPPLEMENTARY INFORMATION:**

## I. Background

### *a. Statutory Authority for Temporary Exemptions*

The National Traffic and Motor Vehicle Safety Act (Safety Act), codified as 49 U.S.C. chapter 301, provides the Secretary of Transportation with authority to exempt, on a temporary basis, under specified circumstances, and on terms the Secretary considers appropriate, motor vehicles from a motor vehicle safety standard or bumper standard. This authority and circumstances are set forth in 49 U.S.C. 30113. The Secretary has delegated the authority for implementing this section to NHTSA.

NHTSA established 49 CFR part 555, *Temporary Exemption from Motor Vehicle Safety and Bumper Standards,* to implement the statutory provisions concerning temporary exemptions, including renewals of temporary exemptions. Under part 555 subpart A, a vehicle manufacturer seeking an exemption or renewal of an exemption must submit a petition for exemption containing specified information. Among other things, the petition must set forth (a) the reasons why granting the exemption would be in the public interest and consistent with the objectives of the Safety Act, and (b) required information showing that the manufacturer satisfies one of four bases for an exemption.[1] Each petitioner is applying on the basis that compliance with the standard would prevent the manufacturer from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempted vehicles (*see* 49 CFR 555.6(d)). A manufacturer is eligible for an exemption on this basis only if NHTSA determines the exemption is for not more than 2,500 vehicles to be sold in the U.S. in any 12-month period. An exemption on this basis may be granted for not more than two years, but may be renewed upon reapplication.[2]

Under 49 CFR 555.8(e), ''[i]f an application for renewal of temporary exemption that meets the requirements of § 555.5 has been filed not later than 60 days before the termination date of an exemption, the exemption does not terminate until the Administrator grants or denies the application for renewal.'' NHTSA notes that the 13 petitions for renewal have been submitted by the deadline stated in 49 CFR 555.8(e).

### *b. FMVSS No. 208*

On November 25, 2013, NHTSA published a final rule amending FMVSS No. 208 to require seat belts for each passenger seating position in all new over-the-road buses (OTRBs) regardless of gross vehicle weight rating (GVWR), and all other buses with GVWRs greater than 11,793 kilograms (kg) (26,000 pounds (lb)) (with certain exclusions).[3]

In the notice of proposed rulemaking (NPRM) preceding the final rule (75 FR 50958, August 18, 2010), NHTSA proposed to permit manufacturers the option of installing either a Type 1 (lap belt) or a Type 2 (lap and shoulder belt) on side-facing seats.[4] The proposed option was consistent with an existing provision in FMVSS No. 208 that allows lap belts for side-facing seats on buses with a GVWR of 4,536 kg (10,000 lb) or less. NHTSA proposed the option because the agency was unaware of any demonstrable increase in associated risks using lap belts when compared to using lap and shoulder belts on side-facing seats. In the NPRM, NHTSA noted that ''a study commissioned by the European Commission regarding side-facing seats on minibuses and motorcoaches found that due to different seat belt designs, crash modes and a lack of real-world data, it cannot be determined whether a lap belt or a lap/shoulder belt would be the most effective.'' [5]

However, after the NPRM was published, the Motorcoach Enhanced Safety Act of 2012 was enacted as part of the Moving Ahead for Progress in the 21st Century Act ((MAP–21), Public Law 112–141 (July 6, 2012)). Section 32703(a) of MAP–21 directed the Secretary of Transportation (with authority delegated to NHTSA) to ''prescribe regulations requiring safety belts to be installed in motorcoaches at each designated seating position.'' [6] As MAP–21 defined ''safety belt'' to mean an integrated lap and shoulder belt, the final rule amended FMVSS No. 208 to require lap and shoulder belts at all designated seating positions, including side-facing seats, on OTRBs.[7]

Even as it did so, however, the agency reiterated its view that ''the addition of a shoulder belt at [side-facing seats on light vehicles] is of limited value, given the paucity of data related to side facing seats.'' [8] The agency also noted that

[1] 49 CFR 555.5(b)(5) and 555.5(b)(7).

[2] 555.8(b) and 555.8(e).

[3] 78 FR 70415 (November 25, 2013); response to petitions for reconsideration, 81 FR 19902 (April 6, 2016). The final rule became effective November 28, 2016 for buses manufactured in a single stage, and a year later for buses manufactured in more than one stage.

[4] 75 FR at 50971.

[5] 75 FR at 50971–50972 (citing *http://ec.europa.eu/enterprise/automotive/projects/safety_consid_long_stg.pdf).*

[6] MAP–21 states at § 32702(6) that ''the term 'motorcoach' has the meaning given the term 'over-the-road bus' in section 3038(a)(3) of the Transportation Equity Act for the 21st Century (49 U.S.C. 5310 note), but does not include a bus used in public transportation provided by, or on behalf of, a public transportation agency; or a school bus, including a multifunction school activity bus.'' Section 3038(a)(3) (49 U.S.C. 5310 note) states: ''The term 'over-the-road bus' means a bus characterized by an elevated passenger deck located over a baggage compartment.''

[7] For side-facing seats on buses other than OTRBs, in the final rule NHTSA permitted either lap or lap/shoulder belts at the manufacturer's option.

[8] 78 FR at 70448 (quoting the agency's Anton's Law final rule, which required lap/shoulder belts in forward-facing rear seating positions of light vehicles, 59 FR 70907).

Australian Design Rule ADR 5/04, ''Anchorages for Seatbelts'' specifically prohibits shoulder belts for side-facing seats.[9]

Given that background, and believing there would be few side-facing seats on OTRBs, NHTSA stated in the November 2013 final rule that manufacturers may petition NHTSA for a temporary exemption under 49 CFR part 555 to install lap belts instead of lap and shoulder belts at side-facing seats.[10] NHTSA further explained that a manufacturer could seek such an exemption on the basis that the applicant is otherwise unable to sell a vehicle whose overall level of safety is at least equal to that of an nonexempted vehicle, stating that the agency would be receptive to an argument that, for side-facing seats, lap belts provide an equivalent level of safety to lap and shoulder belts.[11]

Since issuing the November 2013 final rule, NHTSA has granted temporary exemptions to 15 final stage manufacturers of entertainer buses for the same shoulder belt requirement in FMVSS No. 208 for side-facing seats on entertainer buses, including the 13 manufacturers discussed in this notice who are seeking renewals of their exemptions.[12]

In the most recent decision notice granting one of these exemptions,[13] NHTSA's rationale for granting the exemption cited the uncertainties about shoulder belts on side-facing seats, the few side-facing seats on buses subject to the November 2013 final rule, and that FMVSS No. 208 does not require shoulder belts on side-facing seats on any other vehicle type. NHTSA's analysis also discussed the petitioner's statements regarding safety concerns about the shoulder belt portion of a lap and shoulder belt on side-facing seats and noted that the petitioner did not provide any additional information about the potential for ''serious injury'' beyond reciting what NHTSA stated on the matter in the November 2013 final rule. NHTSA stated that it believes the potential safety risk at issue is theoretical, as explained in the November 2013 final rule, and that the agency could not affirmatively conclude, based on available information, that shoulder belts on side-facing seats are associated with a demonstrated risk of serious neck injuries in front crashes. However, NHTSA also stated that it believes a shoulder belt is of limited value on side-facing seats for the reasons explained in the final rule and further explained that it believed granting the exemption is consistent with the public interest and the Safety Act.

## II. Receipt of Petitions

In accordance with 49 U.S.C. 30113 and the procedures in 49 CFR part 555, 13 final-stage manufacturers of entertainer motorcoaches have submitted individual, mostly identical petitions asking NHTSA for renewals of their temporary exemptions from the shoulder belt requirement of FMVSS No. 208 for side-facing seats on their vehicles. The petitioners seek renewal of their exemptions to allow them to continue installing Type 1 seat belts (lap belt only) at side-facing seating positions, instead of Type 2 seat belts (lap and shoulder belts) as required by FMVSS No. 208. NHTSA granted the 13 exemptions in a **Federal Register** notice published on June 1, 2022 (87 FR 33299) and the exemptions expire on June 1, 2024. The basis for each of the petitions, like the petitioners' original petitions, is that compliance would prevent each petitioner from selling a motor vehicle with an overall safety level at least equal to the overall safety level of nonexempted vehicles (49 CFR 555.6(d)).

For the convenience of readers, and to facilitate administrative processing of the petitions, NHTSA is issuing this single document to notify the public of and request comment on the petitions rather than publishing separate notices for each petition. Copies of each petition have been placed in the docket listed in the heading of this notice. To view the petitions, go to *http://www.regulations.gov* and enter the docket number in the heading.

The petitioners are listed alphabetically as follows: All Access Coach Leasing LLC, Amadas Coach, Creative Mobile Interiors, D&S Classic Coach Inc., Farber Specialty Vehicles, Florida Coach, Inc., Geomarc, Inc., Integrity Interiors LLC, Nitetrain Coach Company, Inc., Pioneer Coach Interiors LLC, Roberts Brothers Coach Company, Russell Coachworks LLC, and Ultra Coach Inc.

*a. Brief Overview of the Petitions*

Each petitioner states that it is a final-stage manufacturer of entertainer-type motorcoaches and is responsible for ensuring the completed vehicle meets the FMVSS. Each petitioner also states that it typically receives a bus shell[14] and customizes it to meet the needs of its entertainer clients and other specialized customers. Each petitioner states that it ''builds out the complete interior'' of the bus shell, including: roof escape hatch; fire suppression systems (interior living space, rear tires, electrical panels, bay storage compartments, and generator); ceiling, side walls and flooring; seating; electrical system, generator, invertor and house batteries; interior lighting; interior entertainment equipment; heating, ventilation and cooling system; galley with potable water, cooking equipment, refrigerators, and storage cabinets; bathroom and showers; and sleeping positions.

Pursuant to 49 CFR 555.6(d), an application must provide ''[a] detailed analysis of how the vehicle provides the overall level of safety or impact protection at least equal to that of nonexempted vehicles.''

Each petitioner reiterates, as part of their justification that the vehicles provide an overall level of safety equivalent to that of a nonexempted vehicle, statements made in NHTSA's 2013 final rule as well as excerpts from the agency's discussion in the June 2022 **Federal Register** notice granting temporary exemptions to the 13 petitioners. Specifically, each petitioner cites NHTSA's statement that it ''believes a shoulder belt is of limited value on side-facing seats for the reasons explained in the [November 2013] final rule.'' Each petitioner also cites NHTSA's conclusion that ''[g]iven the uncertainties about shoulder belts on side-facing seats, the few side-facing seats there are on buses subject to the November 2013 final rule, and that FMVSS No. 208 does not require shoulder belts on side-facing seats on any other vehicle type, NHTSA is

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] The first petition was submitted by Hemphill Brothers Leasing Company, LLC (Hemphill). (Notice of receipt of petition, 84 FR 11735 (March 28, 2019); notice of grant of petition, 84 FR 69966 (November 14, 2019)). In its original petition, Hemphill stated that 39 ''other petitioners'' were covered by it. Later, NHTSA granted the 13 petitions submitted by All Access Coach Leasing LLC, Amadas Coach, Creative Mobile Interiors, D&S Classic Coach Inc., Farber Specialty Vehicles, Florida Coach, Inc., Geomarc, Inc., Integrity Interiors LLC, Nitetrain Coach Company, Inc., Pioneer Coach Interiors LLC, Roberts Brothers Coach Company, Russell Coachworks LLC, and Ultra Coach Inc. (Notice of receipt of the petitions, 85 FR 51550 (August 20, 2022); notice of grant of petitions, 87 FR 33299 (June 1, 2022)). Most recently, NHTSA granted an exemption to Beat the Street Interiors, Inc. (BTS). (Notice of receipt of petition, 88 FR 25445 (April 26, 2024); notice of grant of petition, 88 FR 78093 (November 14, 2023)).

[13] 88 FR 25445.

[14] Each petition describes the bus shell as generally containing the following components: exterior frame; driver's seat; dash cluster, speedometer, emissions light and emissions diagnosis connector; exterior lighting, headlights, marker lights, turn signal lights, and brake lights; exterior glass, windshield and side lights with emergency exits; windshield wiper system; braking system; tires, tire pressure monitoring system and suspension; and engine and transmission.

granting the petitions for temporary exemption.'' Each petitioner states that the considerations and conclusions from the 2022 grant are still pertinent. Additional details are provided in the petitions, which may be located in the docket identified at the top of this document.

Pursuant to 49 CFR 555.5(b)(7), petitioners must state why granting an exemption allowing it to install Type 1 instead of Type 2 seat belts in side-facing seats would be in the public interest and consistent with the objectives of the Safety Act. Each petitioner states that granting an exemption would allow the petitioner the option to continue providing seat belts at side-facing seating positions that are equivalent to or exceed the safety performance of Type 2 belts under the requirements in FMVSS No. 208 (S4.4.5.1.2(c)). Each petitioner also cites NHTSA's statements from the 2022 grant notice in which NHTSA stated that it believes that granting the petitioners' exemption requests is consistent with the public interest and that granting the exemptions would provide relief to small businesses by providing ''an objective standard that is easy for manufacturers to understand and meet.''

In support of the petitions, each petitioner also states that only a small number of entertainer-type motorcoaches with side-facing seats are manufactured in the U.S. market each year and that the number of vehicles they would produce within any 12-month period would be well below the 2,500 limit in part 555.

Each petitioner also indicates that it expects to seek to renew this exemption, if granted, at the end of the exemption period. In support of this intention, each petitioner notes the agency's apparent lack of research, testing, or analysis to justify the use of Type 2 belts on side-facing seats in over-the-road-buses.

## III. Effective Date for Renewals, if Granted

As noted above, under 49 CFR 555.8(e), ''[i]f an application for renewal of temporary exemption that meets the requirements of § 555.5 has been filed not later than 60 days before the termination date of an exemption, the exemption does not terminate until the Administrator grants or denies the application for renewal.'' As the current temporary exemptions for the 13 manufacturers end on June 1, 2024, and NHTSA received the petitions on April 1, 2024, the petitions were submitted by the deadline stated in 49 CFR 555.8(e). Accordingly, the exemptions will not terminate until the Administrator grants or denies the applications for renewal. Since the original two-year exemptions would have expired on June 1, 2024, if granted, the new exemption period would run from June 1, 2024 until June 1, 2026.

Additionally, because each petitioner cited the low number of entertainer-type motorcoaches produced each year in support of its assertion that granting the renewals would be in the public interest, NHTSA is requesting that each of the petitioners submit, during the comment period, the total number of vehicles they produced during their initial exemption period from June 1, 2022 to June 1, 2024.

## IV. Comment Period

The agency seeks comment from the public on the merits of the petitions requesting renewals of temporary exemptions from FMVSS No. 208's shoulder belt requirement for side-facing seats. The petitioners seek to install lap belts at the side-facing seats; they do not seek to be completely exempted from a belt requirement. Further, the petitioners' requests do not pertain to forward-facing designated seating positions on their vehicles. Under FMVSS No. 208, forward-facing seating positions on motorcoaches must have Type 2 lap and shoulder belts, and the petitioners are not seeking an exemption from that requirement for forward-facing seats. After considering public comments and other available information, NHTSA will publish a notice of final action on the petitions in the **Federal Register**.

*Authority:* 49 U.S.C. 30113; delegation of authority at 49 CFR 1.95 and 501.5.

**Sophie Shulman,**

*Deputy Administrator.*

[FR Doc. 2024–14550 Filed 7–1–24; 8:45 am]

**BILLING CODE 4910–59–P**

## DEPARTMENT OF THE TREASURY

### United States Mint

### Notification of Citizens Coinage Advisory Committee Public Meeting—July 15, 2024 (Day One) and July 16, 2024 (Day Two)

**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 July 15–16, 2024.

*Date:* July 15, 2024, and July 16, 2024.

*Time:* 10:00 p.m. to 4:00 p.m. (EDT) each day.

*Location:* Remote via Videoconference.

*Subject:*

*July 15, 2024—Day 1*

Review and discussion of the candidate designs for the 2026 Semiquincentennial Dime, two of the five 2026 Semiquincentennial Quarters (commemorating the Declaration of Independence and the Constitution), and the 2026 American Eagle Platinum Proof Coin.

*July 16, 2024—Day 2*

Review and discussion of the candidate designs for the 2026 Semiquincentennial Half Dollar and 2026 Semiquincentennial ''Best of the Mint'' Silver Medals.

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 ''July 15, 2024'' and ''July 16, 2024'' icons under the Live Tab for the specific day.

*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 July 9, 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. 2024–14579 Filed 7–1–24; 8:45 am]

**BILLING CODE P**

## DEPARTMENT OF VETERANS AFFAIRS

**[OMB Control No. 2900–0092]**

### Agency Information Collection Activity: Information for Veteran Readiness and Employment Entitlement Determination

**AGENCY:** Veterans Benefits Administration, Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** Veterans Benefits Administration, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice.

**DATES:** Comments must be received on or before September 3, 2024.

**ADDRESSES:** Comments must be submitted through *www.regulations.gov.*

**FOR FURTHER INFORMATION CONTACT:**

*Program-Specific information:* Nancy Kessinger, 202–632–8924, *nancy.kessinger@va.gov.*

*VA PRA information:* Maribel Aponte, 202–461–8900, *vacopaperworkreduact@va.gov.*

**SUPPLEMENTARY INFORMATION:** Under the PRA of 1995, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

*Title:* VA Form 28–1902w, Information for Veteran Readiness and Employment Entitlement Determination.

*OMB Control Number:* 2900–0092. *www.reginfo.gov/public/do/PRASearch* (Once at this link, you can enter the OMB Control Number to find the historical versions of this Information Collection).

*Type of Review:* Revision of a currently approved collection.

*Abstract:* The VA Form 28–1902w, Information for Veteran Readiness and Employment Entitlement Determination is used by the Vocational Rehabilitation Counselor (VRC) with the Veteran during the comprehensive initial evaluation after the VA receives an application for Veteran or Service member Readiness and Employment benefits and has determined the Veteran is eligible to apply for Chapter 31 under Title 38 U.S.C. 3104(a) and 38 CFR 21.50. Use of the VA Form 28–1902w will allow the VA counselor to use the form to collect the information during the initial evaluation. The information is unique to each Veteran and must be collected to assist with making an entitlement determination during the initial evaluation or the counselor would not have enough information to properly evaluate the Veteran's circumstances. The information is collected only once. Information for Veteran Readiness and Employment Entitlement Determination takes approximately 45 minutes to complete.

*Affected Public:* Individuals and households.

*Estimated Annual Burden:* 48,097 hours.

*Estimated Average Burden per Respondent:* 45 minutes.

*Frequency of Response:* Once.

*Estimated Number of Respondents:* 64,129.

*Authority:* 44 U.S.C. 3501 *et seq.*

**Maribel Aponte,**

*VA PRA Clearance Officer, Office of Enterprise and Integration/Data Governance Analytics, Department of Veterans Affairs.*

[FR Doc. 2024–14537 Filed 7–1–24; 8:45 am]

**BILLING CODE 8320–01–P**

## DEPARTMENT OF VETERANS AFFAIRS

### Increase in Maximum Tuition and Fee Amounts Payable Under the Post-9/11 GI Bill

**AGENCY:** Department of Veterans Affairs.

**ACTION:** Notice.

**SUMMARY:** The purpose of this notice is to inform the public of the increase in the Post-9/11 GI Bill maximum tuition and fee amounts payable and the increase in the amount used to determine an individual's entitlement charge for reimbursement of a licensing, certification, or national test for the 2024–2025 academic year (AY), effective August 1, 2024 through July 31, 2025.

**FOR FURTHER INFORMATION CONTACT:** Jamak Clifton, Management and Program Analyst, Education Service (225), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420, Telephone: 202–461–9800 (this is not a toll-free number).

**SUPPLEMENTARY INFORMATION:** For AY 2024–2025, the Post-9/11 GI Bill authorizes the Department of Veterans Affairs (VA) to pay the actual net cost of tuition and fees not to exceed the in-state amounts for students pursuing a program of education at public institutions of higher learning; $28,937.09 for students pursuing a program of education at private and foreign institutions of higher learning; $28,937.09 for students pursuing a program of education at non-degree-granting institutions; $16,535.46 for students training at vocational flight schools; and $14,055.13 for students training at correspondence schools. See 38 U.S.C. 3313.

In addition, the entitlement charge for individuals receiving reimbursement of the costs associated with taking a licensing, certification, or national test is pro-rated based on the reimbursed amount of the test fee relative to the rate of $2,414.18 for 1 month. See 38 U.S.C. 3315(c), 3315A(c). The maximum reimbursable amount for licensing and certification tests is $2,000. See 38 U.S.C. 3315(b). There is no maximum reimbursable amount for national tests. Also, the entitlement charge for individuals receiving reimbursement of the costs associated with taking a preparatory course for licensure, certification, or national tests is pro-rated based on the reimbursed amount of the covered preparatory course fee relative to the rate of $2,348.36 for 1 month. See 38 U.S.C. 3315B. There is no maximum reimbursable amount for

covered preparatory courses. Although the statutory language requires VA to charge entitlement based on the ''actual amount of the fee charged'' for the licensure, certification, or national test or the covered preparatory course, to avoid an inequitable outcome for students, VA's practice is to charge entitlement based on the actual reimbursed amount of the test or course fee.

Sections 3313, 3315, 3315A, and 3315B direct VA to increase the maximum tuition and fee payments and entitlement-charge amounts each academic year (beginning on August 1st) based on the most recent percentage increase determined under 38 U.S.C. 3015(h). The most recent percentage increase determined under 38 U.S.C. 3015(h) is 6.7%, which was effective on October 1, 2023.

The maximum tuition and fee payments and entitlement charge amounts for training pursued under the Post-9/11 GI Bill beginning *after* July 31, 2024 and *before* August 1, 2025 are listed below. VA's calculations for AY 2024–2025 are based on the 6.7% increase.

2024–2025 ACADEMIC YEAR

| Type of school | Actual net cost of tuition and fees not to exceed |
|---|---|
| **Post-9/11 GI Bill Maximum Tuition and Fee Amounts** | |
| Public | In-State/Resident Charges. |
| Private/Foreign | $28,937.09. |
| Non-Degree Granting | $28,937.09. |
| Vocational Flight | $16,535.46. |
| Correspondence | $14,055.13. |
| **Post-9/11 Entitlement Charge Amount for Tests** | |
| Licensing and Certification Tests | Entitlement will be pro-rated based on the reimbursed amount of the test fee relative to the rate of $2,414.18 for 1 month. The maximum reimbursable amount for licensing and certification tests is $2,000. |
| National Tests | Entitlement will be pro-rated based on the reimbursed amount of the test fee relative to the rate of $2,414.18 for 1 month. There is no maximum reimbursable amount for national tests. |
| Preparatory Courses for Licensure, Certification, or National Tests. | Entitlement will be pro-rated based on the reimbursed amount of the covered preparatory course fee relative to the rate of $2,348.36 for 1 month. |

**Signing Authority**

Denis McDonough, Secretary of Veterans Affairs, approved and signed this document on May 20, 2024, and authorized the undersigned to sign and submit the document to the Office of the Federal Register for publication electronically as an official document of the Department of Veterans Affairs.

**Luvenia Potts,**

*Regulation Development Coordinator, Office of Regulation Policy & Management, Office of General Counsel, Department of Veterans Affairs.*

[FR Doc. 2024–14525 Filed 7–1–24; 8:45 am]

**BILLING CODE 8320–01–P**


# FEDERAL REGISTER

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Part II

## Department of Homeland Security

Federal Emergency Management Agency

44 CFR Part 206

Update of FEMA's Public Assistance Regulations; Proposed Rule

**DEPARTMENT OF HOMELAND SECURITY**

**Federal Emergency Management Agency**

**44 CFR Part 206**

**[Docket ID FEMA–2023–0005]**

**RIN 1660–AB09**

# Update of FEMA's Public Assistance Regulations

**AGENCY:** Federal Emergency Management Agency, DHS.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Emergency Management Agency (FEMA, agency, or we) proposes to revise its Public Assistance program regulations to reflect current statutory authorities and implement program improvements. The proposed rule would incorporate changes brought about by amendments to the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). FEMA is also proposing clarifications and corrections to improve the efficiency and consistency of the Public Assistance program.

**DATES:** Comments must be submitted by September 3, 2024.

**ADDRESSES:** You may submit comments, identified by Docket ID FEMA–2023–0005, via the Federal eRulemaking Portal: *www.regulations.gov.* Search for the Docket ID and follow the instructions for submitting comments.

**FOR FURTHER INFORMATION CONTACT:** Robert Pesapane, Director, Public Assistance Division. Phone: (202) 646–3834. Email: *fema-recovery-pa-policy@fema.dhs.gov.*

**SUPPLEMENTARY INFORMATION:**

## Table of Contents



## Table of Abbreviations

ADA Americans with Disabilities Act
CDL Community Disaster Loan
CFR Code of Federal Regulations
CPI–U Consumer Price Index for All Urban Consumers
CRA Congressional Review of Agency Rulemaking Act
DFA Direct Federal Assistance
DHS Department of Homeland Security
DRRA Disaster Recovery Reform Act
EA Environmental Assessment
EMAC Emergency Management Assistance Compact
FEMA Federal Emergency Management Agency
GAO Government Accountability Office
HOW Houses of Worship
HUD Department of Housing and Urban Development
NAC National Advisory Committee
NEPA National Environmental Policy Act
NIST National Institute of Standards and Technology
OMB Office of Management and Budget
PAPPG Public Assistance Program and Policy Guide
PKEMRA Post-Katrina Emergency Management Reform Act of 2006
PNP Private Nonprofit
PV Present Value
SBA Small Business Administration
SORN System of Records Notice
SRIA Sandy Recovery Improvement Act of 2013
Stafford Act Robert T. Stafford Disaster Relief and Emergency Assistance Act

## I. Public Participation and Request for Comments

Interested persons are invited to participate in this rulemaking by submitting comments and related materials. We will consider all comments and material received during the comment period.

If you submit a comment, include the Docket ID FEMA–2023–0005, indicate the specific section of this document to which each comment applies, and give the reason for each comment. All submissions may be posted, without change, to the Federal eRulemaking Portal at *www.regulations.gov,* and will include any personal information you provide. Therefore, submitting this information makes it public. You may wish to read the Privacy and Security Notice that is available via a link on the homepage of *www.regulations.gov.*

For access to the docket to read background documents or comments received, go to the Federal eRulemaking Portal at *www.regulations.gov.*

## II. Executive Summary

### *A. Background and Purpose of the Regulatory Action*

FEMA is responsible for administering and coordinating the Federal Government response to Presidentially declared disasters pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (Stafford Act), Public Law 93–288, 42 U.S.C. 5121 *et seq.* When a catastrophe occurs in a State or affects the members of a Tribal community, the State's Governor or Tribal Chief Executive may request a Presidential declaration of a major disaster pursuant to Section 401 of the Stafford Act.[1] Such a request must be based on a finding that the disaster is of such severity and magnitude that an effective response is beyond the capabilities of the State or Tribal government and the affected local governments, and that Federal assistance is necessary.[2] The President's declaration of a disaster will designate the areas within a State, or for an Indian Tribal government, where Federal assistance may be made available (including local governments such as counties, parishes, or Tribal lands, if appropriate) and identify the types of assistance that are authorized under the declaration,[3] although other types may be authorized later.[4] A major disaster declaration may authorize all, or only particular types of, supplemental Federal assistance requested by the Governor or Tribal Chief Executive.[5]

One of the programs that may be authorized by a declaration is the Public Assistance program, which provides a broad range of assistance to State, Tribal, Territorial and local governments.[6] It provides assistance for

[1] 42 U.S.C. 5170(a), (b); 44 CFR 206.36(a).

[2] 42 U.S.C. 5170.

[3] 44 CFR 206.40(a).

[4] 44 CFR 206.40(c).

[5] 44 CFR 206.40(a).

[6] Generally, the State, Territorial, or Indian Tribal government for which the emergency or major disaster is declared is the recipient. The applicant is a State, Tribal, or Territorial agency, local government, or eligible private nonprofit organization submitting an application to the

emergency protective measures, such as emergency evacuation, sheltering, and debris removal, as well as financial assistance for the permanent restoration of facilities.[7] In addition, the Stafford Act authorizes Community Disaster Loans for any local or Tribal government that has suffered a substantial loss of tax and other revenues as a result of a major disaster, and that demonstrates a need for financial assistance to perform its governmental functions.[8]

FEMA proposes to amend its Public Assistance and Community Disaster Loan program regulations to both improve program administration and incorporate statutory changes relating to Public Assistance and Community Disaster Loans. These include the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA), Public Law 109–295, 120 Stat. 1394, the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Public Law 109–347, 120 Stat. 1884, the Pets Evacuation and Transportation Standards Act of 2006 (PETS Act), Public Law 109–308, 120 Stat. 1725, the Sandy Recovery Improvement Act of 2013 (SRIA), Public Law 113–2, 127 Stat. 39, the Emergency Information Improvement Act of 2015, Public Law 114–111, 129 Stat. 2240, the Bipartisan Budget Act of 2018, Public Law 115–123, 132 Stat. 64, and the FAA Reauthorization Act of 2018, Division D, Disaster Recovery Reform Act of 2018 (DRRA), Public Law 115–254, 132 Stat. 3438.

*B. Summary of Major Provisions*

The proposed rule would amend the Public Assistance program regulations at Title 44, part 206, of the Code of Federal Regulations (CFR) to reflect current statutory authorities, clarify the requirements for program eligibility, and improve program administration. Most notably, FEMA proposes to:

- Incorporate PKEMRA:
  - Amend section 206.11 to include ''disability'' and ''English proficiency'' in the list of the grounds upon which discrimination in the provision of assistance is prohibited.
  - Amend section 206.221 to include performing arts facilities and community arts facilities as eligible Private Nonprofit (PNP) facilities.
  - Amend section 206.225 to cover essential assistance for the rescue, care, shelter, and essential needs of household pets, service animals, and assistance animals.
  - Amend section 206.226(c)(1) (proposed section 206.226(i)(1)) to include education in the list of critical services that qualify PNPs to apply for Public Assistance without having first applied for an SBA loan.
- Incorporate SRIA:
  - Amend section 206.228 to incorporate Public Assistance Alternate Procedures for Debris Removal (Stafford Act section 428) to make straight-time labor costs eligible for budgeted employees conducting eligible debris removal activities.
  - Make revisions throughout 44 CFR part 206 to reflect that Indian Tribal governments may act as recipients or subrecipients for the Public Assistance program.
- Incorporate the Bipartisan Budget Act of 2018:
  - Amend the definition of ''private nonprofit organization'' in section 206.2(19) and section 206.221 to clarify requirements for houses of worship (HOWs) that may be exempt from the requirements to apply for tax exempt status under Internal Revenue Code 501(c)(3) or applicable State laws.
  - Amend definition of ''private nonprofit facility'' in section 206.221 to include HOWs and change the term ''essential governmental service facilities'' to ''essential social services facilities.''
- Incorporate DRRA:
  - Amend section 206.12 to include long-term recovery groups, domestic hunger relief organizations, and other relief organizations.
  - Amend section 206.201 to add definitions of the terms ''resilient'' and ''resiliency.''
  - Revise proposed sections 206.204(b)(4) and 206.226 to eliminate funding reductions for alternate projects.
  - Amend definition of ''private nonprofit facility'' in section 206.221 to include ''center-based childcare'' facilities.
  - Amend definition of ''essential social service facility'' in section 206.221 to include food banks.
  - Amend section 206.226(d) (proposed section 206.226(c)) to incorporate the requirement to use the latest codes and standards.
- Remove the definition of ''emergency work'' in section 206.201 and refer to ''debris removal'' and ''emergency protective measures'' separately in sections 206.204 (proposed section 206.205), 206.208 (proposed section 206.209), and 206.225, due to differing legal criteria between debris removal and emergency protective measures.
- Amend section 206.202(d)(2) (proposed section 206.202(d)(4)) to apply the minimum threshold to each site within a Project Worksheet (PW) rather than to the PW as a whole to prevent applicants from improperly grouping together de minimis sites to reach the threshold.
- Amend section 206.202(d) to provide deadlines for the submission of certain work and cost documentation to avoid undue delay and administrative cost and to help ensure timely recovery.
- Amend section 206.202(e) to remove a non-statutory deadline previously imposed on FEMA for obligation of funds to provide the necessary flexibilities to maintain the smooth administration of the Public Assistance program.
- Amend section 206.205 (proposed section 206.206) to add deadlines for the submission of small project certifications and large project cost documentation to help ensure timely closeout of projects.
- Amend section 206.221 to reflect current Stafford Act definitions, which include rehabilitational facilities and broadcasting facilities.
- Amend section 206.225 to add paragraph addressing temporary relocation of public and nonprofit facilities that provide an eligible essential community service and define ''essential community services.''
- Amend subpart K, ''Community Disaster Loans,'' to reflect the current statutory loan maximums.
- Align terminology and definitions with 2 CFR part 200, tailoring to FEMA authorities and requirements as needed.

## III. Discussion of the Proposed Rule

This proposed rule would revise FEMA's Public Assistance program and FEMA's Community Disaster Loan regulations to reflect current statutory authority and agency practice. FEMA is also proposing amendments to improve the efficiency and consistency of the Public Assistance program and improve Public Assistance applicants' understanding of the program. This rule would affect 44 CFR 206.2, 206.11–12, 206.62, 206.200–210, 206.220–228, 206.361, and 206.363–364.

Throughout this rule, FEMA proposes a number of non-substantive, clarifying edits as follows, which will not generally be discussed separately in the section-by-section analysis below. FEMA proposes to revise the word ''shall'' to ''must'' or ''will'' and the word ''which'' to ''that'' as appropriate, consistent with current drafting best practices. FEMA intends these edits to

recipient for assistance under the recipient's grant. Upon award, the recipient notifies the applicant of the award, and the applicant becomes a subrecipient.

[7] 42 U.S.C. 5170b, 5172, and 5173.

[8] 42 U.S.C. 5184.

clarify, but not change, the regulations' meaning. Similarly, this rule proposes a number of non-substantive typographical corrections, stylistic edits to improve clarity, and citation corrections. FEMA also proposes to update references to various FEMA positions and offices to reflect their current titles, such as replacing ''Disaster Assistance Directorate'' with ''Recovery Directorate.'' Similar terminology changes include replacing ''event'' with ''incident,'' to improve clarity by matching the defined term in 44 CFR 206.32(e), and replacing ''grant'' with ''award,'' to improve clarity by matching the terminology used in 2 CFR part 200.

FEMA proposes to replace references in its regulations to ''Project Worksheet'' with the generic term ''Project Application'' [9] because FEMA is in the process of revising information collection 1660–0017, Public Assistance Program, to, *inter alia,* refer to ''Project Application'', where it previously referred to ''Project Worksheet.'' These proposed changes to FEMA's regulations would not change how the form is used or processed in the Public Assistance program. Instead, FEMA proposes this amendment to ensure clarity and consistency in the regulations.

Additionally, FEMA proposes to redesignate various sections to reflect the addition or removal of other sections and to update internal cross-references accordingly. Further, the proposed rule includes revisions to FEMA's regulations to reflect that Indian Tribal governments (Tribal Governments or Tribes) may be recipients or subrecipients for the purpose of Public Assistance, consistent with section 1110 of SRIA.[10] Finally, FEMA proposes to revise various sections throughout the rule to make clear that, where appropriate, a Regional Administrator's designee may take actions on his or her behalf, such as reviewing proposals and approving extensions of time. This is not a substantive change, but simply makes the use of a designee explicit to improve clarity.

In early preparation for this rulemaking, FEMA solicited input from the Administrator's National Advisory Council (NAC). The NAC recommended revisions to the Public Assistance regulations to reflect FEMA's post-Katrina practices and post-Katrina legislative amendments to the Stafford Act.[11] The NAC's recommendations included improving State administrative plans, streamlining and improving project worksheets, and reimbursing State, Tribal, Territorial, and local governments for force-account labor for emergency protective measures and debris removal. Consistent with those recommendations, FEMA is proposing updates to its regulations to reflect current statutory authorities and agency practices. As is discussed in more detail below, this rule proposes revisions to the project application process and State administrative plan requirements and proposes adding a provision that reflects the eligibility of straight-time force account labor for debris removal, which FEMA previously implemented via policy.

*A. 44 CFR Part 206, Subpart A—General*

i. Section 206.2 Definitions

Section 206.2 sets forth the defined terms that apply throughout 44 CFR part 206.

FEMA proposes to revise paragraph (a)(14) to clarify that the term ''hazard mitigation'' means any cost-effective measure intended to reduce the potential for damage from a ''future'' disaster event. Hazard mitigation does not address damage from disasters that have already occurred. This is not a substantive change and is simply intended to improve clarity.

Also, in paragraph (a)(14), FEMA proposes to change the word ''event'' to ''impacts.'' While throughout the rest of this rule we are proposing to replace ''event'' with ''incident,'' to improve clarity by matching the defined term in 44 CFR 206.32(e), in paragraph (a)(14), it is more accurate to refer to the impacts of a disaster, since those impacts are what mitigation measures seek to address. The use of this term is consistent with FEMA's guidance on the subject.[12] This is not a substantive change and does not change the meaning of ''hazard mitigation.'' Instead, we simply intend to improve clarity.

In paragraph (a)(19)(i), FEMA proposes to update the outdated reference to the Internal Revenue Code of 1954. The current authority is the Internal Revenue Code of 1986, as amended.[13]

FEMA also proposes to add a new paragraph (a)(19)(iii) to discuss the requirements for PNP organizations that are exempt from the requirements to apply for Internal Revenue Code section 501(c)(3) status or applicable State or Tribe tax exempt status. Instead of the requirement under paragraphs (a)(19)(i) and (ii) that such an organization must have an effective ruling letter from the Internal Revenue Service or appropriate documentation from the State, FEMA proposes that such an organization may establish their status through: (1) articles of association, bylaws, or other organizing documents indicating that it is an organized entity and (2) a certification that it is compliant with section 501(c)(3) of the Internal Revenue Code and State or Tribal law requirements. This proposed change is consistent with current FEMA guidance on this issue.[14]

We also propose adding a reference to Tribes in paragraph (a)(19)(ii), to make clear that PNP organizations organized under Tribal law do not need to provide documentation from a State due to independent Tribal sovereignty.

Paragraph (a)(20) provides the general definition of ''Public Assistance.'' The definition includes references to other sections in the regulations that contain further information on Public Assistance. We propose to amend those references to add subpart I, Public Assistance Insurance Requirements, subpart J, Coastal Barrier Resources Act, and subpart M, Minimum Standards, which provide additional detail on the Public Assistance program, especially restrictions or limitations on the amount of funding allowed in subparts G and H, Public Assistance Project Administration and Public Assistance Eligibility, respectively. We also propose to replace the words ''individuals and families'' with ''individuals and households,'' to match the language used in section 408 of the Stafford Act. FEMA intends this change to improve clarity and consistency and is not a substantive change.

We propose adding new paragraphs (a)(26) and (a)(27) to include definitions of the terms ''Tribal Authorized Representative'' and ''Tribal

[9] When discussing other proposed changes in this rule, we use the term ''Project Worksheets'' to avoid confusion.

[10] Public Law 113–2, 127 Stat. 39, 47. Tribal declaration requests are currently handled under FEMA's Tribal Declarations Pilot Guidance, and this rule does not propose any changes to those procedures. For more information, see Tribal Declarations Pilot Guidance, *https://www.fema.gov/disaster/tribal-declarations* (last accessed June 12, 2024).

[11] *See* NAC Memo, Recommendations on the Stafford Act and Related Federal Regulations: Public Assistance and Individual Assistance Issues (Aug. 19, 2008), available at *https://www.fema.gov/pdf/about/nac/hp/stafford_act_rec_081908.pdf.*

[12] *See* Public Assistance Program and Policy Guide, ver. 4, FP 104–002–2, at 153 (June 1, 2020) (PAPPG), available at *https://www.fema.gov/sites/default/files/documents/fema_pappg-v4-updated-links_policy_6-1-2020.pdf.* Version 5 of the Public Assistance Program and Policy Guide is currently under review by the Office of Information and Regulatory Affairs. FEMA will update the Public Assistance Update final rule to reflect relevant amendments from Version 5.

[13] Tax Reform Act of 1986, Public Law 99–514, sec. 2(a), 100 Stat. 2085, 2095.

[14] *See* PAPPG at 43.

Coordinating Officer.'' These new paragraphs mirror the definitions of ''Governor's Authorized Representative'' and ''State Coordinating Officer'' in (a)(13) and (a)(23). As with the other changes proposed throughout this rule to add references to Indian Tribal governments, these proposed definitions would create provisions for Tribal governments equivalent to those already provided for State governments to ensure consistency with the Stafford Act.

ii. Section 206.11 Nondiscrimination in Disaster Assistance

Section 689a of PKEMRA amended section 308(a) of the Stafford Act to add ''disability'' and ''English proficiency'' to the list of protected classes. Public Assistance grant recipients are already prohibited from discrimination on these grounds under other laws as codified in the DHS Standard Terms and Conditions [15] and FEMA has already expanded its civil rights compliance and enforcement activities to include these two additional categories. FEMA now proposes to revise paragraph 206.11(b) to reflect this. The revision would improve consistency and clarity by making the list of classes in paragraph (b) match the list in section 308(a) of the Stafford Act.

In addition, although this proposed revision, and others discussed below, originate from amendments to the Stafford Act, and do not involve the exercise of agency discretion, they are consistent with the principles of equity that FEMA seeks to advance in all its programs. We hope that these changes to the regulations would help highlight these provisions, such as nondiscrimination in disaster assistance, and their importance in every part of FEMA's mission.

iii. Section 206.12 Use and Coordination of Relief Organizations

Section 309(a) of the Stafford Act authorizes the President to utilize, with their consent, the personnel and facilities of certain relief or disaster assistance organizations in providing relief and assistance under the Act. Section 309(b) authorizes the President to enter into agreements with these same organizations to coordinate their disaster relief activities. This authority is codified in the regulations at 44 CFR 206.12.

Section 1227 of DRRA amended section 309 of the Stafford Act to add long-term recovery groups and domestic hunger relief and other relief organizations to the lists of organizations whose personnel and facilities may be used and with whom coordination agreements may be entered into. Accordingly, FEMA proposes to revise paragraphs (a) and (b) of section 206.12 to reflect this statutory change by replacing the existing reference to ''other voluntary organizations'' with ''long-term recovery groups, domestic hunger relief organizations, and other relief or voluntary organizations.''

Also, in paragraph (b), FEMA proposes to revise ''American Red Cross'' to ''American National Red Cross'' to match the name used in section 309(b) of the Stafford Act.

*B. 44 CFR Part 206, Subpart C—Emergency Assistance*

In section 206.62, FEMA proposes non-substantive revisions related to Indian Tribal governments. Specifically, current paragraphs (a) through (c) and (g) mention assistance available to State and local governments under an emergency declaration. Section 1110 of SRIA extended this assistance to Indian Tribal governments,[16] but they are not mentioned in this section. FEMA proposes to add explicit references to Indian Tribal governments to properly reflect this eligibility.

*C. 44 CFR Part 206, Subpart G—Public Assistance Project Administration*

i. Section 206.200 General

Section 206.200 provides a general overview to Subpart G, which governs the administration of the Public Assistance Program. We propose numerous non-substantive changes to this section to make the language more concise and move provisions to other sections in the regulations where they are more logically connected. The proposed amendments, however, would not remove any of the substantive provisions in § 206.200 from part 206 entirely.

We propose to remove the headings of paragraphs (a) and (b), since they are unnecessary and to be consistent with proposed paragraphs (c) and (d), which would not have headings. We further propose to revise paragraph (b) by simplifying its provisions. The first sentence of current paragraph (b)(1) would be redesignated as paragraph (b); the second sentence would be edited for clarity and designated as a new paragraph (c), because it addresses recipient and subrecipient responsibilities, rather than FEMA's responsibilities. We specifically propose to remove the words ''we expect'' from proposed paragraph (c), since adherence to the Stafford Act and FEMA's regulations is a clear legal requirement.

Current paragraph (b)(2) discusses the applicability of the ''Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards,'' published at 2 CFR parts 200 and 3002. Since the specific applicability of 2 CFR part 200 is addressed in other sections of subpart G,[17] we propose to remove paragraph (b)(2). The proposed rule would replace it with a new paragraph (d) stating generally that the regulations at 2 CFR part 200 apply to all Public Assistance grants and to all recipients and subrecipients of Public Assistance grants except where those provisions are inconsistent with the Stafford Act or FEMA's regulations. This is a non-substantive change intended to improve clarity and readability.

Current paragraph (b)(2)(i) states that FEMA expects the recipient to inform subrecipients about the status of their applications, including notification of FEMA's approvals of Project Worksheets and FEMA's estimates of when FEMA will make payments. These specific requirements more appropriately belong in section 206.202, which addresses application procedures, rather than section 206.200, which addresses general requirements. Therefore, we propose to remove section 206.200(b)(2)(i) and add this provision to section 206.202 in proposed paragraphs (b)(4), on recipient responsibilities, and (e)(2), on grant approval. Notifying subrecipients of FEMA's approvals is an important requirement and one that warrants repeating in both places in section 206.202.

Section 206.200(b)(2)(ii) states that FEMA expects the recipient to pay the full amounts due to the subrecipient as soon as practicable after FEMA approves payment, including the State contribution required in the FEMA-State Agreement. We propose to remove paragraph (b)(2)(ii) because this provision is already included in current section 206.205(a) (proposed

[15] See FY 2023 DHS Standard Terms and Conditions (Nov. 29, 2022), *https://www.dhs.gov/sites/default/files/2023-01/FY%202023%20DHS%20Terms%20and%20Conditions%20Version%202%20Dated%20November%2029%202022.pdf.*

[16] Public Law 113–2, 127 Stat. 39, 47.

[17] *See* current 44 CFR 206.202(a) (stating that the recipient is ''responsible for processing subgrants to applicants under 2 CFR parts 200 and 3002, and 44 CFR part 206, and your own policies and procedures''); current 44 CFR 206.205(b) (stating that the recipient shall certify that payments for a project were made in accordance with 2 CFR 200.305); current 44 CFR 206.207(a) (stating that the ''Uniform administrative requirements which are set forth in 2 CFR parts 200 and 3002 apply to all disaster assistance grants and subgrants'').

206.206(a)), regarding payment of claims for small projects. We propose to add an equivalent provision regarding payment for large projects in proposed section 206.206(b)(3), so that the requirement is still covered in both contexts.

Finally, current section 206.200(b)(2)(iii) states that FEMA expects the recipient to ''pay the State contribution consistent with State laws.'' Consistent with the other proposed changes to paragraph (b)(2) and for better organization, we propose to remove paragraph (b)(2)(iii) and add this provision to proposed 206.206(b), which addresses payment of claims for large projects. We further propose to add a similar provision for small projects in proposed 206.206(a).

ii. Section 206.201 Definitions Used in This Subpart

FEMA proposes several changes to the definitions in section 206.201. We propose to remove the paragraph designations throughout the section and reorder the definitions alphabetically.

We propose to revise the definition of ''applicant.'' The existing definition includes eligible private nonprofit organizations as identified in Subpart H of this regulation. For clarity, we propose replacing this language with ''private nonprofit organization or institution that owns or operates a private nonprofit facility as defined in § 206.221,'' which is consistent with the language used in section 206.222(b). Eligibility for FEMA Public Assistance remains facility-based; this revision would not impact the eligibility of facilities operated by private nonprofit organizations.

We propose to remove the definition of ''emergency work'' in this section to avoid confusion. Under current practice, FEMA identifies two categories of emergency work: debris removal and emergency protective measures. Due to differing legal criteria between the two, we propose to refer to ''debris removal'' and ''emergency protective measures'' separately in the sections where the term ''emergency work'' was used: sections 206.204 (proposed 206.205), 206.208 (proposed 206.209), and 206.225. This revision would improve clarity and would not be a substantive change to the eligibility of emergency work.

In the definition of ''facility,'' we propose to remove the words ''publicly or privately owned'' because they are unnecessary and do not affect the meaning of the term. We also propose to replace the word ''works'' with ''structure,'' because the latter term is more commonly used in FEMA's regulations and guidance. Neither change is substantive or alters the definition of facility; instead, we propose them to improve clarity and consistency.

We propose replacing the defined term ''grant'' with ''award,'' consistent with changes proposed throughout this rule to comport with the language used in 2 CFR part 200. We also propose specifying in the definition of the term that it means the financial assistance ''that the recipient receives from FEMA'' to avoid ambiguity.

We propose removing the definition of ''hazard mitigation'' in section 206.201 because it is duplicative of the definition in section 206.2. The definition provided in section 206.2 applies throughout 44 CFR part 206 and renders the definition in this section redundant.

We propose to simplify the definition of ''permanent work'' by replacing the current definition with ''work performed pursuant to section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5172.'' Recent amendments to section 406, such as DRRA section 1235(b), have rendered the definition of ''permanent work'' in section 206.201 incomplete or inaccurate. The current definition in section 206.201 ties restorative work to ''current applicable standards,'' but the Stafford Act now requires ''conformity with the latest published editions of relevant consensus-based codes, specifications, and standards that incorporate the latest hazard-resistant designs . . . .'' [18] Rather than continuing to update the regulatory definition each time section 406 is amended, we propose to simply refer generally to work performed pursuant to that section. This proposed revision would bring the regulatory definition of the term ''permanent work'' up to date with the current statutory provisions and avoid unnecessary confusion and administrative burden in the future. This revision would not change eligibility under section 406 or otherwise impact FEMA's implementation of that section.

We propose to remove from the definition of ''project'' the statement that ''the scope of work and cost estimate for a project are documented on a Project Worksheet (FEMA Form 90–91).'' The Project Worksheet is a significant part of the Public Assistance process and merits its own definition. Therefore, we propose to add a stand-alone definition describing the items that are included on the form. However, FEMA is in the process of revising information collection 1660–0017, Public Assistance Program, and will be replacing the term ''Project Worksheet'' with ''Project Application.'' Therefore, we propose defining the term ''Project Application'' instead of ''Project Worksheet.'' We also propose to remove from the definition of ''project'' the statement that FEMA ''must approve a scope of eligible work and an itemized cost estimate before funding a project.'' We propose to capture these requirements in the definitions of ''project approval'' and ''Project Application.''

Also, in the definition of ''project approval,'' we propose revising the first sentence to replace ''the process in which the Regional Administrator, or designee, reviews and signs an approval of work and costs'' with ''the process in which the Regional Administrator, or designee, reviews a proposed project and approves the work and costs.'' FEMA believes the proposed language more clearly and accurately describes the review and approval process. This would be a clarifying edit and would not substantively affect the meaning of the term. Additionally, we propose removing the last sentence of the definition, which states ''Such approval is also an obligation of funds to the recipient.'' Certain circumstances, such as a lack of available funding, could prevent FEMA from immediately obligating funds upon approval of a Project Worksheet. Removing this language from the definition would avoid confusion in such situations. We also propose replacing ''Project Worksheet'' with ''Project Application, consistent with the pending changes to information collection 1660–0017, Public Assistance Program.

As mentioned above, we propose adding a new definition of ''Project Application'' to read as follows: ''Project Application is used to document the location, scope of work, cost or cost estimate, terms and conditions, and information required for approval. For permanent work, the form is also used to document damage description and dimensions.'' This term would be the updated term for ''Project Worksheet,'' which is not currently defined but is used throughout this subpart. We do not intend for the proposed definition to substantively change how Project Worksheets have been (and Project Applications will be) used in the Public Assistance program. Instead, we simply propose to provide clarity and ensure consistency in FEMA's regulations.

In 2023, the Biden-Harris Administration issued the National Climate Resilience Framework noting

[18] 42 U.S.C. 5172(e)(1)(A)(ii).

the intensifying impacts of climate change are costing lives, disrupting livelihoods, and causing billions of dollars in damages.[19] The Administration intends for the Federal Government to serve as a partner with local communities by reforming and modernizing Federal programs in ways that strengthen climate resilience. In 2018, Section 1235(d) of the DRRA amended section 406(e) of the Stafford Act to require that FEMA issue a final rule defining the terms ''resilient'' and ''resiliency.'' Consistent with that requirement, we propose defining the term ''resilient'' as ''able to prepare for threats and hazards, adapt to changing conditions, and withstand and recover rapidly from adverse conditions and disruptions'' and the term ''resiliency'' as ''the ability to prepare for threats and hazards, adapt to changing conditions, and withstand and recover rapidly from adverse conditions and disruptions.'' If adopted, these definitions would help promote consistent terminology across FEMA's programs and would satisfy FEMA's obligations under DRRA section 1235(d) and Stafford Act section 406(e).

These definitions mirror the definition of ''resilience'' used in FEMA's National Resilience Guidance,[20] which is based on the definition in Presidential Policy Directive (PPD) 21.[21] These definitions also mirror the definition of ''resilience'' used in the National Climate Resilience Framework.[22] FEMA previously used a similar definition of ''resilience'' in guidance on DRRA section 1325(b) and on the Building Resilient Infrastructure and Communities program.[23] FEMA considered a few other definitions, including two based on PPD–8 [24] and a National Institute of Standards and Technology (NIST) definition,[25] but proposes the ones given above as they provide the clearest articulation of resilience principles for the purpose of the Public Assistance program, and for consistency with the National Resilience Guidance.

Consistent with the requirement of DRRA section 1235(d), FEMA consulted with the heads of relevant Federal departments and agencies in developing these proposed definitions.[26] As part of the National Resilience Guidance, FEMA consulted with a broad range of stakeholders, including the Mitigation Framework Leadership Group (MitFLG) and the Recovery Support Function Leadership Group (RSFLG). These groups comprise a wide range of Federal departments and agencies with equities in national hazard mitigation and Federal recovery efforts, respectively.[27] Consistent with discussion and feedback received during the National Resilience Guidance engagement process, and to promote a common understanding of resilience in alignment with that effort, FEMA proposes to use that definition of ''resilience'' as the basis for the proposed definitions in this rule.

Lastly, we propose adding a new definition for ''site.'' This term is used in several places in the Public Assistance program regulations, including in the definition of ''project,'' but does not currently have its own definition in section 206.201. Consistent with current FEMA guidance,[28] we propose defining ''site'' as ''an individual building, structure, location, or system section.'' This definition would not change current practice but would provide clarity for FEMA applicants and improve consistency in FEMA's regulations.

All other revisions proposed in this section are non-substantive edits to improve clarity and do not affect the meaning of any defined term. This includes the removal of the word ''eligible'' from the definition of ''subaward.'' The current reference to ''eligible subrecipients'' is redundant, since, by definition, subrecipients are applicants who receive a subaward. We propose removing ''eligible'' to avoid confusion and improve consistency in the regulations. We also propose a minor non-substantive edit to the definition of ''subrecipient,'' rewording the sentence to use active, instead of passive voice.

iii. Section 206.202 Application Procedures

In paragraph (a), we propose to remove the statement that ''under this section the State is the recipient'' because an Indian Tribal government may also be a recipient. We propose to remove this provision rather than correct it because it is unnecessary. The term ''recipient,'' as defined in section 206.201, includes Indian Tribal governments. Also, in paragraph (a), we propose to remove the reference to 2 CFR part 3002, since that part now only references 2 CFR part 200, and instead simply refer directly to the applicable requirements of part 200. That part applies generally to Public Assistance awards except where inconsistent with the Stafford Act or FEMA's regulations. The other revisions proposed in this section are all non-substantive clarifying and stylistic edits to improve readability.

We propose to add a new paragraph (b)(4) stating that the recipient is responsible for informing the subrecipient of the status of its application for Public Assistance funding, including FEMA's approval of the Project Application and the process for disbursement of funds. This requirement currently appears in section 206.200(b)(2)(ii). As explained above for section 206.200, this provision is more appropriately placed in this section, which lists the recipient's responsibilities, and we propose non-substantive changes to the wording of the provision to better capture those responsibilities and the pending change to information collection 1660–0017, Public Assistance Program. We also propose to re-order existing paragraphs (b)(1), (3), and (4) and make other non-substantive clarifying edits to more accurately describe the recipient's grant management activities.

We propose to make a clarifying change to paragraph (c), which currently states that the recipient must submit a

[19] The White House, National Climate Resilience Framework (September 2023), *https://www.whitehouse.gov/wp-content/uploads/2023/09/National-Climate-Resilience-Framework-FINAL.pdf.*

[20] *See* FEMA, National Resilience Guidance: Background and Key Concepts (March 2023), *https://www.fema.gov/sites/default/files/documents/fema_national-resilience-guidance-project-background_2023.pdf. See also* FEMA, National Resilience Guidance, *https://www.fema.gov/emergency-managers/national-preparedness/plan/resilience-guidance* (last accessed June 12, 2024).

[21] Presidential Policy Directive 21, Critical Infrastructure Security and Resilience (Feb. 12, 2013), available at *https://obamawhitehouse.archives.gov/the-press-office/2013/02/12/presidential-policy-directive-critical-infrastructure-security-and-resil.*

[22] Presidential Policy Directive 21, Critical Infrastructure Security and Resilience (Feb. 12, 2013), available at *https://obamawhitehouse.archives.gov/the-press-office/2013/02/12/presidential-policy-directive-critical-infrastructure-security-and-resil.* The White House, National Climate Resilience Framework (September 2023), available at *https://www.whitehouse.gov/wp-content/uploads/2023/09/National-Climate-Resilience-Framework-FINAL.pdf.*

[23] *See* Consensus-Based Codes, Specifications and Standards for Public Assistance, FEMA Recovery Interim Policy FP–104–009–11 Ver. 2.1, at 2 n.2 (Dec. 20, 2019), available at *https://www.fema.gov/sites/default/files/2020-07/fema_DRRA-1235b-public-assistance-codes-standards-interim-policy.pdf;* 87 FR 10805, 10808 (Feb. 25, 2022).

[24] *See* Presidential Policy Directive 8, National Preparedness (Mar. 30, 2011), available at *https://www.dhs.gov/presidential-policy-directive-8-national-preparedness* (last accessed June 12, 2024).

[25] *See* Community Resilience Planning Guide for Buildings and Infrastructure Systems, vol. 1, at 9 (May 2016), available at *https://nvlpubs.nist.gov/nistpubs/SpecialPublications/NIST.SP.1190v1.pdf;* NIST, Community Resilience, *https://www.nist.gov/community-resilience* (last accessed June 12, 2024).

[26] 42 U.S.C. 5172(e)(5)(A).

[27] For more information, see FEMA's website at *https://www.fema.gov/emergency-managers/national-preparedness/frameworks/mitigation/mitflg* and *https://recovery.fema.gov/about* (last accessed June 12, 2024).

[28] PAPPG at 60.

request for assistance within 30 days after designation of the area where the damage occurred. Consistent with current FEMA guidance,[29] we propose to reword the paragraph to clarify that the recipient must submit the request no later than 30 calendar days after the area is designated in an emergency or major disaster declaration. We also propose to remove the references to outdated FEMA Form numbers in paragraph (c) and throughout this section. Neither of these proposed changes is substantive.

We propose to reorganize and revise paragraph (d). First, we propose revising the paragraph heading from ''Project Worksheets'' to ''Project Applications,'' consistent with the pending revision to FEMA's Public Assistance forms. In paragraph (d)(1), we propose clarifying that an applicant's authorized local representative is responsible for ensuring the applicant has submitted all costs or cost estimates. This is not a substantive change but would simply make explicit that submissions may include cost estimates as well as actual costs. For clarity, we also propose removing the words ''for funding'' from the end of paragraph (d)(1) because they are unnecessary.

We propose moving the first sentence of existing paragraph (d)(1)(i) to the end of paragraph (d)(1) and clarifying that the applicant may be assisted by the recipient or by FEMA in preparing a Project Application for each project. We propose removing the existing second sentence of (d)(1)(i), since the requirement to identify eligible work would be included in proposed new paragraphs (d)(2) and (3). We propose moving the provision in existing paragraph (d)(1)(ii) into a new paragraph (d)(2), with certain revisions. Existing paragraph (d)(2) would be redesignated as paragraph (d)(4). New paragraph (d)(2) would provide that within 90 calendar days following FEMA's approval of the Request for Public Assistance, the applicant must identify, and report all impacts the applicant proposes be included on the Project Applications. This would be a change from the existing deadline, which is 60 days following the first substantive meeting with FEMA. Basing the deadline on FEMA's approval of the Request for Public Assistance avoids potential confusion about what constitutes the first substantive meeting. We propose increasing the time period from 60 days to 90 days, to ensure applicants do not have less time to identify and report the impacts.[30]

We propose to add a new paragraph (d)(3), providing that for work not completed prior to or during the project development period, the applicant must conduct any site inspections necessary to validate incident impacts and obtain all information necessary to complete a detailed description of the impacts. This requirement is currently imposed in existing paragraph (d)(1)(ii), but the proposed change would improve clarity by better describing what is required. New paragraph (d)(3) would also require that within 30 calendar days following a site inspection or 120 calendar days following FEMA's approval of the Request for Public Assistance, whichever is later, the applicant must also provide the recipient and FEMA all other documentation necessary to determine eligible work and costs. These deadlines would ensure that applicants timely submit all required information and support the efficient administration of the program. Applicants would be able to request an extension to the deadlines under section 206.202(f)(2), but if they fail to submit the documentation within the required time, the project would be ineligible, and the applicant would need to submit an appeal. When obligation and closeout of projects extends beyond the completion of the work, it delays the recovery process and results in undue burdens and increased costs for FEMA, recipients, and disaster-impacted communities. FEMA believes codifying a specific timeframe for submitting information is necessary to ensure timely completion of Project Worksheets, obligation of funds, and closure of projects.

Existing paragraph (d)(2) (proposed (d)(4)) provides information on the minimum threshold for small projects. When the estimated cost of a project is below this threshold, FEMA will not approve funding for it. Paragraph (d)(2) currently provides that the minimum threshold amount ''shall be adjusted annually to reflect changes in the Consumer Price Index for All Urban Consumers'' (CPI–U). We propose updating the listed minimum threshold amount from $3,000 to $3,900 which is the current published amount.[31] We also propose to revise this paragraph to provide that the minimum threshold ''will be reviewed annually and may be adjusted . . . .'' This is not a substantive revision, but simply clarifies that an adjustment to the minimum threshold is not strictly required every year. Sometimes, the change in CPI–U in a single year is so small as to only result in a de minimis change in the minimum threshold. FEMA interprets section 422 of the Stafford Act not to require the agency expend the time and resources necessary to issue an adjustment when the impact of that adjustment would be de minimis.

We further propose to revise current paragraph (d)(2) to change the way the minimum threshold is applied. Under the existing regulations, FEMA will not approve project applications when the estimated cost of work on the project is under the minimum threshold. FEMA requires applicants to restrict each project to a conceptual and logical grouping of eligible work at one or more sites.[32] Applicants have some discretion in how they group sites across projects, however, and some currently try to group together sites that are, by themselves, de minimis, in order to reach the minimum threshold. When projects consisting solely of multiple de minimis sites that should not have met the minimum threshold are processed, it takes up limited administrative resources and causes delays throughout the program. To remedy this, FEMA proposes to replace ''when the estimated cost of work on a project'' with ''when the estimated cost of work at a site.'' This would ensure the minimum threshold is applied not to the project as a whole, but to each site in the project individually, properly excluding project applications under the threshold.

We propose revising the heading of paragraph (e) from ''grant approval'' to ''award notification'' to better describe its provisions. We propose to make a number of clarifying revisions to paragraph (e)(1) to improve clarity and readability. Among them, we propose to revise the second sentence to replace the phrase ''will obligate funds'' with ''may obligate funds.'' This is not a substantive change, but merely a clarifying edit to more accurately reflect that, while in most cases the Regional Administrator will obligate funds after receiving the appropriate forms and approved Project Worksheets, there are occasionally situations that require a delay. For example, funding may not be available to obligate at the time the Project Worksheet is approved, FEMA may need to request additional information from the applicant, or an environmental review may be ongoing

[29] PAPPG at 37 (''Unless otherwise noted, FEMA calculates all deadlines based on calendar days'').

[30] Based on an analysis of data from FEMA's Grants Manager system, it typically takes applicants approximately 78 days to complete this process. Accordingly, we do not expect this proposed deadline would impose a new burden on applicants.

[31] *See* 88 FR 72512 (Oct. 20, 2023).

[32] *See* 44 CFR 206.201; PAPPG at 60–63.

and need to conclude before funds can be obligated. In such situations, obligation is not automatic upon approval, but FEMA will obligate funds as soon as the relevant issue is resolved. We further propose to replace the term ''Project Worksheet'' with ''Project Application,'' consistent with the pending revision to FEMA's Public Assistance forms.

We propose to remove existing paragraph (e)(2), which provides for a 45-day deadline for FEMA to obligate Federal funds, from the time the applicant submits the Project Worksheets. In the same way that there may be a delay as discussed above regarding paragraph (e)(1), circumstances may arise that require a delay before FEMA may obligate funds; to ensure we have the necessary flexibilities to maintain the smooth administration of the Public Assistance program, we propose to remove this deadline. Under this proposed change, FEMA would still maintain regular contact with applicants regarding the status of their projects and could explain any delays in obligation. We do not believe that removing the deadline will result in any substantial increase in delays or otherwise cause novel problems for applicants, but we request comment on the potential impact of this proposed change.

We propose to add a new paragraph (e)(2) providing that the recipient will notify the subrecipient of FEMA's approval of a subaward. As discussed above, this provision is currently included in section 206.200(b)(2)(i), and we propose moving it to this section to improve organization and clarity in FEMA's regulations.

In paragraph (f)(1)(i), we propose to clarify that a host State or Tribe that provides evacuation and sheltering support is eligible for a grant under sections 403 or 502 of the Stafford Act when an impacted State or Tribe requests direct Federal assistance for sheltering. Adding this statutory reference to ''State/Tribe'' would provide clarity to the reader and is a not a substantive change.

Overall, the proposed amendments to § 206.201 would streamline and improve the Project Worksheet process, which is a reform supported by the NAC in its recommendation.[33]

[33] *See* NAC Memo, Recommendations on the Stafford Act and Related Federal Regulations: Public Assistance and Individual Assistance Issues, at 2 (Aug. 19, 2008), available at *https://www.fema.gov/pdf/about/nac/hp/stafford_act_rec_081908.pdf*.

iv. Section 206.203 Federal Grant Assistance

We propose to revise the heading of this section to read ''Federal funding for large and small projects,'' which adequately describes the contents of the section, as revised, and renders paragraph (a) unnecessary, and to remove paragraph (a). We proposed to redesignate paragraphs (b), (c)(1), (c)(2), and (c)(3) as paragraphs (a), (b), (c), and (d), respectively. We propose to move the provisions in existing paragraph (d), which address improved projects and alternate projects, to a new section 206.204, and accordingly redesignate existing sections 206.204–209 as sections 206.205–210, respectively.

In new paragraph (b), we propose to replace ''State disaster assistance grants'' with ''FEMA Public Assistance awards.'' In new paragraph (c), we propose stating that the minimum threshold amount will be ''reviewed annually and may be adjusted'' to reflect changes in CPI–U. This would more accurately reflect the fact that if the change in CPI–U for a given year is so small as to result in only a de minimis change in the minimum threshold, FEMA is not required to spend limited administrative resources issuing an adjustment that year. These revisions are merely clarifications and would not be a change in current agency practice.

In new paragraph (d), we propose minor edits to reflect the proposed reorganization of this section, replacing the reference to paragraph (c) with one to paragraphs (b) and (c), and to replace the term ''Project Worksheet'' with ''Project Application,'' consistent with FEMA's pending update of its Public Assistance forms.

v. Proposed Section 206.204 Funding Options—Improved Projects and Alternate Projects

Existing section 206.203(d) addresses two funding options for projects that are outside the originally approved scope of work: (1) improved projects, which restore the predisaster function of a damaged facility but include improvements beyond the predisaster design, and (2) alternate projects, which are done when the public welfare would not be best served by restoring a damaged public facility or its function. FEMA proposes to create a new section 206.204 for these provisions, and to make revisions to the current regulatory language in existing section 206.203(d).

FEMA proposes to address improved projects, currently in section 206.203(d)(1), in new paragraph 206.204(a). We propose to add further information regarding project eligibility, deadlines, and funding for improved projects in new paragraphs (a)(1) through (4). We propose to replace the words ''Federal funding'' with the words ''Public Assistance funding'' to more accurately reflect the source of the funds. Regarding project eligibility, we propose to add a sentence indicating that FEMA may only grant improved projects for permanent work.[34] This is not a new requirement, but the revision would help ensure clarity regarding eligibility for improved projects. Emergency work is meant to eliminate immediate threats to public safety and improved property, whereas an improved project is a project that restores the predisaster function of a facility and incorporates improvements or changes to the predisaster design. For example, an improved project would be a subrecipient contributing its own funding to add a new library when rebuilding a school.

The regulations at existing section 206.203(d)(1) require the subrecipient to obtain the recipient's approval for improved projects. We propose to clarify in new section 206.204(a)(2) that the subrecipient must obtain the recipient's approval in writing prior to the start of construction. Further, we propose to require that the recipient notify FEMA in writing of the improved project approval, which is consistent with current FEMA guidance on improved projects.[35] Having recipients notify FEMA of project approval helps ensure accountability and transparency by increasing communication between FEMA and recipients and providing consistent documentation.

FEMA also proposes to clarify in new paragraph 206.204(a)(3) that the project completion deadlines established under existing section 206.204(c) (proposed 206.205(c)) apply to the completion of improved projects and alternate projects. This is not a new requirement. Current section 206.204(c) establishes deadlines that apply to all projects approved under State disaster assistance grants. Including this requirement in the regulatory provisions that specifically address improved projects and alternate projects is intended to aid readers and FEMA in expediting project and program closure.

Regarding funding, FEMA proposes to clarify in new paragraph 206.204(a)(4) that Public Assistance funding for improved projects is either the Federal share of the actual costs of completing the improved project, or the Federal

[34] *See* definition of Permanent Work, 42 CFR 206.201, and discussion *supra* on proposed revision. *See also* PAPPG at 163.

[35] *See* PAPPG at 167.

share of the approved estimate of eligible costs, whichever is less. If, for example, a tornado destroys a school gym and the cost to replace that gym is approved for $2 million, the school could apply that $2 million toward the construction of a larger gymnasium, rather than replace a gymnasium of the same size. If it did, and the larger gymnasium cost $5 million to build, FEMA would still calculate the Federal share from the $2 million approved scope of work. If, however, the school rebuilt a smaller gym, and the actual cost was only $1 million, FEMA would calculate the Federal share from the school's actual costs of $1 million. These proposed changes are consistent with current FEMA guidance and would not substantively affect the amount of Federal share or the eligibility of costs for improved projects.[36]

FEMA proposes to move the provisions in existing section 206.203(d)(2), relating to alternate projects, to new section 206.204(b), and to clarify project eligibility, funding, and other requirements. In proposed paragraph (b)(4)(i), we propose to use the phrase ''Public Assistance funding,'' instead of the phrase ''Federal funding'' used in existing 206.203(d)(2)(ii), to more accurately reflect the source of the funds. Regarding project eligibility, the current regulation states that the recipient may propose alternate projects in any case where a subrecipient determines that restoring a damaged public facility or the function of that facility would not best serve the public welfare. We propose to add PNP facilities to this provision. This is not a substantive change. PNP facilities are currently eligible for alternate project funding under existing section 206.203(d)(2)(iii), but they were inadvertently left out of the introductory language of existing paragraph (d)(2). FEMA also proposes to remove the language in existing section 206.203(d)(2)(i) stating that the ''alternate project option may be taken only on permanent restorative work,'' and to instead state in proposed paragraph (b)(1) that ''an alternate project may only be approved for permanent work.'' Because the language ''permanent restorative work'' may be misunderstood to limit the use of alternate projects funds to restoration work, FEMA is proposing this revision to clarify existing eligibility requirements and avoid confusion regarding the use of alternate project funds.

The current regulation, in section 206.203(d)(2)(v), requires the recipient to submit a proposal for any alternate project to the Regional Administrator for approval before the start of construction. In addition to this requirement, we propose to further specify in new section 206.204(b)(2) that an applicant must receive approval from the Regional Administrator prior to the start of construction on an alternate project. This change would incorporate current policy [37] into the regulations and is intended to save applicants from beginning a project and committing their resources before learning that the project is ineligible for Public Assistance.

The current regulation also states that the recipient shall include a description of the proposed alternate project(s), a schedule of work, and the projected cost of the project(s) in the alternate project proposal. FEMA proposes to add that the schedule of work must include the starting date and targeted completion date because alternate projects tend to take a much longer time to complete than original or improved projects. Knowing the starting date and targeted completion date would enable FEMA to keep track of the project more effectively and aid FEMA in planning for closeout.

Additionally, existing section 206.203(d)(2)(v) further states that the recipient shall provide the necessary assurances to document compliance with special requirements, including, but not limited to, floodplain management, necessary environmental assessments, hazard mitigation, protection of wetlands, and insurance. FEMA proposes to simplify the regulatory language but slightly expand the scope of the provision by revising this list to read ''any environmental or historic preservation issues, and any other legal considerations.'' We propose including this new language to require the recipient to identify other legal considerations not currently listed, such as liens on property, ownership issues, and zoning. See proposed 44 CFR 206.204(b)(2). Legal issues are more likely to arise in alternate projects than in original or improved projects, so identifying these issues early in the project formulation phase can assist FEMA in determining whether it should approve the project, or whether these issues will be prohibitive, thereby saving applicants from beginning a project only to be halted before completion.

In proposed section 206.204(b)(4), FEMA proposes to provide additional clarity regarding funding for alternate projects. Under the existing regulations, at 206.203(d)(2), Public Assistance funding for alternate projects is limited to a certain percentage of the Federal share of FEMA's estimate of the cost of repairing, restoring, reconstructing, or replacing the original facility, and of management expenses. DRRA section 1207(a) amended section 406(c) of the Stafford Act to remove these percentage limitations, so we propose to update the regulations to reflect the current statutory provision. We also propose to clarify that Public Assistance funding for alternate projects is limited to the Federal share of the actual costs of completing the alternate project or the Federal share of the approved estimate of the total eligible cost, whichever is less. This last change is not a substantive change, but simply intended to improve clarity and avoid confusion. Both changes are consistent with current FEMA guidance on alternate projects.[38]

Existing section 206.203(d)(2)(iv) states that funds contributed for alternate projects may be used to repair or expand other selected public facilities, to construct new facilities, or to fund hazard mitigation measures. We propose to add, in proposed 206.204(b)(4)(ii), both the purchase of equipment and, when required to accomplish the project, the demolition of the original structure as eligible uses of alternate project funds. This change is consistent with current FEMA guidance on this issue,[39] and would improve clarity and consistency in the regulations.

Finally, we propose to add provisions to new paragraphs (b)(4)(ii)(A) and (B) regarding limitations on the use of funds for alternate projects. Funds awarded for alternate projects may not be used to pay the non-federal share of any project and may not be applied to operating expenses. These alternative project funds may not be applied in a regulatory floodway or for any uninsured public facility or private nonprofit facility located in a special flood hazard area. We also propose adding in new paragraphs (b)(4)(ii)(A) and (B) examples of work that alternative project funds may be used for. These examples are not an exhaustive list of permissible uses.

These limitations conform to the language of section 406(c)(1)(C) and (c)(2)(C) of the Stafford Act and current FEMA guidance,[40] and are proposed for clarity and to emphasize for readers the importance of these restrictions.

[36] *See* PAPPG at 164, 166–67.

[37] *See* PAPPG at 167.

[38] *See* PAPPG at 164, 167–68.

[39] *See* PAPPG at 167.

[40] *See* PAPPG at 167–68.

vi. Section 206.204 Project Performance (Proposed 206.205)

FEMA proposes to redesignate section 206.204 as section 206.205 to reflect the new section 206.204 discussed above.

In the chart in paragraph (c)(1), we propose replacing ''debris clearance'' with ''debris removal'' and ''emergency work'' with ''emergency protective measures,'' to improve clarity, consistent with the proposed removal of the definition of ''emergency work'' in section 206.201, discussed above. We further propose consolidating these two items onto a single line in the chart. Both have the same 6-month completion deadline, so combining them simplifies the chart and improves readability. We propose a conforming edit in paragraph (c)(2)(ii) to refer to ''debris removal'' and ''emergency protective measures.''

Paragraph (c)(2) provides exceptions to the project completion deadlines established in paragraph (c)(1). Specifically, paragraph (c)(2)(i) states that the recipient may impose lesser deadlines for the completion of work if considered appropriate. Although deadlines shorter than those provided in paragraph (c)(1) are not often imposed, they may be appropriate in some circumstances. Under current practice, FEMA and the recipient will agree that a lesser timeline is appropriate in a particular case before any deadline(s) are reduced, and the recipient will inform the subrecipient of the reduced deadline, and then monitor and enforce the subrecipient's compliance. FEMA proposes revising the existing language in paragraph (c)(2)(i), ''The recipient may impose . . .'', to say ''FEMA and the recipient may impose . . .'' FEMA specifically requests comment on this proposed change and whether mandating concurrence on reduced deadlines would improve delivery of the Public Assistance program. Additionally, consistent with current guidance,[41] FEMA proposes clarifying in paragraph (c)(2)(ii) that all extensions of deadlines for temporary relocation require prior FEMA approval.

Paragraph (d) requires the recipient to submit requests for time extensions beyond the recipient's authority to the Regional Administrator. FEMA proposes to clarify that the recipient must submit the request prior to the expiration of the last approved time extension, and that the recipient must provide the justification for the delay and projected completion date in writing. These revisions are consistent with current FEMA guidance and are not substantive policy changes.[42] FEMA also proposes to require that the recipient base the justification for an extension under this paragraph on extenuating circumstances beyond the recipient's and subrecipient's control. This requirement is similar to the provision in paragraph (c)(2)(ii) requiring that an extension be based on extenuating circumstances or unusual project requirements beyond the control of the subrecipient and would better align these closely related provisions.

Also, in paragraph (d)(2), FEMA proposes to clarify that while FEMA will not provide Federal funding for a project if the work is not completed, FEMA may provide Federal funding for the completed portion of that project if the completed work is distinct from uncompleted work.

Existing paragraph (e)(2) describes how a subrecipient requests additional funding for a cost overrun and FEMA's procedures for cost overruns for small projects. We propose to move the provisions relating to small projects to a new paragraph (e)(3) to more clearly differentiate between the treatment of large and small projects.

We propose to rewrite portions of paragraph (e)(2) to improve readability and to clarify that subrecipients may, but are not required to, submit requests for additional funding. These are non-substantive edits and only meant to improve clarity. We also propose to add a new sentence stating that subrecipients should make the request for additional funding as soon as practicable to give FEMA and the recipient an opportunity to inspect the uncompleted project to validate that the additional costs are eligible. The addition emphasizes the importance of timeliness in alerting the recipient and FEMA of potentially significant changes in eligible funding to allow time for the recipient or FEMA to make interim inspections of the projects, if necessary. Submitting requests as soon as practicable also protects the subrecipient by allowing for approval of reimbursement for the cost overruns before project closeout. Significant overruns that are not submitted until closeout of a project may be more difficult to justify, and the subrecipient may be severely impacted if the overruns are not approved.

The remainder of paragraph (e)(2) addresses cost overruns of small projects. We propose to include this language in new paragraph (e)(3) with one revision. We propose to specify that the subrecipient may submit a request for additional funding within 90 calendar days following the completion of the last small project, instead of an appeal in accordance with existing section 206.206 within 60 days. Consistent with section 423 of the Stafford Act, 42 U.S.C. 5189a, appeals under existing section 206.206 are for decisions regarding eligibility, whereas cost overruns for small projects are financial reconciliation matters that should be handled following procedures related to payment of claims. This proposed revision would provide a deadline for handling cost overruns for small projects under these financial accounting procedures, separate from the formal appeal process under existing section 206.206. Subrecipients would still be able to submit an appeal if FEMA denies the request for additional funding, but proposed paragraph (e)(3) would not specifically reference appeals.

FEMA proposes to revise paragraph (f) to remove the statement that progress reports must describe the status of those projects on which a final payment of the Federal share has not been made to the recipient and outline any problems or circumstances expected to result in noncompliance with the approved grant conditions. Since there may be projects that remain open after payment of the final Federal share has been made to the recipient, we propose rewording this requirement for clarity. For example, if FEMA has provided final payment to the recipient, but the recipient has not yet submitted payment to the subrecipient, the recipient would still be required to provide a progress report. FEMA proposes to revise paragraph (f) to instead state that progress reports must describe the status of open large projects. These amendments would align with current FEMA guidance on progress reports.[43]

vii. Section 206.205 Payment of Claims (Proposed 206.206)

Section 206.205(a) (proposed 206.206(a)) addresses small projects and currently provides that ''Final payment of the Federal share of these projects will be made to the recipient upon approval of the Project Worksheet.'' We propose to replace ''Project Worksheet'' with ''Project Application,'' consistent with the pending revision to FEMA's Public Assistance forms, and to remove the word ''final'' out of recognition that FEMA may occasionally need to adjust funding after approval of the Project Application—for example, to account for a net small project overrun or actual insurance proceeds. Similarly, we propose specifying that recipients must make payment of the Federal share of

[41] *See* PAPPG at 133.

[42] *See* PAPPG at 196–97.

[43] *See* PAPPG at 193 (''FEMA requires the Recipient to report on the status of all open Large Projects on a quarterly basis.'').

small projects to the subrecipient as soon as practicable after Federal approval of funding ''consistent with State or Tribal laws.'' This is not a new requirement, and we only propose including this statement in the regulations to improve clarity. We also propose several non-substantive style edits to paragraph (a) to improve consistency and readability.

Paragraph (a) addresses small projects and currently requires the recipient to certify that all small projects were completed in accordance with FEMA approvals and that the contribution to the non-Federal share has been made to each subrecipient, if applicable. We propose revising paragraph (a) to add that the recipient must make this certification within 90 calendar days of the last approved small project completion date of record. This 90-day deadline is consistent with current Public Assistance program guidance on small projects,[44] and would provide recipients with a clear requirement for maintaining an efficient and timely administrative process. Currently, closeout sometimes extends significantly beyond the completion of the work, causing long administrative delays. FEMA believes imposing this deadline would allow recipients sufficient time to make the required certification, while also helping prevent undue delays and reducing burden on FEMA, but we request comment on the potential impact of this proposed change.

Paragraph (b) addresses large projects. Paragraph (b)(1) currently requires the recipient to submit an accounting to FEMA of each large project as soon as practicable after the subrecipient has completed the approved work and requested payment. We propose revising paragraph (b)(1) to require more specifically that the subrecipient submit a cost documentation for each large project to the recipient for final payment within 90 days of completion of the approved scope of work for that Project Application, and that the recipient submit the accounting for each large project to the Regional Administrator as soon as practicable, but not to exceed 90 calendar days after the subrecipient has submitted documentation for final payment. We also propose adding a new paragraph (b)(4) providing that the Regional Administrator could approve extensions when requested in writing by the recipient. Consistent with other requests for extensions, the recipient would be required to make these requests in advance of the initial deadline. As with the deadline proposed in paragraph (a), FEMA believes these time constraints would reasonably balance the practical need to allow recipients and subrecipients sufficient time to submit the required documentation with FEMA's interest in the efficient administration of the Public Assistance program. These deadlines would avoid lengthy delays by reducing the time it takes to close out projects. They would also require the recipient to make an accounting before documentation is irretrievable, which would improve accountability and transparency in program administration. The proposed 90-day timeframe is consistent with current Public Assistance program guidance.[45] We request comment on the potential impact of this proposed change.

The last sentence of paragraph (b)(2) currently states that if the Regional Administrator determines that eligible costs exceed the initial approval, he/she will obligate additional funds as necessary. We propose to revise this sentence to state that if the Regional Administrator determines that eligible costs vary from the approved estimate, then he/she will adjust the funding (increase or decrease) to reflect the eligible actual costs, as necessary. This revision clarifies that the Regional Administrator does not just determine whether costs exceed the initial approval, which would require the obligation of additional funds. Rather, the Regional Administrator looks for any discrepancies between the approved and actual costs and will adjust funding as necessary, based on whether costs are more or less than the initial approval.

As explained above in reference to section 206.200, we propose to move the requirement in 206.200(b)(2)(ii), relating to the prompt payment of the Federal share to the subrecipient, into proposed 206.206. Specifically, we propose adding a new paragraph (b)(3) requiring that the recipient make payment of the Federal share to the subrecipient as soon as practicable after the Federal obligation of funding, consistent with State or Tribal laws. This is a non-substantive change that would simply reorganize and clarify an existing requirement and is consistent with the changes proposed in 206.205(a) (proposed 206.206(a)) discussed above.

viii. Section 206.206 Appeals (Proposed 206.207)

FEMA proposes no substantive changes to this section. The proposed rule would redesignate the section as 206.207, to account for proposed new section 206.204, and would revise the cross references to the definitions in section 206.201 to reflect the proposed removal of the paragraph designations there.

ix. Section 206.207 Administrative and Audit Requirements (Proposed 206.208)

In section 206.207(a) (proposed 206.208(a)), we propose to remove the reference to 2 CFR part 3002, since that part now only references 2 CFR part 200, and instead simply refer directly to the applicable requirements of part 200. That part applies generally to Public Assistance awards except where inconsistent with the Stafford Act or FEMA's regulations. We propose similar revisions in paragraphs (b)(1)(iii) (G)–(H) and (c)(1)–(2) to remove references to part 3002 and provide more specific citations to the audit requirements of part 200.

Section 324 of the Stafford Act authorizes FEMA to provide funding for management costs incurred in the administration of the Hazard Mitigation Grant Program and the Public Assistance program. Section 324 was implemented in FEMA's regulations at 44 CFR part 207. Existing section 206.207(b)(1)(iii)(K) references these provisions, requiring State administrative plans to include procedures for determining the reasonable percentage or amount of pass-through funds for management costs provided under part 207. Section 1215 of DRRA amended section 324 of the Stafford Act to require FEMA provide funding for management costs at specific percentage rates for recipients and subrecipients. FEMA has implemented the DRRA section 1215 amendments via policy,[46] but new regulations have yet to be issued. Since recipients are no longer required to determine reasonable pass-through amounts, we propose removing the existing provision in paragraph (b)(1)(iii)(K) as it is no longer relevant to administrative plans.

We propose to revise paragraph (b)(1)(iii)(K) to require State/Tribal administrative plans to include procedures for ensuring timely closeout of subawards, subrecipients, and awards. Existing section 206.207 does not explicitly require administrative plans to include procedures for timely

[44] *See* PAPPG at 199–200.

[45] *See* PAPPG at 200.

[46] *See* Hazard Mitigation Grant Program Management Costs (Interim), FP 104–11–1 (Nov. 14, 2018), available at *https://www.fema.gov/sites/default/files/2020-07/fema_DRRA-1215-hazard-mitigation-grant-program-management-costs-interim-policy.pdf*; Public Assistance Management Costs (Interim), FP 104–11–2 (Nov. 14, 2018), available at *https://www.fema.gov/sites/default/files/2020-07/pa_management_costs_interim_policy.pdf*.

closeout, but recipients are subject to the closeout requirements outlined in 2 CFR 200.344 and should already have such procedures in place. Timely closeout is consistently an issue when administering the Public Assistance program, and this proposed revision is intended to assist FEMA in expediting project and program closure.

Paragraph (b)(3) addresses submission and amendment of administrative plans. We propose to delete the first sentence of this paragraph, which refers to the 1989 deadline for submission of the first plan. Every State has submitted a first plan, so this language is now obsolete. We also propose revising the rest of existing paragraph (b)(3) to improve clarity, including to clarify that an administrative plan is required regardless of whether there is an emergency declaration or a major disaster declaration. This is a non-substantive change.

We propose one other change to paragraph (b)(3), relating to recipient staffing plans. Paragraph (b)(1)(ii) already requires recipients to prepare a staffing plan for administering the Public Assistance program as part of the State/Tribal administrative plan. We now propose to add a requirement that when a recipient prepares amendments to its State/Tribal administrative plan after a disaster, the amendments include a disaster-specific staffing plan. A staffing plan identifies all Public Assistance staffing functions, sources of staff to fill these functions, and the management and oversight responsibilities of each position. The staffing plan should identify the number of positions needed by each function for various size disasters and include procedures for determining staffing and budgeting requirements necessary for program management. Disaster-specific staffing plans should address changes in staffing requirements during a particular disaster, for example, when a joint field office is closed, and fewer staff are needed to administer the program. Each recipient would, therefore, have an overarching plan in place before disasters hit and would be able to refine any such plan to address the specific needs of a disaster once it occurs and throughout the response and recovery effort. Including a revised staffing plan when preparing amendments to the State/Tribal administrative plan would provide the opportunity to discuss and resolve any disagreements. This is particularly helpful if mutual aid for program management, through the Emergency Management Assistance Compact, is a possibility. FEMA's administrative plan template already includes a comprehensive staffing plan, and that information is expected to be amended for each Federally declared emergency or major disaster declaration. These proposed changes are intended to improve administrative plans, which was a goal supported by the NAC in its recommendation.[47]

x. Section 206.208 Direct Federal Assistance (Proposed 206.209)

Section 206.208 (proposed 206.209) lays out FEMA's regulations relating to direct Federal assistance (DFA), which may be requested when a State or Tribal government lacks the capability to perform or to contract for eligible emergency protective measures or debris removal.

We propose to revise the first sentence in paragraph (a) of this section to remove the reference to local governments. Requests for DFA are made at the State or Tribal government level, so we propose this change to avoid confusion. We also propose to replace ''emergency work and/or debris removal'' with ''emergency protective measures or debris removal.'' FEMA splits emergency work into two categories: debris removal and emergency protective measures. Current paragraph (a) is potentially confusing, as it refers to the both the broader term ''emergency work'' and the more specific term ''debris removal.'' We propose this non-substantive revision to more accurately reflect the way FEMA categorizes emergency work.

Additionally, we propose expanding the statutory references in paragraph (a) to include Stafford Act sections 402, 418, 419, 502(a)(4) and (6), and 503. Section 402 covers general Federal assistance that FEMA may provide in a major disaster. Paragraph (a) currently references 402(1) and (4), but the proposed revision would expand the reference to section 402 as a whole. Sections 418 and 419 authorize the President to establish temporary communications systems and temporary public transportation. DFA is the only way to provide funds under sections 418 and 419 of the Stafford Act, so adding these two provisions clarifies the potential Federal role. Section 502 authorizes the President to direct any Federal agency to provide emergency assistance. Current paragraph (a) references 502(a)(1), (5), and (7), but the proposed revision would expand that to include 502(a)(4) and (6), which concern emergency assistance through Federal agencies and assistance under Stafford Act section 408. Section 503 addresses the amount of assistance the President may provide for emergency assistance. These additions are a non-substantive change that would improve clarity for the reader and do not reflect a change in statutory authority.

We propose a few clarifying revisions to paragraph (b)(2). First, we propose replacing the words ''statement as to the reasons'' with ''certification and explanation from'' in order to more accurately reflect the form of a recipient's submission that it cannot perform or contract for performance of the requested work. Second, we propose to specify that this certification and explanation must come from the State or Indian Tribal government. Finally, we propose including Indian Tribal governments as one of the entities that must not be able to perform or contract for performance of the requested work. These are only revisions for clarity and would not represent substantive changes in policy.

We propose revising paragraph (c)(1) to replace the first instance of ''Regional Administrator'' with ''FEMA.'' This revision would clarify that some requests for DFA may be approved by FEMA headquarters instead of by a Regional Administrator. We also propose clarifying that when FEMA (whether a Regional Administrator or headquarters) approves a request for DFA, FEMA may perform or contract for the work itself or will, as appropriate, issue a mission assignment to another Federal agency. This is not a substantive change in policy; because the current regulatory language does not make explicit that FEMA may handle the DFA work itself, we are proposing such an addition for clarity. Paragraph (c)(1) also incorrectly indicates that FEMA issues the mission assignment via a letter to the Federal agency performing the mission assignment. FEMA issues a mission assignment using various OMB-approved forms, not via a letter. Therefore, we propose to remove the reference to a mission assignment ''letter.'' Although an actual letter is not used, the substance of the mission assignment remains the same. This is not a substantive change.

In paragraph (c)(2), we propose non-substantive edits to improve clarity, including the addition of the words ''more specific'' before ''statutory authority of another Federal agency.'' The relevant restriction derives from appropriations law that prohibits augmentation of a Federal agency's purpose, *i.e.,* expanding into another Federal agency's jurisdiction or area of authority. FEMA characterizes this issue

[47] *See* NAC Memo, Recommendations on the Stafford Act and Related Federal Regulations: Public Assistance and Individual Assistance Issues, at 2 (Aug. 19, 2008), available at *https://www.fema.gov/pdf/about/nac/hp/stafford_act_rec_081908.pdf.*

as ''duplication of programs.'' The proposed edit here is to improve clarity and is non-substantive.

In paragraph (d), we propose to clarify that the time limit for completion of work by a Federal agency under a mission assignment is 60 *calendar* days after the President's declaration. The time limit has always been calculated using calendar days, but we propose making that explicit to improve clarity.

In paragraph (e), we propose only minor non-substantive edits.

xi. Section 206.209 Arbitration for Public Assistance Determinations Related to Hurricanes Katrina and Rita Hurricanes Katrina and Rita (Major Disaster Determinations DR–1603, DR–1604, DR–1605, DR–1606, and DR–1607) (Proposed 206.210)

FEMA proposes no substantive changes to this section. The proposed rule would redesignate the section as 206.210, update cross-references to other sections in part 206 consistent with the other changes proposed in this rule and replace the term ''Project Worksheet'' with ''Project Application,'' consistent with FEMA's pending update of its Public Assistance forms.

*D. 44 CFR Part 206, Subpart H—Public Assistance Eligibility*

i. Section 206.220 General

FEMA proposes only non-substantive stylistic edits to this section to improve clarity.

ii. Section 206.221 Definitions

In section 206.221, FEMA proposes to remove the top-level paragraph designations in the section and reorder the definitions alphabetically.

FEMA proposes to add new definitions for the terms ''assistance animal,'' ''household pet,'' and ''service animal.'' These proposed definitions are currently used in FEMA's Public Assistance guidance.[48] Their addition to section 206.221 is not intended to change their meaning, but simply to improve clarity and consistency in the regulations.

FEMA proposes to define ''assistance animal'' as an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates identified symptoms or effects of a person's disability. Although dogs are the most common type of assistance animal, other animals can also be assistance animals. This definition is based on the definition found in U.S. Department of Housing and Urban Development (HUD) guidance.[49]

FEMA proposes to define ''household pet'' as a domesticated animal that is traditionally kept in the home for personal rather than for commercial purposes, can travel in commercial carriers, and be housed in temporary facilities. Household pets do not include reptiles (except turtles), amphibians, fish, insects/arachnids, farm animals (including horses), and animals kept for racing purposes. This definition is based on HUD's definition of household pets found in 24 CFR 5.306 and is consistent with FEMA's current guidance.[50]

FEMA proposes to define ''service animal'' as any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition. The work or tasks performed by a service animal must be directly related to the individual's disability. Our proposed definition of ''service animal'' is based on the Americans with Disabilities Act (ADA), 42 U.S.C. 12101 *et seq.,* and the U.S. Department of Justice's implementing regulations at 28 CFR 36.104.

FEMA proposes to update the definition of ''educational institution'' by adding references to Title 20 of the U.S. Code. The references to the terms ''elementary school,'' ''secondary school,'' and ''institution of higher education'' have not been updated since FEMA promulgated 44 CFR 206.221 in 1990.[51] FEMA proposes to update the references to these terms to reflect where they are defined in current law. The Elementary and Secondary Education Act of 1965, as amended by the Every Student Succeeds Act, Public Law 114–95, defines the terms ''elementary school'' and ''secondary school.'' The Higher Education Act of 1965, as amended, defines the term ''institution of higher education.'' All three definitions are codified in Title 20 of the U.S. Code (currently found at 20 U.S.C. 7801(19), 7801(45), and 1001(a), respectively).

We also propose to clarify several definitions in this section. First, we propose to revise the definition of ''immediate threat., which is currently defined as the threat of additional damage or destruction from an event that can reasonably be expected to occur within five years. The term ''immediate threat'' is used in the criteria that must be met for debris removal and emergency protective measures to be eligible for assistance. Some threats caused by a declared incident are threats in the context of some future incident, such as erosion to a beach creating the threat of damage to improved property in the event of flooding from a 5-year storm.[52] Other threats are more direct, such as broken tree limbs or branches that are overhanging improved property or public-use areas and creating the threat of injury or damage to improved property if they fall.[53] We propose revising this definition to better describe these two types of threats. We propose moving the existing definition to a new paragraph and revising it to clarify that the five-year period is from the date of the declared disaster and that, for flood incidents specifically, an immediate threat is a threat from a five-year flood (a flood that has a 20 percent chance of occurring in any given year). We also propose replacing the phrase ''the threat of additional damage or destruction'' in the existing definition with the phrase ''the threat to lives or public health and safety, or of damage.'' This change would clarify that the definition encompasses the full range of risks not just to improved property, but also to individuals and public health and safety that are at issue in debris removal and emergency protective measures determinations. We propose removing the word ''destruction'' because it is redundant with ''damage,'' and we propose removing the word ''additional'' to reflect that immediate threats may exist prior to any initial damage or destruction having occurred. In other words, reasonable expenses incurred in anticipation of and immediately preceding a declared incident may also be eligible. We propose adding a new paragraph covering the more direct type of immediate threats mentioned above. This new paragraph would provide that immediate threat includes an imminent danger requiring an urgent response to address serious risks to lives or public health and safety, or to avoid damage from an incident. These proposed revisions are consistent with FEMA's guidance on this issue [54] and are only intended to clarify the regulations. We do not seek to make substantive changes to how we assess immediate threats for

[48] *See* PAPPG at 119.

[49] *See* HUD, Office of Fair Housing and Equal Opportunity, Notice FHEO–2020–01 (Jan. 28, 2020), available at *https://www.hud.gov/sites/dfiles/PA/documents/HUDAsstAnimalNC1-28-2020.pdf.*

[50] *See* PAPPG at 119.

[51] *See* 55 FR 2307 (Jan. 23, 1990).

[52] *See* PAPPG at 104.

[53] *See* PAPPG at 102.

[54] *See* PAPPG at 97–139.

the purposes of debris removal or emergency protective measures. We specifically request public comment on the proposed revisions to this definition and whether the new definition would accurately capture how the term is used in the Public Assistance program.

''Improved property'' is currently defined as a structure, facility, or item of equipment which was built, constructed, or manufactured. The term ''facility'' is currently defined in section 206.201 as ''any publicly or privately owned building, works, system, or equipment, built or manufactured, or an improved and maintained natural feature.'' As discussed above, we propose to revise that definition by replacing the word ''works'' with ''structure,'' because the latter term is more commonly used in FEMA's regulations and guidance. Accordingly, we propose to remove the word ''structure'' from the definition of ''improved property'' in section 206.221 as it would be redundant. Additionally, although the current definition of ''improved property'' encompasses facilities, and ''facility'' is defined in section 206.201 as including improved and maintained natural features, there has been confusion as to whether improved and maintained natural features are improved property. To address this confusion and make clear that improved property does include improved and maintained natural features, FEMA proposes to revise the definition of ''improved property'' to explicitly include improved and maintained natural features. The current definition also states that land used for agricultural purposes is not improved property. For clarity, we propose to add crops and livestock as examples of agricultural purposes.

In the definition of ''private nonprofit facility'' (existing paragraph (e)), the introductory text lists the types of eligible private nonprofit (PNP) facilities, and the succeeding paragraphs provide more detailed definitions for each type. We propose revisions to update the introductory text to reflect current statutory language in section 102(11)(A) of the Stafford Act, which provides a definition of PNP facility. First, both section 102(11)(A) and the paragraph defining ''utility'' (existing (e)(3)) include an item for irrigation facilities, but they were inadvertently omitted from the list in the introductory text to the regulatory definition. We propose to correct this oversight and add irrigation facilities to this list. This is a technical, non-substantive change.

Second, we propose to add ''rehabilitational'' to the introductory text and add a new paragraph defining ''rehabilitational facility.'' This term has been in section 102 since 1988,[55] but was inadvertently omitted from the introductory text and paragraphs here. We propose to define ''rehabilitational facility'' as a facility that provides alcohol and drug treatment and other rehabilitational services. FEMA intends for this definition to clarify the distinction between this term and the separate term ''rehabilitation facility,'' which is used in the paragraph definitions of ''medical facility'' and ''essential social service facility.'' While the latter term refers to more traditionally medical-focused treatment of injury or disease, a ''rehabilitational facility'' as proposed to be defined offers treatment of substance use disorders and related services. This proposed definition would not represent a substantive policy change or alter FEMA's implementation of section 102(11)(A) of the Stafford Act. FEMA is proposing it to ensure consistency between the statute and regulations and improve clarity for the public.

Third, we propose to add ''center-based childcare'' to the proposed introductory text and add a new paragraph defining ''center-based childcare.'' Section 1238(b) of DRRA amended section 102(11)(A) of the Stafford Act to add ''center-based childcare'' to the definition of ''private nonprofit facility.'' Our proposed additions in the definition would implement this statutory change. In the proposed paragraph, we would define ''center-based childcare'' as a private nonprofit facility that the State or Tribal Department of Children and Family Services, Department of Human Services, or similar agency, recognizes as a licensed childcare facility. This definition is consistent with FEMA's current guidance on childcare facilities,[56] and does not represent a substantive policy change.

Fourth, we propose to revise the introductory text to the definition to reflect changes in the Bipartisan Budget Act of 2018. Section 20604(a) of the Bipartisan Budget Act of 2018 amended section 102(11)(A) of the Stafford Act to provide that the definition of PNP facilities includes educational facilities without regard to the religious character of the facility and amended section 102(11)(B) to replace the term ''essential services of a governmental nature'' with the term ''essential social services.'' To incorporate these amendments in FEMA's regulations, we propose revising the introductory text to the definition to replace ''educational'' with ''educational (without regard to the religious character of the facility)'' and to replace ''essential governmental type services'' with ''essential social services.'' FEMA proposes the change from ''essential governmental type services'' to ''essential social services'' to conform FEMA's regulations with the current statutory text. This change would not represent a substantive change in policy.[57]

The fifth revision we propose within the introductory text to the definition of ''private nonprofit facility'' is to remove the term ''aged and disabled'' and replace it with ''older adults and persons living with disabilities.'' Terminology has changed since the original drafting of § 206.221 and FEMA proposes this change to align with more updated terminology. This change would not represent a substantive change in policy.

The last revision we propose to the introductory text to the definition of ''private nonprofit facility'' is to remove the words ''and such facilities on Indian reservations'' and ''Further definition is as follows'' from the end. The reference to facilities on Indian reservations has no practical impact on facility eligibility and causes confusion. Section 102(11)(A) of the Stafford Act, 42 U.S.C. 5122(11)(A), includes in the definition of ''private nonprofit facility'' a category for facilities on reservations, to be defined in regulation. However, neither the existing nor proposed regulations include a definition for facilities on reservations. As such, only the specific facility types named in the definition (existing paragraph (e)) are eligible, and they are eligible regardless of whether they are located on a reservation. We propose removing the reference to facilities on Indian reservations to avoid confusion. This revision would not change which facilities are eligible. Similarly, the mention of ''further definition'' in the last sentence is unnecessary, and we propose to remove it to simplify the paragraph and improve clarity.

The paragraph defining ''educational facilities'' to the definition of ''private nonprofit facility'' (existing (e)(1)), currently states that they are classrooms plus related supplies, equipment, machinery, and utilities of an educational institution necessary or appropriate for instructional, administrative, and support purposes. We propose to explicitly limit this definition to PNP facilities, for the sake of clarity, and to explicitly include in the definition ''related buildings.'' FEMA has found that many educational

[55] *See* Public Law 100–707, 102 Stat. 4689, 4690.

[56] *See* PAPPG at 48.

[57] 42 U.S.C. 5122(11)(B).

facilities have buildings that may contain support functions in addition to classrooms, for example, dormitories. These buildings may be essential to the provision of the school's educational services, but the current regulation is not clear as to their eligibility. We propose to clarify that related buildings are indeed eligible, consistent with current FEMA practice and guidance.[58] This proposed revision is not substantive. Also, in this paragraph, we propose to remove the word ''machinery'' as it is already encompassed by the word ''equipment,'' which immediately precedes it. This is a non-substantive change intended to simplify the provision and prevent confusion. Further, we propose to remove from this paragraph the exclusion of buildings, structures, and related items used primarily for religious purposes or instruction. Consistent with the proposed revisions to the introductory text in the proposed definition, this proposed change would reflect the amendments to the Stafford Act in section 20604(a) of the Bipartisan Budget Act of 2018, which specifically provided that an educational facility could qualify as a PNP facility regardless of its religious character.

In the proposed edits to the paragraph defining ''utility'' (existing (e)(2)), we propose to explicitly limit the application of the definition to PNP facilities, for the sake of clarity, and to further clarify that PNP irrigation facilities are not considered ''utilities'' under this paragraph. This is to avoid any possible confusion that such facilities are also considered utilities. Instead, a proposed paragraph (existing (e)(3)) would separately define PNP irrigation facilities.

In the proposed paragraph defining ''medical facility'' (existing (e)(5)), we propose to make a technical correction to the citation. The current citation, 42 U.S.C. 2910, should be 42 U.S.C. 291o.

In the proposed paragraph defining ''essential social service facility'' (existing (e)(7)), we propose a number of revisions. First, we propose to revise the defined term ''other essential governmental service facility'' to ''essential social service facility.'' Section 20604(a) of the Bipartisan Budget Act of 2018 amended section 102(11)(B) of the Stafford Act to redefine this term, and this revision would update FEMA's regulations to reflect that. Section 20604(a) also added ''houses of worship'' to the list of eligible PNP facilities, and we accordingly propose to add ''house of worship'' to the list of eligible PNP facilities in the proposed paragraph. Second, we propose adding the words ''a private nonprofit facility'' to explicitly limit this definition to PNP facilities, for the sake of clarity. Third, we propose adding performing arts facilities and community arts centers as eligible PNP facilities. Section 688 of PKEMRA amended section 102 of the Stafford Act to add performing arts facilities and community arts centers as eligible PNP facilities, and this revision would update FEMA's regulations to reflect that. Fourth, we propose adding food banks as eligible PNP facilities. Section 1214 of the DRRA amended section 102 of the Stafford Act to include food banks as eligible PNP facilities, and this revision would update FEMA's regulations to reflect that. Fifth, we propose adding broadcasting facilities as eligible PNP facilities. Section 2(a) of the Emergency Information Improvement Act of 2015 amended section 102 of the Stafford Act to include broadcasting facilities as eligible PNP facilities and this revision would update FEMA's regulations to reflect that. The proposed revisions would reflect the current statutory language, which provides that these categories of PNPs are eligible to receive PA funding, and are consistent with current FEMA guidance.[59] Under this proposed rule, the paragraph would list the following facility types: museums, zoos, performing arts facilities, community arts centers, community centers, libraries, homeless shelters, senior citizen centers, rehabilitation facilities, shelter workshops, food banks, broadcasting facilities, houses of worship, and facilities that provide health and safety services of a governmental nature.[60]

We further propose revising the last sentence of the paragraph defining ''essential social service facility'' to replace ''All such facilities must be open to the general public'' with ''such a facility must provide essential social services to the general public.'' This revision would better align FEMA's regulations with the language of the Stafford Act, as amended by section 20604(a) of the Bipartisan Budget Act of 2018 and improve clarity. Section 102(11)(B) of the Stafford Act requires that facilities provide essential social services to the general public in order to qualify as eligible PNP facilities under the statute, and also provides that houses of worship may not be excluded from the definition of PNP facility on the grounds that leadership or membership in the organization operating the house of worship is limited to persons who share a religious faith or practice. As currently written, one could interpret the last sentence to require that PNPs allow members of the public open access to their facilities or not restrict leadership or membership, instead of simply providing services to the public. The proposed revision to this sentence would avoid that potential confusion and ensure that it is interpreted consistently with the statutory requirements.

Next, FEMA proposes to revise the definition of ''private nonprofit organization.'' In proposed paragraph (1) in the definition (existing (f)(1)), FEMA proposes to update the outdated reference to the Internal Revenue Code of 1954. The current authority is the Internal Revenue Code of 1986, as amended. This revision is also proposed in section 206.2 under the definition of ''private nonprofit organization.'' In proposed paragraph (2) (existing (f)(2)), FEMA proposes to remove the words ''nonrevenue producing'' and add a reference to Tribal law to make the definition consistent with section 206.2(a)(19)(ii). The definitions should be uniform, and FEMA currently applies the definition as it appears in section 206.2.[61] Lastly, we propose to add new paragraph (3) to allow private nonprofit organizations that are exempt from the requirements to apply for Internal Revenue Code section 501(c)(3) status or applicable State or Tribal tax exempt status to establish their status through (1) articles of association, bylaws, or other organizing documents indicating that it is an organized entity and (2) a certification that it is compliant with section 501(c)(3) of the Internal Revenue Code and State or Tribal law requirements. Consistent with the addition proposed in section 206.2(a)(19)(iii), discussed above, this proposed addition is meant to ease the burden for certain private nonprofit organizations that are not able to establish their nonprofit status under proposed paragraphs (1) or (2).

Finally, eligibility for Public Assistance is dependent on the existence of an eligible facility, but the agency recognizes that care for vulnerable populations such as those for

[58] *See* PAPPG at 45.

[59] *See* PAPPG at 43, 46.

[60] ''Shelter workshop'' and ''senior citizen centers'' are the terms used in section 102 of the Stafford Act, 42 U.S.C. 5122(11)(B), but other facilities providing services for individuals with disabilities and/or older adults may qualify for assistance if they meet the standards for one of the other facility types. *See* PAPPG at 43–47.

[61] FEMA proposes maintaining this definition in both sections to improve readability. Section 206.221 includes several provisions regarding PNPs and including the definition there would help avoid confusion and the need to cross-reference section 206.2.

older adults and persons with disabilities, has evolved since the original drafting of FEMA's regulations. FEMA seeks comment on whether its definition of ''private nonprofit facility'' is sufficiently broad to encompass all private nonprofit organizations providing service to older adults and persons with disabilities that are eligible to receive public assistance under the Stafford Act. Stakeholders should identify gaps that might be addressed if FEMA offered further amendment to the definition of ''private nonprofit facility'' in the final rule.

iii. Section 206.222 Applicant Eligibility

Section 206.222 lists the entities that are eligible to apply for Public Assistance through the recipient. We propose to revise paragraph (c) to replace ''Indian tribes'' with ''Indian Tribal governments,'' for consistency with the definition at 44 CFR 206.201 and the Stafford Act. Neither this nor the other changes proposed in this section are substantive.

iv. Section 206.223 General Work Eligibility

Section 206.223 describes general work eligibility. Paragraph (a) lists general eligibility requirements for an item of work. We propose to revise paragraph (a)(2) to clarify that emergency operation center activities are eligible even if they are located outside of the designated area. It is FEMA's practice to allow for emergency operations center activity [62] under paragraph (a)(2), and the change would simply update the regulatory text for clarity and consistency.

Paragraph (b) specifically addresses PNP facilities. For work on PNP facilities to be eligible for financial assistance, an organization meeting the definition of a ''private nonprofit organization'' in section 206.221 must own or operate the PNP facility. FEMA proposes to rewrite paragraph (b) to improve clarity for the reader. Additionally, these edits would correct the language that says facilities must be owned ''and'' operated to read owned ''or'' operated, in conformance with 44 CFR 206.222(b) and FEMA's application of the requirement.

FEMA proposes to consolidate paragraphs (c) and (d) into a revised paragraph (c) titled ''*Rural community, unincorporated town or village, or other public entity facilities.*'' Section 102(8)(C) of the Stafford Act provides that the term ''local government'' includes ''a rural community, unincorporated town or village, or other public entity, for which an application for assistance is made by a State or political subdivision of a State.'' Section 206.223(c) properly reflects that facilities owned or operated by public entities are eligible for financial assistance, but paragraph (d) only discusses facilities serving a rural community or unincorporated town or village that are owned by a PNP. While it is correct that work performed on PNP facilities may be eligible, this is already addressed by paragraph (b) and confuses what are separate issues. Facilities serving a rural community or unincorporated town or village are also eligible if they are the legal responsibility of the rural community or unincorporated town or village itself. To improve clarity, we propose revising paragraph (c) to cover rural communities, unincorporated towns or villages, and other public entities together, consistent with the statutory language.

Per the above changes, existing paragraph (e) would be redesignated paragraph (d), and FEMA further proposes to add a new paragraph (e) addressing duplication of benefits. This new paragraph would describe the recipient's and subrecipient's obligations to notify FEMA of available benefits and to pursue recovery of available benefits, and would reiterate that FEMA will disallow or recoup duplicate benefits. We propose adding this new paragraph (e) to improve usability for readers and emphasize these requirements in the relevant section of the regulations. Nothing in proposed paragraph (e) is a new requirement. The provision is based on section 312(c) of the Stafford Act, which requires FEMA to recover other assistance that is available. For example, if a recipient or subrecipient did not receive insurance proceeds because they did not present the claims or assert the legal rights, FEMA would deduct the value of those unasserted rights to insurance proceeds from the Public Assistance grant amount.

v. Section 206.224 Debris Removal

In paragraphs (a) and (b), we propose to make non-substantive stylistic edits to make the provisions easier to understand. The proposed edits would not change the meaning of these paragraphs.

We also propose to revise paragraph (a)(4) to provide that the Regional Administrator must approve extensions of the two-year deadline to complete debris removal under the terms of that paragraph, instead of the Assistant Administrator for the Disaster Assistance Directorate (now the Recovery Directorate). FEMA believes the Regional Administrator is best positioned to determine whether an extension is appropriate, and that approval at the Assistant Administrator level is not necessary in this situation. The delay and administrative burden of a lengthier review process, which is required for approval by the Assistant Director, outweigh any marginal benefit it may have.

vi. Section 206.225 Emergency Work

FEMA proposes to revise the heading of this section from ''Emergency work'' to ''Emergency protective measures.'' FEMA splits emergency work into two categories: debris removal and emergency protective measures. Currently, the heading of sections 206.224 and 206.225 are confusing as both concern emergency work, but only section 206.225 is entitled ''emergency work.'' We propose to revise the heading of this section to more accurately reflect the way FEMA categorizes emergency work. Similarly, in paragraph (a)(2), we propose to replace ''emergency work'' with ''emergency protective measures.'' These are non-substantive changes intended to improve clarity.

Also, in paragraph (a)(2), we propose replacing ''cope with'' with ''eliminate, lessen, or avert,'' and in paragraph (a)(3) we propose adding ''avert'' to ''eliminate'' and ''lessen.'' ''Avert'' is used in the current definition of ''emergency work'' in 206.201, as well as in section 502 of the Stafford Act. These proposed changes in paragraph (a) are non-substantive and would simply ensure clear, consistent language throughout part 206.

In paragraph (a)(3)(ii), we propose to remove the word ''additional.'' Emergency protective measures authorized under section 403 or 502 of the Stafford Act include work that eliminates, lessens, or averts immediate threats of significant damage to improved public or private facilities. The Stafford Act does not limit emergency protective measures to ''additional'' damage to improved facilities. That is, FEMA does not currently limit emergency work to ''additional'' damage, and FEMA reimburses emergency protective measures that protect a facility prior to damage. For example, emergency protective measures such as sandbagging, bracing/shoring structures, and construction of temporary levees are eligible for reimbursement. Removal of the word ''additional'' is a non-substantive change.

[62] *See* PAPPG at 52.

FEMA proposes to revise paragraphs (c) and (d) to clarify that pursuant to these provisions FEMA provides emergency communications and emergency public transportation in the form of direct Federal assistance. In paragraph (c), this new language would replace the existing statement about establishing and making emergency communications available to State and local government officials. Although this current language is a reasonably accurate description of the DFA process, FEMA believes it could be better worded to improve clarity. FEMA therefore proposes to explicitly describe this assistance as DFA. The proposed revision would not change how FEMA provides emergency communications or other types of DFA. Likewise, under section 206.225(a), emergency communications and emergency public transportation are only eligible to save lives, to protect public health and safety, and to protect improved property. Once those needs have been met, funding is discontinued. As there is no need to restate this requirement in paragraphs (c) and (d), FEMA proposes to remove the relevant sentence from each paragraph for clarity.

Additionally, FEMA proposes to add specific mention of appropriate auxiliary aids and services where necessary for effective communication and paratransit services for individuals with disabilities to paragraphs (c) and (d). FEMA currently provides DFA for these services,[63] and this proposed revision would not change that, but simply improve clarity and highlight to the reader the availability of this assistance, consistent with FEMA's obligation to provide accessible disaster assistance.[64]

FEMA proposes to add a new paragraph (e) to address the rescue, care, shelter, and essential needs of household pets, service animals, and assistance animals. Section 689(b) of PKEMRA and section 4 of the PETS Act amended section 403(a) of the Stafford Act to include as essential assistance the rescue, care, shelter, and essential needs of individuals with household pets and service animals and of such pets and animals. With the change to FEMA's statutory authority, the costs recipients and subrecipients expend to rescue, shelter, care for, and provide essential needs for household pets and service animals are reimbursable, and we therefore propose updating section 206.225 accordingly. Consistent with FEMA guidance on this issue,[65] proposed paragraph (e) includes ''assistance animals,'' since animals meeting the definition of that term proposed in section 206.221 would fall within the scope of section 403(a) of the Stafford Act.[66]

FEMA proposes to add a new paragraph (f) to address the provision of temporary relocation facilities for essential community services, which is authorized by section 403(a)(3)(D) of the Stafford Act. As a result of a disaster, essential community services provided at public and PNP facilities may be disrupted to the extent that they cannot continue unless they are relocated to another facility. An applicant may request reimbursement for the reasonable costs for temporary facilities so that it can continue to provide its essential community services. Consistent with current FEMA guidance, paragraph (f) would define ''essential community services'' as those services performed by governmental entities or private nonprofit organizations that are necessary to save lives, protect and preserve property or public health and safety, or preserve the proper function and health of the community at large.[67] Proposed paragraph (f) would also include a non-exhaustive illustrative list of specific essential community services as previously provided in guidance. The temporary relocation provision in section 403(a)(3)(D) of the Stafford Act is not new and FEMA's administration of temporary relocation assistance is not changing; the proposed addition of paragraph (f) would simply provide additional information in the regulations to improve clarity and usability.

vii. Section 206.226 Restoration of Damaged Facilities

FEMA proposes to revise the introductory text in this section by adding a parenthetical after ''restore'' that reads ''(repair, reconstruct, or replace),'' which more clearly reflects the scope of projects that are eligible for Public Assistance funding under section 406 of the Stafford Act. We also propose revising this sentence to clarify that the restoration of facilities must be on the basis of their ''predisaster design,'' consistent with the term used in the definition in section 206.201. This is not a substantive change.

To improve clarity and readability, we propose to reorganize the paragraphs in this section to be in alphabetical order.

We propose to remove existing paragraphs (a)(2) and (3), which allow public elementary and secondary school facilities to receive assistance under the Stafford Act even though they may be otherwise eligible for assistance from the U.S. Department of Education. The exception was added on October 25, 1993, to provide an exception to FEMA's general practice of deferring to the authority of another Federal agency when both FEMA and the other agency have authority to grant assistance in response to a declared major disaster.[68] The change eliminated the overlap of FEMA and the U.S. Department of Education programs and any confusion resulting from that overlap. Due to changes made by the No Child Left Behind Act of 2001, 20 U.S.C. 6301, the U.S. Department of Education no longer has the authority to assist elementary and secondary schools in response to a disaster. Therefore, the exception is no longer necessary, and these paragraphs are no longer applicable. Removing these paragraphs is not a substantive change. FEMA will continue to provide assistance to public and eligible PNP elementary and secondary school facilities as otherwise authorized by 44 CFR part 206.

In proposed paragraph (c) (existing (d)), we propose revising the heading to read ''Codes and standards,'' consistent with the other edits to this paragraph, discussed below. We also propose conforming edits elsewhere in the paragraph to change ''standards'' to ''codes and standards.'' We also propose designating the introductory text as paragraph (c)(2), adding a new paragraph (c)(1), and redesignating the remaining paragraphs accordingly.

Section 1235(b) of DRRA amended section 406(e) of the Stafford Act to require FEMA to fund repair, restoration, reconstruction, or replacement in conformity with ''the latest published editions of relevant consensus-based codes, specifications, and standards that incorporate the latest hazard-resistant design and establish minimum acceptable criteria for the design, construction, and maintenance of residential structures and facilities . . . .'' We propose to codify this requirement in our regulations in proposed paragraph (c)(1). Per the proposed revision to the definition of ''facility'' in section 206.201, the proposed language in proposed section 206.226(c)(1) does not include the word ''structure.'' FEMA has issued interim guidance on DRRA section 1235(b),

[63] *See* PAPPG at 114.

[64] *See* 42 U.S.C. 5151, 29 U.S.C. 794.

[65] *See* PAPPG at 119.

[66] 42 U.S.C. 5170b(a)(3)(J)(ii) refers to ''such pets and animals,'' indicating that household pets and service and assistance animals are contemplated within our statutory authority.

[67] *See* PAPPG at 130.

[68] Disaster Assistance; Public Elementary and Secondary School Facilities Final Rule, 58 FR 55021 (Oct. 25, 1993).

which defines the framework for consistent and appropriate implementation of this consensus-based codes, specifications, and standards requirement,[69] and this proposed addition to the regulations would not displace that guidance. The framework and details provided there would continue to apply; this proposed rule would simply incorporate the basic statutory requirement into the regulations. We also propose revising new paragraph (c)(2) (existing (d)) to provide that the costs of restoration under other Federal, State, Tribal, and local codes and standards are still eligible, provided that they (1) are at least as stringent as the applicable code or standard established in new paragraph (c)(1), and (2) meet the existing requirements being retained in proposed paragraphs (c)(2)(i)–(v). This proposed revision would ensure that the new DRRA-mandated consensus-based codes and standards apply, but also allow for the funding of projects under other codes and standards that meet or exceed that minimum. This proposed revision is consistent with FEMA's guidance on DRRA section 1235(b).[70]

In proposed paragraph (c)(2)(i) (existing (d)(1)), we propose removing ''repair,'' since it is redundant with ''restoration.'' This is consistent with the proposed revision to the introductory text of section 206.226, discussed above. We also propose removing the undesignated parenthetical between paragraphs (c)(2)(i) and (ii) (existing (d)(1) and (2)), which explains that standards may be different for new construction than for repair work. Removing this language would not be a substantive change, but simply improve the readability and clarity of the regulations; paragraph (c)(2)(i) would already make clear that different types of restoration may have different applicable codes and standards, so the parenthetical is redundant, and its location in the paragraph may cause confusion. In addition, we propose to remove existing paragraph (d)(3)(ii), which addresses standards for State governments until January 1, 2000, and local governments until January 1, 1999. This paragraph is no longer necessary because these dates have passed.

We propose to add a new paragraph (d) to address disaster damage. The requirement that, to be eligible for restoration under section 206.226, damage must be the result of a major disaster is a fundamental requirement of section 406 of the Stafford Act. Deterioration, loss of useful life, or aging of a facility are not damage caused by a disaster, and therefore do not qualify for Public Assistance funding. This proposed addition would emphasize the disaster damage requirement and improve clarity in the regulations.

Proposed paragraph (f) (existing (e)) addresses hazard mitigation and states that, in approving grant assistance for restoration of facilities, the Regional Administrator may require cost-effective hazard mitigation measures not required by applicable standards. Although it has been FEMA's policy to consider hazard mitigation measures when evaluating projects for Public Assistance grants,[71] FEMA proposes to add language clarifying that recipients and subrecipients may request cost-effective hazard mitigation measures when seeking grant assistance for the restoration of facilities to underscore the importance of hazard mitigation in the recovery from a disaster. In recognition that there are some projects in which hazard mitigation is not appropriate, or that some measures may not be cost-effective, the Regional Administrator must consider, but is not required to approve, all proposals for hazard mitigation.

Proposed paragraph (i) (existing (c)) lists the critical services that eligible PNP facilities must provide in order to be eligible for Public Assistance funding for permanent work without applying for a loan from the U.S. Small Business Administration. Section 689h of PKEMRA amended section 406(a)(3)(B) of the Stafford Act to include education as a critical service. To implement this new statutory authority, FEMA proposes to add ''education'' to this list of critical services. Similarly, the Emergency Information Improvement Act of 2015, Public Law 114–111, amended the list of critical services in section 406(a)(3)(B) of the Stafford Act to replace ''communications'' with ''communications (including broadcast and telecommunications)''. FEMA proposes to make this same change to the list of critical services in this paragraph. FEMA also proposes to revise paragraphs (i)(1) and (2) (existing (c)(1) and (2)) to remove unnecessary cross-references and improve clarity and readability; these changes would not alter the current PNP eligibility requirements.

Proposed paragraph (j) (existing (g)) addresses approval of funding for relocation. Existing paragraph (g)(1) currently states that the Regional Administrator may approve funding for and require restoration of a destroyed facility at a new location when the facility is and will be subject to repetitive heavy damage, the approval is not barred by other provisions in 44 CFR, and the overall project, including all costs, is cost-effective. FEMA proposes three clarifying, non-substantive edits to proposed paragraph (j)(1).

First, we propose replacing the phrase ''a destroyed facility'' with ''a damaged facility that is not repairable, per paragraph (k)(1) of this section.'' Under proposed paragraph (k)(1) (existing (f)(1)), if the cost to repair a damaged facility exceeds 50 percent of the cost to replace the facility, it is considered not repairable. Damaged facilities that are not destroyed but that are not repairable are treated the same as destroyed facilities with respect to relocation assistance. The proposed change would make clear that the Regional Administrator may approve funding for and require relocation of these damaged, not repairable facilities. The proposed change would not affect the eligibility of destroyed facilities. Destroyed facilities are considered not repairable and would continue to be eligible for relocation assistance if the other requirements of proposed paragraph (j) are met.

Second, FEMA proposes to revise proposed paragraph (j)(1)(ii) to clarify that FEMA regulation *or* applicable statutory requirements must not bar relocation approval. Adherence to applicable statutory requirements is necessary even if those requirements are not explicitly invoked in FEMA regulations in Title 44 CFR.

Third, we propose to remove the words ''including all costs'' from proposed paragraph (j)(1)(iii). In determining the cost-effectiveness of relocation, it is not necessary to include every cost and it is unlikely that all costs will be known at the time the cost-effectiveness determination is made. FEMA considers the larger context of the requested relocation when determining cost-effectiveness, such as whether the applicant provides an essential community service that should be relocated. The regulatory text should not suggest the burden for establishing cost-effectiveness is higher than it is. This proposed revision is consistent with FEMA's current guidance on relocation.[72]

[69] Consensus-Based Codes, Specifications and Standards for Public Assistance, FEMA Recovery Interim Policy FP–104–009–11 Ver. 2.1 (Dec. 20, 2019), available at *https://www.fema.gov/sites/default/files/2020-07/fema_DRRA-1235b-public-assistance-codes-standards-interim-policy.pdf.*

[70] *See Id.* at 4.

[71] *See* PAPPG at 153.

[72] *See* PAPPG at 160 (''If the cost to relocate the facility is less than the eligible cost to replace the facility at its original location . . . then the project

Continued

In proposed paragraph (j)(2), we propose to clarify that when relocation is required by the Regional Administrator, it is ''the construction of'' ancillary facilities such as roads and utilities that is eligible.

Existing paragraph (g)(3) states that, when relocation is required by the Regional Administrator, no future funding for repair or replacement of a facility at the original site will be approved. We propose to clarify that the funding referred to is FEMA funding. We also propose to replace the reference to 44 CFR part 9 with a reference to 44 CFR part 80. Part 80, added to the CFR in 2007,[73] consolidated FEMA's procedures and requirements for the acquisition of property for open space and expanded the scope of the prior regulations to address the use of all types of mitigation funds.

In proposed paragraph (j)(4), we propose to remove the 90 percent limit on eligible costs for alternate projects to reflect section 1207(a) of DRRA, which amended section 406(c) of the Stafford Act to remove the 90 percent Federal cost share limit for alternate projects. This proposed revision would incorporate the statutory change without alteration. Also, in proposed paragraph (j)(4), we propose clarifying that if the actual project costs for an alternate project are less than the estimated costs, only the actual costs will be eligible for funding. This is not a substantive policy change; we would simply be making this limitation explicit.[74]

Lastly, in proposed paragraph (j)(5), we propose to remove an outdated reference to 44 CFR part 10, which was removed in 2016.[75] When considering the environmental planning and historic preservation impacts of providing funding for projects under the Public Assistance program, FEMA now uses DHS Instruction Manual 023–01–001–1, Revision 01, and Directive 023–01, Implementation of the National Environmental Policy Act, and FEMA Directive 108–1 and Instruction 108–1–1, Environmental Planning and Historic Preservation Responsibilities and Program Requirements, instead of 44 CFR part 10.

Proposed paragraph (k) (existing (f)) addresses when a facility should be repaired versus replaced. Existing paragraph (f)(1) states in part that ''[a] facility is considered repairable when disaster damages do not exceed 50 percent of the cost of replacing a facility to its predisaster condition.'' We propose to replace the words ''disaster damages do'' with ''the estimated repair cost for disaster damage does.'' This is a more accurate statement since it is the costs of repair rather than the damage incurred that is considered when determining whether a facility is repairable. This change would not substantively alter the requirements of this paragraph. Instead, it is simply intended to improve clarity. Similarly, we propose replacing the words ''predisaster condition'' with ''predisaster design and function.'' This latter term is used more often in FEMA's guidance on repair and replacement,[76] and would improve clarity and consistency; it would not be a substantive change. We also propose replacing the second occurrence of the words ''a facility'' with ''the facility'' to avoid confusion. This would not be a substantive change.

Finally, in proposed paragraph (l)(1) (existing (k)(1)), we propose to change the subheading from ''Alternative use facilities'' to ''Converted facilities'' in order to avoid confusion with ''alternate projects,'' which are addressed in another section of this subpart. We also propose to reword the text to clarify the limitations of eligibility for converted facilities. When a facility is being used for an alternate use at the time of the disaster, it is eligible for restoration either to the alternate use or to the original use, whichever is less. For example, a school being used as a hospital at the time of the disaster would be reimbursed for eligible costs to restore the facility to a school, or a hospital, whichever is less. This is detailed in FEMA's current guidance,[77] but the regulatory language in existing paragraph (k)(1) does not make this clear, so we propose to revise the text to improve clarity and consistency.

As clarified in the preceding paragraph, FEMA currently considers eligible the lesser of the cost to restore a converted facility to its immediate pre-disaster use or its original use. FEMA requests comment on whether to amend its regulations to allow reimbursement in some or all cases for the cost of restoring the facility to its original design or to the design for the purpose the facility was being used prior to the disaster, regardless of the lesser cost. FEMA seeks feedback on how best to balance supporting community-driven recovery and responsible stewardship of taxpayer funds and whether there are specific criteria FEMA should consider when evaluating converted facilities projects.

We also propose non-substantive grammatical edits to proposed paragraph (l)(2) (existing (k)(2)) to refer to ''facility'' in the singular instead of the plural, to match the usage in proposed paragraph (l)(1) (existing (k)(1)).

viii. Section 206.227 Snow Assistance

We propose to revise section 206.227 by replacing the word ''snowstorms'' with ''snowfall'' to clarify that FEMA's assessment of record or near-record conditions for the purposes of snow assistance is based on the amount of snow that falls. This change is non-substantive, but would improve clarity and make the language in section 206.227 consistent with the language used in FEMA's guidance on snow assistance.[78]

ix. Section 206.228 Allowable Costs

We propose to revise the introductory text in section 206.228 to clarify the applicability of different authorities to the Public Assistance program. While 2 CFR part 200 provides basic requirements for allowable costs for all Federal awards, the Public Assistance program is limited to the assistance authorized and other requirements imposed by the Stafford Act.[79] Part 200 therefore applies only to the extent that it does not conflict with the more specific statutory provisions, or with FEMA's implementation of those provisions in regulation and guidance. The revised language does not represent a substantive policy change with respect to allowable costs but is simply intended to more accurately describe the interplay between these different authorities.

We propose to replace paragraph (a) with paragraph (a)(1) and to redesignate the remaining paragraphs accordingly. The heading of new paragraph (a) would be revised to read ''Eligible Force Account Equipment Costs,'' to more accurately describe its contents.

We also propose to remove paragraph (a)(2)(ii) to remove the provision on debris removal work for major disasters and emergencies declared in response to

is cost effective. In instances where the cost of relocation exceeds the cost to replace the facility at its original location FEMA may . . . determine cost effectiveness.'').

[73] *See* Flood Mitigation Grants and Hazard Mitigation Planning, 72 FR 61720 (Oct. 31, 2007) (interim final rule); *see also* Flood Mitigation Grants and Hazard Mitigation Planning, 74 FR 47471 (Sept. 16, 2009) (final rule).

[74] *See* PAPPG at 164.

[75] *See* Removal of Environmental Considerations Regulations, 81 FR 56514 (Aug. 22, 2016).

[76] *See* PAPPG at 157, 217.

[77] PAPPG at 140.

[78] *See* PAPPG at 238.

[79] *See also* 2 CFR 200.420 (''In case of a discrepancy between the provisions of a specific Federal award and the provisions below, the Federal award governs'').

Hurricane Sandy. This provision is out of date and no longer needed.

We propose to add a new paragraph 206.228(b)(2) incorporating the Public Assistance alternative procedures pilot program for debris removal. The Sandy Recovery Improvement Act of 2013 amended the Stafford Act to add section 428, which, *inter alia,* authorized alternative procedures for debris removal under the Public Assistance program.[80] It also authorized FEMA to implement the alternative procedures through a pilot program. FEMA established a pilot program that applied to debris removal in all major disasters and emergencies declared on or after June 28, 2013, and has repeatedly revised the pilot program since then.[81] Under normal procedures for emergency work, only overtime labor is eligible for budgeted employees, while straight and overtime labor are eligible for unbudgeted employees.[82] Under the alternative procedures, as currently implemented in FEMA guidance, applicants can opt to participate in the straight-time procedure for debris removal, where straight-time labor costs are eligible for budgeted employees conducting Category A debris removal activities.[83] Proposed new paragraph 206.228(b)(2) would incorporate this policy into FEMA's regulations.

The Sandy Recovery Improvement Act of 2013 also amended section 403 of the Stafford Act to provide for the eligibility of straight-time for force account labor for state and local employees conducting emergency protective measures, where the work is not typically performed by the employees and it is the type of work that might otherwise be carried out by contract.[84] We request comment on whether FEMA should incorporate that change in its regulations. In addition, we request comment on a provision to make straight-time labor costs eligible for permanently employed health care personnel reassigned or redeployed to perform eligible healthcare work for any major disaster or emergency declared by the President on or after March 13, 2020, in response to the COVID–19 pandemic. In light of the widespread impact of the pandemic and its continued impact on State and local governments, we seek feedback from the public on whether such a provision would promote efficient and timely recovery.

Existing paragraph (a)(3) provides that administrative and management costs for major disasters and emergencies will be paid in accordance with 44 CFR part 207. We propose removing paragraph (a)(3) to avoid confusion. Part 207 was first published in 2007 [85] and implemented section 324 of the Stafford Act, which authorizes FEMA to provide funding for management costs incurred in the administration of the Hazard Mitigation Grant Program and the Public Assistance program. Section 1215 of DRRA amended section 324 of the Stafford Act to require FEMA provide funding for management costs at specific percentage rates. As a result of this amendment, the existing part 207 regulations are no longer current. FEMA has implemented the DRRA section 1215 amendments via policy,[86] but FEMA has not yet issued new regulations. As such, the reference to part 207 in paragraph (a)(3) may cause confusion, and we propose to remove it. This removal would not change the current calculation or funding of management costs and future revisions to part 207 would still apply even without the specific cross-reference here. This proposed change would help simply to improve clarity.

*E. 44 CFR Part 206, Subpart K—Community Disaster Loans*

The Disaster Relief Act of 1974 (Pub. L. 93–288) authorized FEMA's Community Disaster Loan (CDL) program, which is currently codified in Section 417 of the Stafford Act, 42 U.S.C. 5184. The CDL program provides funding for local governments to operate their essential community services after substantial revenue loss caused by a disaster.[87]

i. Section 206.361 Loan Program

Section 608 of the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Public Law 109–347, 120 Stat. 1884, amended section 417(b) of the Stafford Act by increasing the amount that communities may receive in a CDL. It now allows communities to receive up to 50 percent of their annual operating budgets (not to exceed $5 million) if they suffered a loss of tax or other revenue equal to or greater than 75 percent of their annual operating budgets for the fiscal year in which the disaster occurred. We propose to revise paragraph (b) accordingly.

ii. Section 206.363 Eligibility Criteria

We propose to remove the words ''or emergency'' from paragraph (b)(1). Section 417(a) of the Stafford Act authorizes CDLs only under major disaster declarations, and FEMA only makes CDLs in such cases; however, paragraph (b)(1) erroneously refers to major disasters and emergencies. This revision would make clear that CDLs are not authorized for emergency declarations, consistent with the Stafford Act.

iii. Section 206.364 Loan Application

Consistent with the proposed edit to section 206.361, we propose to revise paragraph 206.364(d)(1)(ii) to reflect that, per section 608 of the SAFE Port Act, communities may now receive CDLs of up to 50 percent of their annual operating budgets (not to exceed $5 million) if they suffered a loss of tax or other revenue equal to or greater than 75 percent of their annual operating budgets for the fiscal year in which the disaster occurred. Additionally, we propose a non-substantive revision to paragraph (c)(2) to clarify that the deadline to submit a revised loan application is sixty ''calendar days'' from the date of the initial disapproval.

[80] *See* Public Law 113–2, 1102, 127 Stat. 39, 39–42.

[81] *See* FEMA, Archives: Public Assistance Alternative Procedures (PAAP), *https://www.fema.gov/assistance/public/policy-guidance-fact-sheets/public-assistance-alternative-procedures-paap-archives* (last accessed June 12, 2024).

[82] 42 U.S.C. 5170b(d)(1)(B); 44 CFR 206.228(a)(2)(iii) (proposed 206.228(b)(3)).

[83] *See* PAPPG at 101. When FEMA first issued guidance on the alternative procedures, it provided for a variety of alternatives, including, for example, recycling revenues and an increased Federal cost share for accelerated removal. *See* PAAP Alternative Procedures Pilot Program Guide for Debris Removal, ver. 1 (June 28, 2013), available at *https://www.fema.gov/sites/default/files/2020-07/fema_PAAP-debris-removal-guide-V1_2013.pdf.* Over the years, as FEMA revised the guidance, various provisions were removed for being ineffective or underutilized, and by 2019, when FEMA issued version 7 of the guidance, it only included the straight time force account labor provision. *See* PAAP Alternative Procedures Pilot Program Guide for Debris Removal, ver. 7 (June 28, 2019), available at *https://www.fema.gov/sites/default/files/2020-07/fema_PAAP-debris-removal-guide-V7_6-28-2019.pdf.* In 2020, this guidance was incorporated into FEMA's comprehensive Public Assistance program guidance, the PAPPG, retaining only this straight time force account labor provision. *See* PAPPG at 101.

[84] *See* Public Law 113–2, 1108, 127 Stat. 39, 47.

[85] *See* Management Costs, 72 FR 57875 (Oct. 11, 2007).

[86] *See* Hazard Mitigation Grant Program Management Costs (Interim), FP 104–11–1 (Nov. 14, 2018), available at *https://www.fema.gov/sites/default/files/2020-07/fema_DRRA-1215-hazard-mitigation-grant-program-management-costs-interim-policy.pdf;* Public Assistance Management Costs (Interim), FP 104–11–2 (Nov. 14, 2018), available at *https://www.fema.gov/sites/default/files/2020-07/pa_management_costs_interim_policy.pdf.*

[87] FEMA's website provides more information on CDLs at *https://www.fema.gov/assistance/public/nonstate-nonprofit/community-disaster-loan* (last accessed June 12, 2024).

## IV. Regulatory Analysis

*A. Executive Order 12866, as Amended, Regulatory Planning and Review and Executive Order 13563, Improving Regulation and Regulatory Review, Executive Order 14094 Modernizing Regulatory Analysis*

Executive Orders 12866 (Regulatory Planning and Review), as amended by Executive Order 14094 (Modernizing Regulatory Review), and 13563 (Improving Regulation and Regulatory Review) direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

The Office of Management and Budget (OMB) has designated this proposed rule a ''significant regulatory action'' under section 3(f) of Executive Order 12866, as amended by Executive Order 14094, but it is not significant under section 3(f)(1). Accordingly, the rule has been reviewed by OMB.

This analysis provides a summary of the potential costs, benefits, and transfer payments for the Public Assistance program update Notice of Proposed Rulemaking (NPRM) under the criteria of Executive Orders 12866, 13563, and 14094. The full Regulatory Impact Analysis (RIA) for this proposed rule is included in the docket for this NPRM.

FEMA proposes to revise its PA and CDL programs regulation to reflect current statutory authorities, agency practice, and implement program improvements. The proposed rule would incorporate changes brought about by amendments to the Stafford Act. FEMA is also proposing clarifications and corrections to the Public Assistance program. FEMA previously implemented many of the changes limiting the practical effects of this rule. The primary purpose of this rule would be to codify these changes to improve efficiency and consistency of information for the Programs. The following Table 1 summarizes the proposed changes of this rule and their impacts as measured against a no-action baseline (*i.e.,* what the world would look like absent the rule) and Table 2 summarizes the changes and their impacts as measured against a pre-statutory baseline (*i.e.,* what the world would look like without the statutory changes or FEMA's implementing guidance).

TABLE 1—SUMMARY OF THE IMPACTS FOR THE PROPOSED CHANGES, NO-ACTION BASELINE, 2020–2029

[2019$]

| Category | Summary |
|---|---|
| Changes | Codify availability of assistance for the rescue, care, shelter and essential needs of household pets and service animals.<br>Codify expansion of PA eligibility for certain types of private nonprofits (PNPs): rehabilitational facilities, community and performing arts facilities, broadcasting facilities, food banks, houses of worship, and center-based childcare facilities.<br>Codify expanding CDL percentage to 50 percent under certain conditions while maintaining $5 million maximum loan cap.<br>Codify alternative procedures for debris removal.<br>Codify the alternate project funding Federal cost share caps.<br>Codify consensus-based codes and standards requirement for PA funded projects.<br>Proposed requirement for applicants to identify any legal considerations for alternate projects.<br>Proposed requirement that State and Tribal Administrative Plans include an outline for timely closeout of project and disaster specific staffing plans.<br>Proposed setting of submission dates for certain work documentation required for PA projects.<br>Non-substantive changes and clarifications to improve the efficiency and consistency of the PA program. |
| Affected Population | Applicants eligible to request a Federal major disaster declaration authorizing PA, including 56 State and Territorial governments, 574 Federally recognized Indian Tribal governments, local governments, and certain private nonprofit organizations. |
| Transfer Payments from FEMA to Applicants | Under a no-action baseline, there are no transfer payments to report. |
| Costs (quantitative) | For the no-action baseline, the total 10-year costs to Applicants and FEMA discounted at 3 percent and 7 percent, respectively, is $251,270 and $216,272. The annualized cost is $29,457 and $30,792 at the 3 and 7 percent discount rates. |
| Benefits (quantitative) | FEMA is unable to estimate quantitative benefits. |
| Benefits (qualitative) | Codifying already implemented changes would improve clarity and align FEMA regulations with statutory changes and current practices and procedures.<br>Identifying legal considerations early in the applications process would allow for more complete project application review for alternate projects.<br>Adding submission deadlines for work documentation would increase clarity and add more time early in the application process for work documentation.<br>Keeping administrative plans up-to-date and providing additional staffing information about prior disasters would help recipients be in a better position to respond to and recover from emergencies and disasters. |

TABLE 2—SUMMARY OF THE IMPACTS FOR CHANGES, PRE-STATUTORY BASELINE, 2000–2029

[2019$]

| Category | Summary |
|---|---|
| Changes | Amends availability of assistance for the rescue, care, shelter and essential needs of household pets and service animals.<br>Amends PA eligibility for certain types of private nonprofits (PNPs): rehabilitational facilities, community and performing arts facilities, broadcasting facilities, food banks, houses of worship, and center-based childcare facilities.<br>Amends CDL percentage to 50 percent under certain conditions while maintaining $5 million maximum loan cap.<br>Amends alternative procedures for debris removal.<br>Amends the alternate project funding Federal cost share caps.<br>Amends consensus-based codes and standards requirement for PA funded projects.<br>Proposed requirement for applicants to identify any legal considerations for alternate projects.<br>Proposed requirement that State and Tribal Administrative Plans include an outline for timely closeout of project and disaster specific staffing plans.<br>Proposed setting of submission dates for certain work documentation required for PA projects.<br>Non-substantive changes and clarifications to improve the efficiency and consistency of the PA program. |
| Affected Population | Applicants eligible to request a Federal major disaster declaration authorizing PA, including 56 State and Territorial governments, 574 Federally recognized Indian Tribal governments, local governments, and certain private nonprofit organizations. |
| Transfer Payments from FEMA to Applicants | Under a pre-statutory baseline, the net increase in 10-year total transfer payments discounted at 3 and 7 percent, respectively, is $50,762,154 and $41,796,443. The net increase in annualized transfer payment is $5,950,873 at the 3 and 7 percent discount rates. |
| Costs (quantitative) | Under the pre-statutory baseline, the total 10-year costs to Applicants and FEMA discounted at 3 percent and 7 percent, respectively, is $70,957,558 and $58,434,274. The annualized cost is $8,318,390 and $8,319,726 at the 3 and 7 percent discount rates. |
| Benefits (quantitative) | FEMA is unable to estimate quantitative benefits. |
| Benefits (qualitative) | Expands PA eligibility for certain PNPs allowing FEMA to consistently provide additional assistance to such PNPs to allow them to recover more quickly from disaster-damage.<br>Improving clarity and aligning FEMA regulations with statutory changes and current practices and procedures.<br>Increasing recipient flexibility when determining whether the community would benefit more from facility restoration or an alternate project.<br>Promotes resiliency and reduces future damage risk of repaired facilities with consensus-based codes and standards requirement for PA funded projects.<br>Increasing flexibility for debris removal projects by allowing FEMA to reimburse base and overtime wages for the employees of State, Tribal, or local governments.<br>Identifying legal considerations early in the applications process would allow for more complete project application review for alternate projects.<br>Increases clarity and adds more time early in the application process for work documentation.<br>Keeping administrative plans up-to-date and providing additional staffing information about prior disasters would help recipients be in a better position to respond to and recover from emergencies and disasters. |

## Need for Regulation

FEMA proposes to revise its PA and CDL program regulations to reflect current statutory authorities and implement program improvements. The proposed rule would incorporate changes brought about by amendments to the Stafford Act [88] to the PA and CDL programs. FEMA proposes to amend its PA and CDL program regulations to incorporate these statutory changes and to improve program administration. FEMA is also proposing clarifications and corrections to improve the efficiency and consistency of the PA program. FEMA previously implemented many of the changes through guidance, limiting the practical effects of this rule. The primary purpose of this rule would be to codify these changes to improve efficiency and consistency of information for the program.

FEMA addresses the substantive changes in this analysis and presents how they affect costs, benefits, and transfer payments. The remaining changes would be non-substantive, meaning they are technical and include definitional updates and other changes that modernize and standardize regulations, reduce redundancy, or increase readability. The non-substantive changes do not have an economic impact. FEMA included a detailed marginal analysis table in Appendix A of the separate Regulatory Impact Analysis that summarizes changes listed in the NPRM and the related impacts.

## Affected Population

The proposed rule would affect all potential applicants for Federal assistance under the PA and CDL programs. Eligible applicants for PA include 56 State and Territorial governments, 574 Federally recognized Tribal governments, local governments,

[88] Several Federal statutes have amended sections of the Stafford Act relating to Public Assistance and Community Disaster Loans. These include the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA), 6 U.S.C. 701 *et seq.,* the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), Public Law 109–347, 120 Stat. 1884, the Pets Evacuation and Transportation Standards Act of 2006 (PETS Act), Public Law 109–308, 120 Stat. 1725, the Sandy Recovery Improvement Act of 2013 (SRIA), Public Law 113–2, 127 Stat. 39, the Emergency Information Improvement Act of 2015, Public Law 114–111, 129 Stat. 2240, the Bipartisan Budget Act of 2018, Public Law 115–123, 132 Stat. 64, and the FAA Reauthorization Act of 2018, Division D, Disaster Recovery Reform Act of 2018 (DRRA), Public Law 115–254, 132 Stat. 3438.

and certain PNPs.[89] Based on data from 2010 to 2019, the PA program as a whole obligated an average amount of $5.6 billion (in 2019 dollars) across 28,721 projects per year. For PNP entities specifically, the PA program obligated an average amount of $454.7 million (in 2019 dollars) per year across 2,070 projects from 2010 to 2019.

Under the PA program, FEMA awards grants to help communities quickly respond to and recover from Presidentially-declared emergencies and major disasters. Generally, the State, Territory, or the District of Columbia for which the emergency or major disaster is declared is the recipient. Federally recognized Indian Tribal governments may apply for Public Assistance directly and be classified as a recipient.[90] The applicant is a State, Tribal, or Territorial agency, local government, or eligible private nonprofit organization submitting an application to the recipient for assistance under the recipient's grant. Upon award, the recipient notifies the applicant of the award, and the applicant becomes a subrecipient.

Baseline

Following guidance in OMB Circular A–4, FEMA assessed each impact of this rule against a pre-statutory and no-action baseline. The pre-statutory baseline is what the world would be like if the relevant statute(s) had not been adopted and implemented through guidance. Accordingly, measuring the proposed rule against a pre-statutory baseline shows the effects of the proposed rule as compared to FEMA practice prior to the enactment of the enabling statute or guidance (*i.e.,* as if FEMA had not already implemented the statutory or policy changes.) A no-action baseline is an assessment of the way the world would look absent the proposed action. Accordingly, measuring the proposed rule against a no-action baseline shows the effects of the proposed rule as compared to current FEMA practice (*i.e.,* compared to FEMA guidance, which reflects FEMA's current practice).

The proposed rule under a no-action baseline would have monetary costs and qualitative benefits. Under a pre-statutory baseline, the proposed rule would have distributional transfer payments, monetary costs, opportunity costs, and qualitative benefits. Table 3 shows the undiscounted annual effects of this proposed rule under a no-action baseline. Table 4 shows the undiscounted annual effects of this proposed rule under a pre-statutory baseline.

TABLE 3—AVERAGE ANNUAL EFFECTS OF PROPOSED RULE, FUTURE 10-YEAR PERIOD, NO-ACTION BASELINE
[2019$]

| Change No. | Change | Year implemented | Costs | Benefits | Transfers from FEMA to recipients |
|---|---|---|---|---|---|
| 1 | Rehabilitational Facilities | 1988 | $0 | Qualitative | $0 |
| 2 | Pets and Service Animals | 2006 | 0 | | 0 |
| 3 | Community and Performing Arts | 2007 | 0 | | 0 |
| 4 | CDL Program | 2012 | 0 | | 0 |
| 5 | Debris Removal Pilot | 2013 | 0 | | 0 |
| 6 | Broadcasting Facilities | 2015 | 0 | | 0 |
| 7 | Food Banks | 2017 | 0 | | 0 |
| 8 | Houses of Worship | 2017 | 0 | | 0 |
| 9 | Alternate Project Funding | 2017 | 0 | | 0 |
| 10 | Center-Based Childcare Facilities | 2018 | 0 | | 0 |
| 11 | Codes and Standards | 2019 | 0 | | 0 |
| 12 | Alt Projects Legal Considerations | New | 1,434 | | 0 |
| 13 | State and Tribal Admin Plans* | New | 22,138 | | 0 |
| 14 | Work Documentation | New | 0 | | 0 |
| | Familiarization* | | 4,926 | | 0 |
| | Annual Increase | | 28,498 | | 0 |
| | Annual Decrease | | 0 | | 0 |
| | Total | | 28,498 | Qualitative | 0 |

*For consistency in the table, this cost is displayed as an annual average over ten years. Familiarization cost would be a one-time cost in the first year of $49,264. Change 13 has a cost of $40,250 in the first year and $20,125 in subsequent years.

TABLE 4—AVERAGE ANNUAL EFFECTS OF PROPOSED RULE, FUTURE 10-YEAR PERIOD, PRE-STATUTORY BASELINE
[2019$]

| Change No. | Change | Year implemented | Costs | Benefits | Transfers from FEMA to recipients |
|---|---|---|---|---|---|
| 1 | Rehabilitational Facilities | 1988 | $10,890 | Qualitative | $1,126,114 |
| 2 | Pets and Service Animals | 2006 | 3,496 | | 590,464 |
| 3 | Community and Performing Arts | 2007 | 1,485 | | 224,514 |
| 4 | CDL Program | 2012 | 0 | | 0 |
| 5 | Debris Removal Pilot | 2013 | 0 | | −7,373,048 |
| 6 | Broadcasting Facilities | 2015 | 1,485 | | 344,235 |
| 7 | Food Banks | 2017 | 0 | | 0 |
| 8 | Houses of Worship | 2017 | 76,725 | | 2,121,795 |
| 9 | Alternate Project Funding | 2017 | 0 | | 2,524,814 |
| 10 | Center-Based Childcare Facilities | 2018 | 0 | | 0 |
| 11 | Codes and Standards | 2019 | 8,194,853 | | 6,391,985 |
| 12 | Alt Project Legal Considerations | New | 1,434 | | 0 |
| 13 | State and Tribal Admin Plans* | New | 22,138 | | 0 |

[89] A list of the 574 Tribal entities can be found at: Indian Entities Recognized by and Eligible To Receive Services From the United States Bureau of Indian Affairs, 88 FR 2112 (Jan. 12, 2023).

[90] FEMA Tribal Policy (Rev. 2). FEMA. *https://www.fema.gov/sites/default/files/documents/fema_tribal-policy.pdf.* Dec. 18, 2020.

TABLE 4—AVERAGE ANNUAL EFFECTS OF PROPOSED RULE, FUTURE 10-YEAR PERIOD, PRE-STATUTORY BASELINE—Continued
[2019$]

| Change No. | Change | Year implemented | Costs | Benefits | Transfers from FEMA to recipients |
|---|---|---|---|---|---|
| 14 ..... | Work Documentation ..... | New | 0 | | 0 |
| | Familiarization* ..... | | 4,926 | | 0 |
| | Annual Increase ..... | | 8,317,432 | | 13,323,921 |
| | Annual Decrease ..... | | 0 | | −7,373,048 |
| | Total (Net) ..... | | 8,317,432 | Qualitative ..... | 5,950,873 |

*For consistency in the table, these costs are displayed as an annual average over ten years. Familiarization would be a one-time cost in the first year of $49,216. Change 13 has a cost of $40,250 in the first year and $20,125 in subsequent years.

*Costs*

No-Action Baseline

FEMA estimates the total average undiscounted cost for this proposed rule, as measured against a no-action baseline, to be $28,498 per year over a future ten-year period. Changes 1 through 11 would not result in any additional costs, as measured against the no-action baseline, because FEMA has already implemented them through guidance and proposes to codify these changes through this rule. The proposed rule under a no-action baseline would result in additional costs due to Change 12: Alternate Project Legal Considerations (recipient costs of $1,434) and Change 13: State and Tribal Admin Plans (recipient costs of $40,250 in the first year and $20,125 in the subsequent years). Changes 12 and 13, and their estimated impacts, are described in more detail in the Pre-Statutory Baseline section below.

The proposed regulation would also result in familiarization costs. FEMA assumed a State Government Chief Executive, a senior level government official, or an individual in an equivalent occupation would read the proposed regulations to understand the changes. FEMA obtained the wage rate of $52.83 for a State Government Chief Executive from BLS OES data.[91] To account for employee benefits, FEMA multiplied the base hourly wage rate by a load factor of 1.6 to find a loaded hourly wage rate of $84.53 ($52.83 hourly mean wage for Chief Executives × 1.6 wage rate multiplier).[92] FEMA used 93 respondents (56 States territories + 37 Tribes acting as recipients) [93] in the estimate as this is the level from which a PA disaster declaration request is made. FEMA assumed there would be 112 Chief Executives that review the proposed changes, two from each State. FEMA also assumed there would be 74 Chief Executives that review the proposed changes, two from each Tribe. This means that there are a total of 186 (112 + 74) Chief Executives. FEMA assumed the States regularly update their emergency response networks and local emergency management divisions on changes in the field and the States would disseminate the regulatory changes through each State's respective process. As of the time of this analysis, there are approximately 47,000 words in the NPRM document for this rule. Although FEMA could not identify formal studies on the subject, some reports suggest that, on average, a person reads about 250 words per minute, though there can be variation according to individual attributes and type of material being read.[94] Based on the word count at the time of this analysis, it would thus take about 3.1333 (47,000 words ÷ 250 words per minute ÷ 60 minutes per hour) hours to read the rule. At the burdened wage for Chief Executives, this would be about $264.86 ($84.53 × 3.1333 hours) per review. The total familiarization cost would be about $49,264 (186 respondents × $264.86), which would potentially be incurred during the first year the rule is effective.

Under a no-action baseline, FEMA estimates the total annual cost undiscounted would be $90,948 ($1,434 + $40,250 + $49,264) for only the first year. The first year includes the calculations for familiarization costs discussed in the previous paragraph as well as costs due to Change 12: Alternate Project Legal Considerations and Change 13: State and Tribal Admin Plans. Then the total annual cost undiscounted would be $21,559 ($1,434 + $20,125) for each year after that. The discounted total net 10-year cost at 3 percent and 7 percent, respectively, would be $251,270 and $216,272. The annualized cost would be $29,457 and $30,792 at the 3 and 7 percent discount rates (Table 5).

[91] BLS OES, May 2019, NAICS code 999200, State Government, Standard Occupational Code 11–1011 for Chief Executives, mean wage. *https://www.bls.gov/oes/2019/may/naics4_999200.htm.*

[92] Fully loaded wage rates include other benefits, we are using a factor of 1.6 to calculate fully loaded wage rates. The unloaded wage rate does not account for costs to the employer for benefits, such as paid leave, health insurance, retirement, and other benefits. Bureau of Labor Statistics. Employer Costs for Employee Compensation, Table 1. ''Employer costs For Employee Compensation by ownership, March 2019.'' *http://www.bls.gov/news.release/archives/ecec_06182019.pdf.* June 18, 2019.

The wage multiplier is calculated by dividing total compensation for State and local government workers of $50.89 by Wages and salaries for State and local government workers of $31.75 per hour yielding a benefits multiplier of approximately 1.6 ($50.89 ÷ $31.75).

[93] 56 States includes 50 states and 6 territories: the District of Columbia, and territories including American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and U.S. Virgin Islands. FEMA's annual estimate of 37 Tribes was based on the number of Tribes acting as recipients historically.

[94] The benchmark of 250 words per minute applies to most adults, according to several reports. *See, e.g.,* HealthGuidance.org, What Is the Average Reading Speed and the Best Rate of Reading?, *https://www.healthguidance.org/entry/13263/1/what-is-the-average-reading-speed-and-the-best-rate-of-reading.html,* (last accessed June 12, 2024); ExecuRead, Speed Reading Facts, *https://secure.execuread.com/facts/,* (last accessed June 12, 2024). It is noted that the reading of technical material can be slower than other types of documents. Because this document is technical in some ways, the actual review time might be higher, thus resulting in higher familiarization costs than reported herein.

TABLE 5—SUMMARY OF NO-ACTION BASELINE COSTS, FUTURE 10-YEAR PERIOD

[2019$]

| Year | FEMA costs | Recipient costs | Total costs undiscounted | Annual costs discounted at 3% | Annual costs discounted at 7% |
|---|---|---|---|---|---|
| 2020 | $0 | $90,948 | $90,948 | $88,299 | $84,998 |
| 2021 | 0 | 21,559 | 21,559 | 20,321 | 18,830 |
| 2022 | 0 | 21,559 | 21,559 | 19,730 | 17,599 |
| 2023 | 0 | 21,559 | 21,559 | 19,155 | 16,447 |
| 2024 | 0 | 21,559 | 21,559 | 18,597 | 15,371 |
| 2025 | 0 | 21,559 | 21,559 | 18,055 | 14,366 |
| 2026 | 0 | 21,559 | 21,559 | 17,529 | 13,426 |
| 2027 | 0 | 21,559 | 21,559 | 17,019 | 12,548 |
| 2028 | 0 | 21,559 | 21,559 | 16,523 | 11,727 |
| 2029 | 0 | 21,559 | 21,559 | 16,042 | 10,960 |
| Total | 0 | 284,979 | 284,979 | 251,270 | 216,272 |
| Annualized | ..... | ..... | ..... | 29,457 | 30,792 |

Pre-Statutory Baseline

The proposed rule, under a pre-statutory baseline, would result in additional costs for Change 1: Rehabilitational Facilities; Change 2: Pets and Service Animals; Change 3: Community and Performing Arts; Change 6: Broadcasting Facilities; Change 8: Houses of Worship (HOW); Change 11: Codes and Standards; Change 12: Alternate Project Legal Considerations; and Change 13: State and Tribal Admin Plans. The proposed rule would also result in familiarization costs. FEMA estimates the total undiscounted cost of this proposed rule, as assessed against a pre-statutory baseline, would be $8,317,432 per year over a future ten-year period.

*Change 2:* PKEMRA and the PETS Act authorized FEMA to provide assistance for the rescue, care, shelter, and essential needs of household pets and service animals. FEMA implemented this change via PA guidance and proposes to codify it through this rule. FEMA used data from Enterprise Data Warehouse (EDW) database between 2006 and 2019 to estimate costs of assistance for the rescue, care, shelter, and essential needs of household pets and service animals. FEMA estimated an increase in costs for recipients for completing additional assistance request forms and FEMA for reviewing these additional forms totaling $3,496 ($3,392 recipients + $104 FEMA) per year.

*Changes 1, 3, 6, and 8:* The definition of PNPs was expanded by multiple statutory amendments occurring between 1988–2018 to include the following: rehabilitational facilities in 1988, community and performing arts facilities in 2007, broadcasting facilities in 2015, and houses of worship in 2017. FEMA implemented all these changes via PA guidance and proposes to codify them through this rule. FEMA used PNP project data from the EDW database for 2000–2019 to estimates costs for these changes but impacts in many cases were estimated with fewer than 10 years of data due to different dates of implementation. FEMA estimated an increase in costs for PNP recipients for completing assistance request forms and FEMA for reviewing these forms totaling $90,585 (rehabilitational facilities $10,890 ($10,516 recipients + $374 FEMA) + community and performing arts $1,485 ($1,434 recipients + $51 FEMA) + broadcasting $1,485 ($1,434 recipients + $51 FEMA) + house of worships $76,725 ($74,090 recipients + $2,635 FEMA)) per year.

*Change 11:* DRRA section 1235(b) defines the framework for consistent and appropriate implementation of consensus-based codes, specifications, and standards requirement for disaster-related repair, restoration, reconstruction, or replacement of buildings, roads and bridges, electric power, potable water, and wastewater projects. FEMA implemented this statutory change in 2019. Because this change was recently made and these types of projects can take years to complete, FEMA does not have 10 years of data with the change in effect. Therefore, FEMA estimated the impact of this change against a pre-statutory baseline by using data pulled from EDW from 2010 through 2018. During this time period, FEMA provided assistance for an average of 2,386 projects (PA categories: C–roads/bridges, E–buildings/equipment, F–utilities) per year.

FEMA used the Building Codes Adoption Tracking (BCAT) Regional reports [95] to identify projects in States with moderate to low hazard-resistant building code adoption rates. FEMA expects the consensus-based codes and standards requirement would impact projects in moderate to low hazard-resistant building code areas by applying more stringent requirements than the local codes and standards. Based on the BCAT reports, FEMA estimates the number of impacted projects from 2010 to 2018 was 1,313 projects per year and the average annual amount for these projects was $819,485,316 ($179,372,869 non-Federal share + $640,112,447 Federal share) per year. FEMA developed a project cost increase range of 1 percent to 10 percent based on input from subject matter experts and is in line with additional costs estimates of hazard-resistant building codes referenced in the 2020 Building Codes Saves: A Nationwide Study and 2019 Natural Hazard Mitigation Saves Report.[96] This range of additional costs reflects the unknown variations between local codes and/or standards used and the consensus-based codes and standard, and FEMA expects Change 11 would have limited impacts

[95] FEMA Building Code Adoption Tracking: Regions 1–10 Reports, 2023. A State or Territory is classified as moderate or lower resistance when less than 75 percent of jurisdictions have adopted hazard-resistant building codes. Available at *https://www.fema.gov/emergency-managers/risk-management/building-science/bcat/fact-sheets.* Accessed May 2, 2023

[96] Building Codes Saves: A National Study, page 1–6, *https://www.fema.gov/sites/default/files/2020-11/fema_building-codes-save_study.pdf.* Accessed August 9, 2023. Additional reference, Natural Hazard Mitigation Saves: 2019 Report, page 70, 126, 143, Additional construction cost estimates for flooding 1.7 percent, hurricane 1 percent, and safe room wind 5 to 7 percent, respectively. *https://www.nibs.org/files/pdfs/NIBS_MMC_MitigationSaves_2019.pdf.* Accessed August 9, 2023.

on projects costs due to FEMA's policy referencing multiple industry consensus-based codes and standards that may be selected from to meet the requirement.[97] Accordingly, for the impacted 1,313 projects, FEMA estimated between an additional $8,194,853 ($819,485,316 × 1 percent) and $81,948,532 ($819,485,316 × 10 percent) per year in PA total project costs for the consensus-based codes and standards requirement. Due to the policy implementation in November 2019, little post-implementation data were available. For the primary estimate of this change under a pre-statutory baseline, FEMA selected the lower estimate of $8,194,853 per year, due to the change aligning with commonly used industry building standards. Not all of these additional costs are borne by recipients as PA projects have a cost share structure; the increased total project costs for more stringent codes and standards are partially offset by FEMA in form of increased grants (transfer payments; addressed below) resulting in a higher the Federal cost share amount provided to recipients.

*Change 12:* Alternate Project Legal Considerations is the proposal to add a requirement for alternate projects that the recipient must identify any other legal considerations that might impact the project, such as liens on property, ownership issues, or zoning concerns, beyond those currently required. FEMA has not yet implemented this change and proposes to do so through this rule. FEMA anticipates that the burden to identify any legal considerations would be comparable to that of identifying issues required under the current regulations, such as floodplain management and insurance considerations, as they are similar in nature. FEMA estimates the burden associated with identifying floodplain management and insurance considerations to be 0.5 hours.[98] Based on data from 2010–2019, on average, FEMA funded 53 alternate projects per year. Using the 0.5 hour burden estimate as the estimated time required to complete the legal considerations form and the State government loaded mean wage rate of $54.10 ($33.81 hourly mean wage for Emergency Management Directors × 1.6 wage rate multiplier) yields an annual average cost of $1,434 (53 projects × 0.5 hours × $54.10 fully-loaded wage rates for Emergency Management Directors).[99] Because FEMA has not implemented this change and proposes to do so through this rule, the estimated annual cost of Change 12 is the same whether measured against the no-action or pre-statutory baseline.

*Change 13:* State and Tribal Admin Plans is FEMA's proposal to add certain requirements to State and Tribal administrative plans. As currently required, all recipients file administrative plans with FEMA.[100] This requirement includes Indian Tribal governments when they choose to act as a recipient. The proposed rule would add that recipient administrative plans must include an outline for timely closeout of project and disaster-specific staffing plans. FEMA subject-matter experts estimate that 93 respondents (56 States/Territories and 37 Tribes acting as recipients) [101] would provide one Administrative Plan per year and that the additional activities identified above would add an average of 8 hours of effort to the current burden estimate in the first year, and then 4 hours in each successive year to account for any updates needed. Using the State Emergency Management Directors, the fully-loaded wage rate is $54.10 ($33.81 hourly mean wage for Management Directors × 1.6 wage rate multiplier), which yields a total burden of $40,250 (93 respondents × 1 annual plan × 8 hours × $54.10 fully-loaded wage rate for Management Directors) in year one and $20,125 (93 respondents × 1 annual plan × 4 hours × $54.10 fully-loaded wage rate for Management Directors) each year after that.[102] Because FEMA has not implemented this change and proposes to do so through this rule, the estimated annual cost of Change 13 is the same whether measured against the no-action or pre-statutory baseline.

*Change 14:* Work Documentation relates to two PA documentation requirement changes. First, FEMA proposes to adjust the time-period during which an applicant must identify and report all disaster impacts included on project applications from a 60-day time-period to within 90 calendar days following FEMA's approval of the Request for PA to ensure applicants have adequate time to identify and report the impacts. This would be a change from the existing deadline, which is 60 days following the Recovery Scoping Meeting with FEMA. FEMA expects this additional time for documentation would not impose additional cost burden on applicants or FEMA.

Second, FEMA proposes to require applicants to submit all eligible work and costs documentation within 30 calendar days following a site inspection or 120 calendar days following FEMA's approval of the Request for PA, whichever is later. There is no current submission date for eligible work and costs documentation. FEMA used PA project data from 2016 through 2019 to estimate the percentage of projects that met the 120 day proposed submission dates due to PA grants process and system changes prior to 2016. This period from 2016 through 2019 reflects the new grants delivery model [103] and new software applications, ''PA Grants Manager'' and ''Grants Portal,'' [104] used for all stakeholders involved in the PA grant process since 2016. FEMA estimates that more than 45 percent of completed work documentation are complete within 120 days of FEMA's approval of the Request for PA. FEMA expects the new requirement to submit documentation within a certain

[97] Appendix A: Consensus-Based Codes, Specifications and Standards, page 9–16. December 20, 2019. *https://www.fema.gov/sites/default/files/2020-05/DRRA1235b_Consensus_BasedCodes_Specifications_and_Standards_for_Public_Assistance122019.pdf.*

[98] *See* Information Collection Request 202208–1660–001, Special Considerations Questions Form 009–0–120, *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202208-1660-001.* Until recently, information about floodplain management and insurance considerations was captured on Special Considerations Questions Form 009–0–120, with an estimated hour burden of 0.5 hours per response. This collection has been revised and now captures floodplain management and insurance considerations information on different forms that also ask for other information. *See* Information Collection Request 202212–1660–015, *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202212-1660-015.*

[99] Bureau of Labor Statistics, Occupational Employment Survey May 2019, SOC 11–9161 Emergency Management Directors: mean hourly wage $33.81. *https://www.bls.gov/oes/2019/may/naics4_999200.htm#11-0000.* Fully loaded wage rates include other benefits. We are using a factor of 1.6 to calculate fully loaded wage rates. The unloaded wage rate does not account for cost of benefits, such as health insurance, to the employer. Accessed July 29, 2020.

[100] 44 CFR 206.207.

[101] 56 States includes 50 states and 6 territories: the District of Columbia, and territories including American Samoa, Guam, Northern Mariana Islands, Puerto Rico, and U.S. Virgin Islands. FEMA's annual estimate of 37 Tribes was based on the number of Tribes acting as recipients historically.

[102] Bureau of Labor Statistics, Occupational Employment Survey May 2019, SOC 11–9161 Emergency Management Directors: mean hourly wage $33.81. *https://www.bls.gov/oes/2019/may/naics4_999200.htm#11-0000* (accessed July 29, 2020). Fully loaded wage rates include other benefits, we are using a factor of 1.6 to calculate fully loaded wage rates. The unloaded wage rate does not account for cost of benefits, such as health insurance, to the employer. FEMA assumes the equivalent of a managerial position in State or local government would prepare Administrative Plans, PWs, and other FEMA forms.

[103] PA Delivery Model Fact Sheet, available at: *https://www.fema.gov/sites/default/files/2020-07/fema_pa_delivery-model_factsheet.pdf* (last accessed June 12, 2024).

[104] PA Grant Manager and Grants Portal Fact Sheet, available at: *https://www.fema.gov/sites/default/files/2020-07/fema_pa_grants-manager-grants-protal-tool_factsheet.pdf* (last accessed June 12, 2024).

timeframe would not impose an additional cost burden on applicants because FEMA currently requires the documentation prior to obligating PA funds and close to half of applicants meet the requirement voluntarily. FEMA expects all applicants to meet the new documentation requirement as FEMA believes the lack of a formal deadline is the reason for delays in submitting these documents. Additionally, applicants may request documentation time extensions for extenuating circumstances as needed consistent with the current practice for requesting extensions for project work completion deadlines.[105] Accordingly, FEMA estimates the proposed changes to documentation deadlines would not impose additional future cost burdens. Because FEMA has not implemented this change and proposes to do so through this rule, this estimated impact is the same whether measured against the no-action or pre-statutory baseline.

Changes 4, 5, 7, 9, and 10 did not result in any additional costs post implementation and FEMA does not expect additional costs in the future, as measured against the pre-statutory baseline.

*Change 4:* CDL Program, The SAFE Port Act amended the Stafford Act by increasing the amount that communities may receive in a community disaster loan from no greater than 25 percent to no greater than 50 percent of their annual operating budgets when revenue losses suffered are equal to greater than 75 percent of their operating budget. FEMA implemented updated guidance in 2012 reflecting this CDL change. FEMA estimated a pre-statutory baseline for total costs at no costs as CDLs above 25 percent were not possible prior to the change. From 2012–2019, FEMA did not have any CDLs at the higher percent and FEMA estimated this change did not create additional cost burdens. Additionally, documentation requirements are consistent for all CDLs meaning the change allows for higher loan amounts and does not impact recipient documentation. The CDL program does not adjust the maximum loan amount of $5,000,000 for inflation and as inflation increases prices and local government budgets each year the probability of a CDL issued above 25 percent declines with each year.

*Change 5:* Debris Removal Pilot allowed straight-time labor costs to be eligible for budgeted employees conducting debris removal activities. FEMA estimated the Debris Pilot change did not create additional costs. The increase in eligibility for budgeted employees conducting debris removal activities did not change reporting requirements for debris removal projects, and therefore did not impact costs.

*Changes 7 and 10:* The definition of PNP was expanded to include Food Banks (change 7) in 2017 and Center-Based Childcare Facilities (change 10) in 2018. FEMA implemented these changes via PA guidance and proposes to codify them through this rule. FEMA estimated that the additional cost for expanding eligibility to facilities that collect, store, and distribute food to food banks and Center-Based Childcare facilities were zero dollars because there were zero PA awards for these PNPs since they became eligible. FEMA acknowledges that there may be PNPs that receive PA funding in the future. However, due to the limited sample size, FEMA was unable to estimate the number of these PNP projects impacted by these changes over the next 10-year period. If such PNPs were to receive an award in the future, FEMA estimated potential future costs of $495 ($478 recipient + $17 FEMA) per additional award.

*Change 9:* Alternate Project Funding, FEMA estimated the change to funding limitations for alternate projects had no impact on total costs because it increases FEMA portion of funding per project. FEMA has not received an increase in alternate projects applications post implementation and FEMA does not expect this change to impact the number of alternate projects in the future.

The proposed regulation would also result in familiarization costs (as detailed in the above No-Action Baseline Section). FEMA estimates it would cost $49,264 for applicants to familiarize themselves with the proposed rule under a no-action and pre-statutory baseline. This would be a one-time cost for the applicants in the first year.

Under a pre-statutory baseline, FEMA estimates the total annual cost undiscounted would be $8,379,882 for only the first year. The first year includes calculations for familiarization costs. Then the total annual undiscounted cost would be $8,310,493 for each year after that. The discounted total 10-year cost at 3 percent and 7 percent, respectively, would be $70,957,558 and $58,434,274. The annualized cost would be $8,318,390 and $8,319,726 at the 3 and 7 percent discount rates (Table 6).

TABLE 6—SUMMARY OF PRE-STATUTORY BASELINE COSTS, FUTURE 10-YEAR PERIOD

[2019$]

| Year | FEMA costs | Recipient costs | Total costs | Annual costs discounted at 3% | Annual costs discounted at 7% |
|---|---|---|---|---|---|
| 2020 | $3,215 | $8,376,667 | $8,379,882 | $8,135,808 | $7,831,665 |
| 2021 | 3,215 | 8,307,278 | 8,310,493 | 7,833,437 | 7,258,706 |
| 2022 | 3,215 | 8,307,278 | 8,310,493 | 7,605,278 | 6,783,838 |
| 2023 | 3,215 | 8,307,278 | 8,310,493 | 7,383,765 | 6,340,035 |
| 2024 | 3,215 | 8,307,278 | 8,310,493 | 7,168,704 | 5,925,267 |
| 2025 | 3,215 | 8,307,278 | 8,310,493 | 6,959,907 | 5,537,632 |
| 2026 | 3,215 | 8,307,278 | 8,310,493 | 6,757,191 | 5,175,357 |
| 2027 | 3,215 | 8,307,278 | 8,310,493 | 6,560,380 | 4,836,783 |
| 2028 | 3,215 | 8,307,278 | 8,310,493 | 6,369,301 | 4,520,358 |
| 2029 | 3,215 | 8,307,278 | 8,310,493 | 6,183,787 | 4,224,633 |
| Total | 32,150 | 83,142,169 | 83,174,319 | 70,957,558 | 58,434,274 |
| Annualized | ..... | ..... | ..... | 8,318,390 | 8,319,726 |

[105] Federal Emergency Management Agency (June 1, 2020). Public Assistance Program and Policy Guide, version 4, FEMA Policy 104–009–2, Work Completion Deadlines page 196, *https://www.fema.gov/sites/default/files/documents/fema_pappg-v4-updated-links_policy_6-1-2020.pdf.*

Benefits

All benefits associated with the proposed rule would be qualitative. The proposed rule would improve clarity and align FEMA regulations with statutory changes and current practices under a no-action and pre-statutory baseline. Although not quantified, these changes would result in users better understanding the PA program. Such increased clarity and understanding would improve the efficiency and consistency of implementation of FEMA's PA program.

The clearer FEMA regulations are, the faster and better applicants can understand and correctly apply them, which in turn can speed disaster assistance to communities and help them support survivors. This would be especially helpful when applicants bring on new staff to States or localities that experience disasters infrequently need to familiarize themselves with the program and its requirements. This increased efficiency allows both applicants and FEMA to direct their energy and resources towards responding to and recovering from the disaster or emergency. FEMA is unable to quantify this impact, but it would be an important intended result of this proposed rule.

No-Action Baseline

Changes 1–11 have already been implemented. As discussed above, codifying these changes would improve clarity by aligning FEMA regulations with statutory changes and current practices. Benefits from newly proposed changes would include: (1) Change 12: Reduced project delays related to legal consideration; (2) Change 13: Keeping administrative plans up-to-date would provide additional staffing information about prior disasters, helping recipients to be in a better position to respond to and recover from emergencies and disasters; (3) Change 14: Increasing the impact documentation date by 30 days earlier in the process would provide benefits by helping to ensure applicants have adequate time to identify and report the impacts prior to the start of the project benefitting both the applicant's recovery and FEMA's ability to assist with their recovery, and FEMA expects the submission deadlines for eligible work and costs documentation would set expectations early in the process and help timely closeout of projects benefiting FEMA, recipients, and disaster-impacted communities.

Pre-Statutory Baseline

In this section, FEMA examines the benefits against a pre-statutory baseline. FEMA has already implemented Changes 1–11; they provide the following benefits: (1) Change 2: Expanded PA eligibility for the rescue, care, shelter, and essential needs of household pets and service animals provides additional assistance to recipients allowing them to more quickly address pet related needs during and after a damage; (2) Changes 1, 3, 6, 7, 8, and 10: The expanded definition of PNP to include rehabilitational facilities, community and performing arts facilities, broadcasting facilities, food banks, houses of worship, and center-based childcare facilities allows FEMA to consistently provide additional assistance to such PNPs, which enables them to recover more quickly from a disaster; (3) Change 4: CDL Program allows local governments to receive higher loans amounts if they suffered extreme losses due to a disaster, which assists local governments in recovering more quicky from extreme disaster losses; (4) Change 5: Debris Removal Pilot allows straight-time labor costs to be eligible for budgeted employees conducting debris removal activities, which increases the eligible supply of debris removal staff for PA projects and increases recipient flexibility for debris removal; (5) Change 9: Alternate Project Funding provides additional assistance consistent with standard project funding, which allows communities greater flexibility when deciding which project type benefits the communities more; and (6) Change 11: Codes and Standards requires the use of consensus-based codes that incorporate hazard-resistant design for repairs, which promotes resiliency and reduces risk of future repair and replacement of disaster damaged facilities funded by PA. Facilities restored to a code that includes hazard-resistant designs and criteria would experience fewer interruptions and less damage in the future enabling those facilities to continue to function during and after a disaster. The benefits from newly proposed Changes 12–14 would be reduced project delays related to legal consideration, keeping administrative plans up-to-date and providing additional staffing information, and increased clarity and adding more time early in the application process for impact documentation.

Transfer Payments

Transfer payments are monetary payments from one group to another that do not affect the total resources available to society.[106] The grants FEMA provides to recipients through PA are considered transfer payments because these are monetary payments from FEMA to recipients do not affect the total resources available to society. In this analysis, FEMA has analyzed the impact of this proposed rule on transfer payments.

No-Action Baseline

This rule will not result in any impacts to transfer payments under a no-action baseline.

Pre-Statutory Baseline

In this section, FEMA examines the effects of the proposed changes on transfer payments, as measured against a pre-statutory baseline. FEMA has already implemented changes 1–11 and discusses their impacts on transfer payments: Change 2 authorized assistance for the rescue, care, shelter, and essential needs of household pets and service animals; Changes 1, 3, 6, 7, 8, and 10 expanded PNP eligibility; Change 4: CDL Program; Change 5: Debris Removal Pilot; Change 9: Alternate Project Funding; and Change 11: Codes and Standards.

*Change 2:* In 2006, FEMA was authorized to provide assistance for the rescue, care, shelter, and essential needs of household pets and service animals. FEMA proposes to codify this change in regulation. Before this change, such assistance was not eligible under PA, and FEMA estimates the pre-statutory baseline at zero dollars. FEMA used data from EDW database from 2006 through 2019 to estimate the assistance FEMA provided for rescue, care, shelter, and essential needs of household pets and service animal related assistance during this time period. FEMA estimates an average of 8 awards per year for animal related essential assistance and an average award amount of $73,808. In total, rescue, shelter, care, and essential needs of household pets and service animal related assistance increased from zero to an average of $590,464 (8 projects × $73,808) per year in PA funding from FEMA to recipients.

*Changes 1, 3, 6, 7, 8, and 10:* FEMA was authorized to expand PA grant funding eligibility for the following types of PNPs: rehabilitational facilities (in 1988), community and performing arts facilities (in 2007), broadcasting facilities (in 2015), food banks (in 2017), houses of worship (in 2017), and center-based childcare facilities (in 2017). FEMA proposes to codify these changes in regulation. To estimate the impacts of these changes measured against a pre-

[106] Office of Management and Budget, Circular A–4, Regulatory Analysis, September 17, 2003. Available at *https://www.reginfo.gov/public/jsp/Utilities/a-4.pdf.*

statutory baseline, FEMA used PNP project data from the EDW database for 2000–2019; however, impacts in many cases were estimated with fewer than 10-years of data due to different dates of implementation. FEMA estimates an average increase in transfer payments through PA funding from FEMA to PNP recipients of $3,816,658 (rehabilitational facilities $1,126,114 + community and performing arts $224,514 + broadcasting $344,235 + house of worships $2,121,795) per year.

*Change 9:* In August 2017, the Disaster Recovery Reform Act (DRRA) amended the Stafford Act to remove the 90 percent (75 percent for PNPs) alternate project funding limit of the original project eligible Federal cost share amount. FEMA proposes to codify these changes in regulation. Because this change was recently made and FEMA does not have adequate data with the change in effect, FEMA estimated the impact of this change against a pre-statutory baseline by using data pulled from EDW for PA alternate projects from 2010 to 2019 and recalculating obligations for alternate projects at the full eligible Federal cost share consistent with standard projects. FEMA does not believe this change impacted the number of projects but rather just the funding source for those projects. Accordingly, FEMA estimates the average annual number of affected projects over this time period is 53. FEMA estimates that if this change had been in effect for the entire 2010 to 2019 period, the average annual obligation would have increased from $349,196 to $396,834 per project, and the average total obligation would have increased from $18,507,388 ($349,196 × 53 projects) to $21,032,202 ($396,834 × 53 projects) per year. FEMA estimates an increase of PA assistance from FEMA to PA recipients of $2,524,814 ($21,032,202 − $18,507,388) per year for the removal of the alternate project funding limit.

*Change 5:* Debris Pilot relates to the implementation of alternative debris removal procedures through a pilot program starting on June 28, 2013. Before this pilot, FEMA would only reimburse for debris removal costs for overtime labor of recipient budgeted employees or debris removal costs for third-party contractors. The Debris Pilot allows FEMA to reimburse recipients for straight-time labor costs for budgeted employees to perform all or part of debris removal operations. FEMA used data from the EDW database for Debris Pilot projects and those choosing to opt out of the Pilot (non-Pilot projects) from 2013 through 2019 to estimate the baseline and impact of the pilot program. The Pilot project data includes straight-time labor cost projects and other contract projects to allow for comparison to the non-Pilot projects.[107] This proposed codification for the eligibility of recipient's budgeted employee straight-time labor costs is directly related to the Debris Pilot for straight-time labor and would not impact the other contracts portion (such as overtime labor) of the Debris Pilot. During this period, the average number of Debris Pilot projects was 501 per year, and the average Federal obligation amount was $445,721 per project equaling an annual Federal obligation amount of $223,306,221 ($445,721 × 501 Debris Pilot projects) per year.

For non-Pilot projects during this period, the average number of projects per year was 514, and the average obligation amount was $473,328. Based on this information, FEMA estimates that if the debris pilot had not been in place (the pre-statutory baseline) total assistance for the 501 debris projects that did participate in the pilot would have been $237,137,328 ($473,328 × 501 Debris Pilot projects) per year over this time period. By using the non-Alternative Debris Removal project average obligation amount, FEMA converted the Debris Pilot Removal projects into non-Pilot project estimates.

Next FEMA isolated the Debris Pilot straight-time labor portion from the Debris Pilot other contract costs because this debris removal change would be specific to the straight-time labor portion of the Debris Pilot. FEMA used the average straight-time labor costs project obligation from 2013–2019 of $119,969,697 per year and the Pilot project total obligations of $223,306,221 per year to estimate that 53.7 percent ($119,969,697 ÷ $223,306,221) of Debris Pilot obligations were for straight-time labor cost projects. Because the other 46.3 percent of debris pilot obligations were for overtime or contract costs, which were unaffected by this change, FEMA compares non-pilot to pilot costs for only the 53.7 percent of obligations affected by the rule. FEMA applied this percentage to non-pilot obligations to calculate the amount in obligations replaced by straight-time cost labor: $127,342,745 ($237,137,328 × 53.7 percent) per year. FEMA considers this the baseline cost without the pilot. FEMA then took the difference between the average straight-time labor costs for pilot obligations of $119,969,697 per year and the baseline estimate $127,342,745 per year. FEMA estimated a transfer payment decrease of $7,373,048 ($119,969,697 − $127,342,745) per year due to implementation of the Debris Pilot.

*Change 11:* DRRA section 1235(b) defines the framework for consistent and appropriate implementation of consensus-based codes, specifications, and standards requirement for disaster-related repair, restoration, reconstruction, or replacement of buildings, roads and bridges, electric power, potable water, and wastewater projects. FEMA implemented this statutory change in 2019. Because this change was recently made and these types of projects can take years to complete, FEMA does not have 10 years of data with the change in effect. Therefore, FEMA estimated the impact of this change against a pre-statutory baseline by using data pulled from EDW from 2010 through 2018. During this time period, FEMA provided assistance for an average of 2,386 projects (PA categories: C—roads/bridges, E—buildings/equipment, F—utilities) per year.

FEMA used Building Codes Adoption Tracking (BCAT) Regional reports [108] to identify projects in States with moderate to low hazard-resistant building code adoption rates. FEMA expects the consensus-based codes and standards requirement would impact projects in moderate to low hazard-resistant building code areas by applying more stringent requirements than the local codes and standards. Based on the BCAT reports, FEMA estimates the number of impacted projects from 2010 to 2018 was 1,313 projects per year and the average annual amount for these projects was $819,485,316 ($179,372,869 non-Federal share + $640,112,447 Federal share) per year. FEMA estimated the average Federal cost share for PA project was 78 percent ($640,112,447 Federal share ÷ $819,485,316 total project amount). FEMA developed a project cost increase range of 1 percent to 10 percent based on input from subject matter experts and is in line with additional costs estimates of hazard-resistant building codes referenced in the 2020 Building Codes Saves: A Nationwide Study and 2019 Natural Hazard Mitigation Saves

[107] Straight-time labor cost is the wage rate for budgeted employees during the standard workday or work week.

[108] FEMA Building Code Adoption Tracking: Regions 1–10 Reports, 2023. A State or Territory is classified as moderate or lower resistance when less than 75 percent of jurisdictions have not adopted hazard-resistant building codes. Available at *https://www.fema.gov/emergency-managers/risk-management/building-science/bcat/fact-sheets.* Accessed May 2, 2023.

Report.[109] This range of additional costs reflects the unknown variations between local codes and/or standards used and the consensus-based codes and standard, and FEMA expects Change 11 would have limited impacts on projects costs due to FEMA's policy referencing multiple industry consensus-based codes and standards that may be selected from to meet the requirement.[110] Accordingly, for the impacted 1,313 projects, FEMA estimated an increase in FEMA's portion of the cost share (transfer payments) of between an additional $6,391,985 ($819,485,316 × 1 percent × 78 percent Federal share) and $63,919,855 ($819,485,316 × 10 percent × 78 percent Federal share) per year in PA project costs for the consensus-based codes and standards requirement. Due to the interim policy implementation in November 2019, little post-implementation data were available. For the primary estimate of this change under a pre-statutory baseline, FEMA selected the lower estimate of $6,391,985 per year, due to the change aligning with commonly used industry building standards.

*Change 4:* In 2012, FEMA released guidance that implemented changes by the SAFE Port Act which increased the amount that communities may receive in a CDL by allowing communities to receive up to 50% of their annual operating budgets if they suffered a loss of tax or other revenue equal to or greater than 75% of their annual operating budget in the fiscal year in which the disaster occurred, up to $5,000,000.[111] FEMA proposes to codify this change in regulation. Prior to the 2012 guidance, loans administered through the CDL program were not to exceed 25 percent of the operating budget of the local government for the fiscal year in which the disaster occurred, not to exceed $5,000,000.[112] FEMA used CDL program data to analyze the effects of this change against the pre-statutory baseline. CDL data was available from 2012 through 2019.[113] During this period, zero loans were issued above 25 percent of the local government's operating budget. It is rare for a community to lose revenues up to 75 percent of an operating budget following a disaster, and therefore, local governments would not often qualify for the higher loan amount. Additionally, the CDL program does not adjust the maximum loan amount of $5,000,000 for inflation and as inflation increases prices and local government budgets each year the probability of a CDL issued above 25 percent declines with each year. Therefore, FEMA does not expect to issue a CDL loan above 25 percent of the local government's operating budget in the next 10 years.

Changes 7, 10, and 14 did not result in any additional transfer payments post implementation and FEMA does not expect additional transfer payments in the future, as measured against the pre-statutory baseline.

*Change 7: Food Banks and Change 10:* Center-Based Childcare Facilities, FEMA estimated that expanding eligibility to facilities that collect, store, and distribute food to food banks and Center-Based Childcare facilities did not result in any additional transfer payments post implementation and FEMA does not expect additional transfer payments in the future because there were zero PA awards for these PNPs. FEMA acknowledges that there may be PNPs that receive PA funding in the future. However, due to the limited sample size, FEMA was unable to estimate the number of these PNPs impacted by these changes over the next 10-year period.

*Change 14:* Work Documentation, FEMA does not expect these documentation changes to impact transfer payments. These changes alter when FEMA requires documents from applicants. However, these changes do not change whether an applicant is eligible to receive assistance. Additionally, FEMA expects all applicants to meet these new documentation submission requirements.

For the pre-statutory baseline, FEMA estimates the net 10-year undiscounted transfer payments from FEMA to applicants would be $59,508,730. The total 10-year discounted transfer payments would be $50,762,154 at a 3 percent discount rate and $41,796,443 at a 7 percent discount rate, with annualized transfer payments of $5,950,873 at both 3 and 7 percent discount rates (Table 7).

TABLE 7—SUMMARY OF TRANSFER PAYMENTS, PRE-STATUTORY BASELINE, FUTURE 10-YEAR PERIOD

[2019$]

| Year | Transfers from FEMA to recipients | Total transfers undiscounted | Annual transfers discounted at 3% | Annual transfers discounted at 7% |
|---|---|---|---|---|
| 2020 | $5,950,873 | $5,950,873 | $5,777,547 | $5,561,564 |
| 2021 | 5,950,873 | 5,950,873 | 5,609,269 | 5,197,723 |
| 2022 | 5,950,873 | 5,950,873 | 5,445,892 | 4,857,685 |
| 2023 | 5,950,873 | 5,950,873 | 5,287,274 | 4,539,893 |
| 2024 | 5,950,873 | 5,950,873 | 5,133,275 | 4,242,890 |
| 2025 | 5,950,873 | 5,950,873 | 4,983,762 | 3,965,318 |
| 2026 | 5,950,873 | 5,950,873 | 4,838,604 | 3,705,905 |
| 2027 | 5,950,873 | 5,950,873 | 4,697,674 | 3,463,462 |
| 2028 | 5,950,873 | 5,950,873 | 4,560,849 | 3,236,881 |
| 2029 | 5,950,873 | 5,950,873 | 4,428,008 | 3,025,122 |

[109] Building Codes Saves: A National Study, page 1–6, *https://www.fema.gov/sites/default/files/2020-11/fema_building-codes-save_study.pdf.* Accessed August 9, 2023. Additional reference, Natural Hazard Mitigation Saves: 2019 Report, page 70, 126, 143, Additional construction cost estimates for flooding 1.7 percent, hurricane 1 percent, and safe room wind 5 to 7 percent, respectively. *https://www.nibs.org/files/pdfs/NIBS_MMC_MitigationSaves_2019.pdf.* Accessed August 9, 2023.

[110] Appendix A: Consensus-Based Codes, Specifications and Standards, page 9–16. December 20, 2019. *https://www.fema.gov/sites/default/files/2020-05/DRRA1235b_Consensus_BasedCodes_Specifications_and_Standards_for_Public_Assistance122019.pdf.*

[111] For more information, see Congressional Research Service, FEMA's Community Disaster Loan (CDL) Program: A Primer. July 13, 2020. *https://crsreports.congress.gov/product/pdf/IF/IF11600.*

[112] FEMA places the approved amount of funds into account for use by the local government, which can be drawn upon the loan at any point during the five-year loan period.

[113] There were zero CDLs issued in 2014.

TABLE 7—SUMMARY OF TRANSFER PAYMENTS, PRE-STATUTORY BASELINE, FUTURE 10-YEAR PERIOD—Continued

[2019$]

| Year | Transfers from FEMA to recipients | Total transfers undiscounted | Annual transfers discounted at 3% | Annual transfers discounted at 7% |
|---|---|---|---|---|
| Total | 59,508,730 | 59,508,730 | 50,762,154 | 41,796,443 |
| Annualized | | | 5,950,873 | 5,950,873 |

TABLE 8—CIRCULAR A–4 ACCOUNTING STATEMENT, NO-ACTION BASELINE (2019$), 2020–2029

| Category | 3 Percent discount rate | 7 Percent discount rate | Source citation |
|---|---|---|---|
| **BENEFITS** | | | |
| Annualized Monetized | N/A | N/A | RIA Section 9. |
| Annualized quantified, but unmonetized benefits | N/A | N/A | |
| Qualitative (unquantified) benefits | • Improving clarity and aligning FEMA regulations with statutory changes and current practices and procedures.<br>• Identifying legal considerations early in the application process would allow for more complete alternate project review.<br>• Increasing clarity and adding more time early in the application process for work documentation.<br>• Keeping administrative plans up-to-date and providing additional staffing information about prior disasters helping recipients be in a better position to respond to and recover from emergencies and disasters. | | |
| **COSTS** | | | |
| Annualized Monetized | $29,457 | $30,792 | RIA Section 8. |
| Annualized quantified, but unmonetized, costs | N/A | N/A | |
| Qualitative (unquantified) costs | N/A | | |
| **TRANSFERS** | | | |
| Annualized Monetized | $0 | $0 | RIA Section 11. |
| From/To | | | |
| Category | Effects | | Source citation |
| Effects on State, local, and/or Tribal governments | • Establishing additional requirements for Administrative Plans, alternate project legal consideration identification, and application work documentation. | | RIA. |
| Effects on small businesses | • Codifying the Expansion of Federal assistance to specific types of facilities does not impact the number of small entities to receive aid from FEMA. In an average year, FEMA approves 28,721 PA projects and of those, FEMA estimated small entities to account for 19,818 projects. | | Regulatory Flexibility Act. |
| Effects on wages | None | | N/A. |
| Effects on growth | None | | N/A. |

TABLE 9—CIRCULAR A–4 ACCOUNTING STATEMENT, PRE-STATUTORY BASELINE (2019$), 2000–2029

| Category | 3 Percent discount rate | 7 Percent discount rate | Source citation |
|---|---|---|---|
| **BENEFITS** | | | |
| Annualized Monetized | N/A | N/A | RIA Section 10. |
| Annualized quantified, but unmonetized benefits | N/A | N/A | |
| Qualitative (unquantified) benefits | • Expanding PA eligibility for certain types of PNPs and allowing FEMA to consistently provide additional assistance to such PNPs to allow them to recover more quickly from disaster-damage. | | |
| | • Increasing recipient flexibility when determining whether the community would benefit more from facility restoration or an alternate project. | | |

TABLE 9—CIRCULAR A–4 ACCOUNTING STATEMENT, PRE-STATUTORY BASELINE (2019$), 2000–2029—Continued

| Category | 3 Percent discount rate | 7 Percent discount rate | Source citation |
|---|---|---|---|
| | • Increasing flexibility for debris removal projects by allowing FEMA to reimburse base and overtime wages for the employees of State, Tribal, or local governments.<br>• Improving clarity and aligning FEMA regulations with statutory changes and current practices and procedures.<br>• Promoting resiliency and reducing future damage risk of repaired facilities with consensus-based codes and standards requirement for PA funded projects.<br>• Identifying legal considerations early in the application process would allow for more complete alternate project review.<br>• Increasing clarity and adding more time early in the application process for work documentation.<br>• Keeping administrative plans up-to-date and providing additional staffing information about prior disasters would help recipients be in a better position to respond to and recover from emergencies and disasters. | | |
| **COSTS** | | | |
| Annualized Monetized | $2,021,806 | $1,233,307 | RIA Section 9. |
| Annualized quantified, but unmonetized, costs | N/A | N/A | |
| Qualitative (unquantified) costs | N/A | | |
| **TRANSFERS** | | | |
| Annualized Monetized | $739,294 | −$139,749 | RIA Section 11. |
| From/To | • Increasing transfers from FEMA to PA recipients. | | |
| Category | Effects | | Source citation |
| Effects on State, local, and/or Tribal governments | • Increasing PA eligibility of private non-profit organizations, more flexibility with alternate projects and debris removal projects, and additional requirements for Administrative Plan should better position communities for emergencies and disasters.<br>• Establishing additional requirements for Administrative Plans, alternate project legal consideration identification, and application work documentation. | | RIA. |
| Effects on small businesses | • Expanding Federal assistance through increasing the types of facilities eligible for PA increases the opportunity for small entities to receive aid from FEMA. In an average year, FEMA approves 28,721 PA projects and of those, FEMA estimated small entities to account for 19,818 projects. | | Regulatory Flexibility Act. |
| Effects on wages | None | | N/A. |
| Effects on growth | None | | N/A. |

*B. Regulatory Flexibility Act*

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*), as amended, requires agency review of proposed and final rules to assess their impact on small entities. When an agency promulgates a notice of proposed rulemaking under 5 U.S.C. 553, the agency must prepare an initial regulatory flexibility analysis (IRFA) unless it determines and certifies pursuant to 5 U.S.C. 605(b) that the rule, if promulgated, would not have a significant impact on a substantial number of small entities. As set forth below, this proposed rule would not have a significant impact on a substantial number of small entities. However, FEMA is publishing this IRFA to aid the public in commenting on the potential impacts of the proposed requirements in this NPRM on small entities. FEMA invites all interested parties to submit data and information regarding the potential economic impact on small entities that would result from the adoption of this NPRM. FEMA will consider all comments received in the public comment process when making a final determination.

FEMA prepared this IRFA to examine the impacts of the proposed rule on small entities. A small entity is: a small business (a business that is independently owned and operated and is not dominant in its field); a small not-for-profit organization (any not-for-profit enterprise that is independently owned and operated and is not dominant in its field); or a small governmental jurisdiction (locality with fewer than 50,000 people). *See* 5 U.S.C. 601(3)–(6); *see also* 15 U.S.C. 632.

1. A Description of the Reasons Why Action by the Agency Is Being Considered

FEMA initiated this rulemaking to codify legislative requirements included in several Federal statutes that have amended sections of the Stafford Act, but not yet been incorporated by FEMA into its regulations. The rule also proposes revisions to improve program administration.

The Stafford Act authorizes the President to provide Federal assistance when the severity and magnitude of an incident or threatened incident exceeds the affected State, Territorial, Indian Tribal, or local government's

capabilities to effectively respond or recover. If an emergency or major disaster is declared, FEMA may award Public Assistance grants to assist State, Territorial, Indian Tribal, and local governments and certain PNP organizations so communities can quickly respond to and recover from the emergency or major disaster.

The Public Assistance program provides a range of assistance, including direct services and financial assistance for emergency protective measures, such as emergency evacuation, sheltering, and debris removal, as well as financial assistance for the permanent restoration of facilities. In addition, the Stafford Act authorizes CDLs for any local government that has suffered a substantial loss of tax and other revenues as a result of a major disaster, and that demonstrates a need for financial assistance to perform its governmental functions.

2. A Succinct Statement of the Objectives of, and Legal Basis for, the Proposed Rule

FEMA proposes to amend its Public Assistance and CDL program regulations to incorporate various amendments to the Stafford Act and to improve program administration. Section 701 of the Stafford Act, 42 U.S.C. 5201, provides for rulemaking authority to implement the provisions of the Act, and the Secretary delegated this authority to FEMA in Department of Homeland Security Delegation 9001.1. The Federal statutes that have amended the Stafford Act but that FEMA has yet to fully incorporate into FEMA's regulations include the Post-Katrina Emergency Management Reform Act of 2006 (PKEMRA), the Security and Accountability for Every Port Act of 2006 (SAFE Port Act), the Pets Evacuation and Transportation Standards Act of 2006 (PETS Act), the Sandy Recovery Improvement Act of 2013 (SRIA), the Emergency Information Improvement Act of 2015, the Bipartisan Budget Act of 2018, and the Disaster Recovery Reform Act (DRRA).

3. A Description—and, Where Feasible, an Estimate of the Number—of Small Entities to Which the Proposed Rule Will Apply

The proposed rule would directly affect all eligible Public Assistance recipients. Amendments to the Stafford Act affect recipients that are small governmental jurisdictions with a population of less than 50,000, as defined at 5 U.S.C. 601(5), and PNPs that meet the small entity size standards set by the SBA.[114] To estimate the effects of this proposed rule on small entities, FEMA identified the affected population and analyzed how the changes would affect those recipients and subrecipients based on a random sample. Using those results, FEMA then evaluated which recipients and subrecipients qualified as ''small entities.'' Eligible Public Assistance recipients may include States, U.S. Territories, and Indian Tribal governments; subrecipients may include cities, counties, towns, townships, villages, school districts, special districts, or PNPs. FEMA removed from this analysis any recipients that are States and U.S. Territories because they have populations greater than 50,000. FEMA also removed any Indian Tribal governments because they are not included in the definition of a small entity. The remaining recipients were either PNPs, local governments, or governmental organizations.

Alternate Project Legal Considerations

FEMA proposes to add a requirement for alternate projects that the recipient must identify any ''other legal considerations,'' such as liens on property, ownership issues, or zoning concerns. FEMA assumes the recipient's burden to identify other legal considerations would be comparable to that of identifying the issues required under the current regulations,[115] such as floodplain management and insurance considerations, as they are similar in nature. FEMA estimates the burden associated with identifying floodplain management and insurance considerations to be 0.5 hours,[116] with an hourly wage rate of $54.10.[117] Each year, FEMA funds an average of 53 alternate projects. For comparison, in an average year FEMA approves 28,721 projects in total.[118]

To determine the number of small entities that would be affected by this proposed change, FEMA selected a random sample of 85 projects out of the 527 alternate projects from 2010 through 2019.[119] FEMA identified 51 recipients (60 percent) that met the definition of a small entity based on the population size of local governments (less than 50,000 population), or PNPs based on size standards set by the SBA.[120] Each of those small entities, if they are not already identifying legal considerations for alternate projects, would see an increased burden of $27.05.[121] In an average year, FEMA approves 53 alternate projects, and 32 (60 percent of 53) projects are estimated to be for small entities.[122]

FEMA meets with the recipient and applicants for a kickoff meeting. The kickoff meeting is to address the specific needs of each eligible applicant. Currently, the recipient and FEMA discuss a variety of topics including documentation requirements, and the applicants may ask questions relating to project formulation, insurance requirements, eligibility criteria for work and costs, and required documentation. This is an opportunity for the applicants to receive guidance from FEMA and the recipient. This is particularly important for those small entities who may not have an in-house expert.

Although requiring applicants to identify legal requirements relevant to alternate projects would impose a new burden on small entities, identifying legal issues early in the project

[114] Information on population sizes was obtained using the U.S. Census Bureau's City and Town Population Totals: 2010–2019. Available at *https://www.census.gov/data/tables/time-series/demo/popest/2010s-total-cities-and-towns.html.* Small Business Administration, ''Table of Size Standards'' (.xlxs). Available at *https://www.sba.gov/document/support--table-size-standards.* Revenue and employment information for individual PNP's was obtained from PNP websites.

[115] *See* 44 CFR 203(d)(2)(v).

[116] *See* Information Collection Request 202208–1660–001, Special Considerations Questions Form 009–0–120, *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202208-1660-001.* Until recently, information about floodplain management and insurance considerations was captured on Special Considerations Questions Form 009–0–120, with an estimated hour burden of 0.5 hours per response. Now, FEMA has consolidated the collection of floodplain management and insurance considerations information on different forms that also ask for other information. *See* Information Collection Request 202212–1660–015, *https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=202212-1660-015.*

[117] Bureau of Labor Statistics. Occupational Employment Survey May 2019, SOC 11–9161 Emergency Management Directors: mean hourly wage $33.81. Retrieved from: *https://www.bls.gov/oes/2019/may/naics4_999200.htm#11-0000.* Accessed December 2020.

Fully loaded wage rates include other benefits, using a factor of 1.6 to calculate fully loaded wage rates. The unloaded wage rate does not account for cost of benefits, such as health insurance, to the employer. FEMA assumes the equivalent of a managerial position in State or local government would prepare Administrative Plans, PWs, and other FEMA forms. Fully loaded Emergency Management Directors salary paid is $33.81 × 1.6 = $54.10

[118] A more fulsome discussion of the assumptions used here may be found in the RIA accompanying this proposed rule.

[119] FEMA used Slovin's formula and a 90 percent confidence interval to determine the sample size. Slovin's formula is n = N/(1 + N * e ^2). Therefore, 527/(1 + 527 × 0.1 ^2) = 85 (rounded).

[120] Small Business Administration. ''Table of Size Standards.'' Available at *https://www.sba.gov/document/support--table-size-standards.* Revenue and employment information for individual PNPs was researched using publicly available data sources, such the PNP website.

[121] $27.05 = 0.5 × $54.10.

[122] 12,063 = 28,721 × 42%.

formulation phase is critical to FEMA in determining whether the project should be approved, or whether the legal issues will be prohibitive. Accordingly, this change could save applicants from beginning a project only to be halted before completion. FEMA estimates that This change would impose a burden of $27.05 on 32 small entities annually.

State and Tribal Administrative Plans

Currently, all recipients are required to file an administrative plan with FEMA.[123] This requirement includes States, as well as Indian Tribal governments when they choose to act as a recipient. Accordingly, this burden would affect States and Indian Tribal governments, which are not small entities as defined by the Regulatory Flexibility Act. Therefore, this proposed change would not impact any small entities.

Clarifications & Other Minor Changes

Many of the changes proposed in this rule are clarifications or codifications of current policies, practices, and regulations. This means their only impact would be to increase the applicants' understanding of current processes. There would be no new transfers or costs associated with these changes. Clearer FEMA regulations can speed disaster assistance to communities and help them support survivors. This would be especially helpful to applicants that have brought on new staff or to localities that experience disasters infrequently who need to re-familiarize themselves with the program and its requirements. This increased efficiency would allow both applicants and FEMA to direct their energy and resources towards responding to and recovering from the disaster or emergency. Small entities may find these clarifications particularly useful, as they are less likely to have in-house experts.

These changes would not have a significant economic impact even though the number of small entities impacted could be substantial. To determine the number of small entities affected by these proposed changes, FEMA selected a random sample of 100 projects from 287,214 unique Public Assistance projects from 2010 through 2019.[124] FEMA gathered information about each sampled entity using publicly available information from the U.S. Census Bureau and online small business directories (*e.g.,* Dunn and Bradstreet, Manta.com). FEMA determined that 69 out of the 100 recipients (69 percent) met the definition of a small entity based on the population size of local governments (less than 50,000 population), or PNPs based on size standards set by the SBA.[125] FEMA identified 61 small entity recipients as local governments and identified 8 small entity recipients as PNPs. In an average year, FEMA approves 28,721 Public Assistance projects and of those, FEMA accordingly estimated small entities to account for 19,818 projects.

4. A Description of the Projected Reporting, Record Keeping, and Other Compliance Requirements of the Proposed Rule, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirements and the Types of Professional Skills Necessary for Preparation of the Report or Record

FEMA proposes to revise its Public Assistance program regulations to reflect current statutory authorities and implement program improvements. The proposed programmatic revisions to the collection of information include reporting alternate project legal consideration; adding deadlines for submitting certain supporting documentation and closeout certifications for project worksheets; and in the list of procedures that must be included in a State/Tribal Administrative Plan, adding requirements that recipients include timely closeout procedures and address staffing plans when updating their Administrative Plans. FEMA believes the professional skills typical of a person in an Emergency Management Director position are best suited for the preparation of the reports, forms, and other documentation.

5. An Identification, to the Extent Practicable, of All Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

There are no relevant Federal rules that may duplicate, overlap, or conflict with this proposed rule.

6. A Description of Significant Alternatives to the Rule Which Accomplish the Stated Objectives of Applicable Statutes and Which Minimize Any Significant Economic Impact of the Proposed Rule on Small Entities

FEMA proposes to revise its Public Assistance program regulations to reflect current statutory authorities and implement program improvements. As such, FEMA was unable to consider alternatives to the proposed rule that would minimize economic impact on small entities. However, FEMA is interested in the potential impacts of the proposed rule on small entities and requests public comment on these potential impacts. If you think that this rule would have a significant economic impact on you, your business, or your organization, please submit a comment to the docket as directed under the **ADDRESSES** caption, above. In your comment, explain why, how, and to what degree you think this rule would have an economic impact on you. FEMA will consider all comments received in the public comment process.

*C. Unfunded Mandates Reform Act of 1995*

Pursuant to section 201 of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4, 2 U.S.C. 1531), each Federal agency ''shall, unless otherwise prohibited by law, assess the effects of Federal regulatory actions on State, local, and tribal governments, and the private sector (other than to the extent that such regulations incorporate requirements specifically set forth in law).'' Section 202 of the Act (2 U.S.C. 1532) further requires that the agency shall prepare a written statement detailing the effect on State, local, and tribal governments and the private sector before promulgating, inter alia, any proposed rule that is likely to result in the promulgation of any rule that includes any Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. FEMA has determined, however, that it does not need to prepare an assessment for this proposed rule because it meets the criteria set forth in 2 U.S.C. 1503(4), which states, ''This chapter shall not apply to . . . any provision in a proposed or final Federal regulation that . . . provides for emergency assistance or relief at the request of any State, local, or tribal government or any official of a State, local, or tribal government.'' Additionally, FEMA estimates this rule would not have an economic impact of $100 million or more in any one year. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

*D. National Environmental Policy Act*

The National Environmental Policy Act of 1969 (NEPA), 83 Stat. 852 (Jan. 1, 1970, as amended June 3, 2023, by the Fiscal Responsibility Act) (42 U.S.C.

[123] *See* 44 CFR 206.207.

[124] FEMA used Slovin's formula and a 90 percent confidence interval to determine the sample size. Slovin's formula: n = N/(1 + N * e^2). Therefore, 287,214/(1 + 287,214 × 0.1^2) = 100 (rounded).

[125] *See* 13 CFR 121.201.

4321 *et seq.*) requires Federal agencies to consider the effects of their major proposed actions on the quality of the human environment. The Council on Environmental Quality's procedures for implementing NEPA, 40 CFR parts 1500 through 1508, require Federal agencies to prepare Environmental Impact Statements (EISs) for major Federal actions significantly affecting the quality of the human environment. Each agency can develop and use categorical exclusions (CATEXs) to cover major Federal actions that have been demonstrated to not typically trigger significant effects to the human environment. If an action does not qualify for a CATEX and has the potential to significantly affect the environment, Federal agencies develop environmental assessments (EAs) to evaluate those actions. At the end of the EA process, the agency will determine whether to make a Finding of No Significant Impact (FONSI) or whether to initiate the EIS process.

A major Federal action may be categorically excluded under a Federal agency's NEPA procedures if it fits one of the approved exclusion categories and there are no extraordinary circumstances.[126] 40 CFR 1501.4, 1507.3. This proposed rule falls within the scope of the U.S. Department of Homeland Security List of CATEXs, A3(b), (c), and (d).[127] In the instant rulemaking, proposed changes would (a) implement, without substantive change, statutory or regulatory requirements; (b) implement, without substantive change, procedures, manuals, and other guidance documents; or (c) interpret or amend an existing regulation without changing its environmental effect. The proposed changes are intended to clarify current policy and improve the administration of the Public Assistance program. The regulatory revisions in this proposed rule would have no significant effect on the human environment, are categorically excluded consistent with DHS procedure and NEPA regulations, and FEMA has not identified any extraordinary circumstances. Therefore, this rule does not require the preparation of either an EA or an EIS as defined by NEPA.[128]

*E. National Historic Preservation Act of 1966*

The National Historic Preservation Act (NHPA) (54 U.S.C. 300101, formerly 16 U.S.C. 470) was enacted in 1966, with various amendments throughout the years. Section 106 of the NHPA (54 U.S.C. 306108) requires Federal agencies to consider the effects of their actions, referred to as an ''undertaking,'' on any historic property listed, or eligible for listing, on the National Register of Historic Places. Section 106 requires Federal agencies to consult with any other Federal agencies, State, local, and Tribal governments, and members of the public who have an interest in the effects of the undertaking. Section 106 mandates the consultation process in the early stages of project planning and that Federal agencies complete it prior to the approval of expenditure of any Federal funds for the undertaking. Subpart B of 36 CFR part 800 lays out a 4-step section 106 process to fulfill this obligation: (1) initiate the process (800.3); (2) identify historic properties (800.4); (3) assess adverse effects (800.5); and (4) resolve adverse effects (800.6).

The proposed rule would revise the Public Assistance regulations to reflect current statutory authority and make improvements to the administration of the Public Assistance program. Pursuant to section 106 of the National Historic Preservation Act and its implementing regulations at 36 CFR part 800, FEMA has determined that this rulemaking does not have the potential to cause effects to historic properties. In accordance with 36 CFR part 800.3(a)(1), FEMA has no further obligations under section 106.

When FEMA undertakes specific actions that may affect historic properties, FEMA follows the procedures set forth in 36 CFR part 800 to ensure compliance with this law. These procedures include a specific, four-step process for determining effects to historic properties. With few exceptions (such as emergencies) and as set forth in applicable statutes or regulations, FEMA must complete reviews for compliance before FEMA approves funding and starts work. The proposed rule would not change this process.

*F. Endangered Species Act*

The Endangered Species Act (ESA), 16 U.S.C. 1531 *et seq.,* mandates that Federal agencies determine whether their proposed actions may affect listed species and/or their designated critical habitat (critical habitat has been designated for some, but not all listed species). Without authorization or exemption from Federal resource agencies, it is unlawful for any person, whether government employee or private citizen, to take listed animal species, or remove, damage, or destroy (among other actions) an endangered plant species.[129]

To comply with section 7(a)(2) of the ESA, for every action that FEMA proposes to carry out, fund, or authorize, FEMA must first determine if listed species and their designated critical habitat are present in the action area. If species are present in the action area, then FEMA must make one of the following determinations with respect to the effect of the proposed action on listed species and critical habitat: (1) no effect (NE); (2) may affect, but is not likely to adversely affect (NLAA); or (3) may affect and is likely to adversely affect (LAA).

The proposed rule would revise the Public Assistance regulations to reflect current statutory authority and make improvements to the administration of the Public Assistance program. This rulemaking has been evaluated by FEMA, and due to its administrative nature, FEMA has determined the rulemaking does not have the potential to affect federally listed species or designated critical habitat. As such, FEMA has made a No Effect determination for this activity. Per the ESA regulations, FEMA is not required to notify, and to consult with, the U.S. Fish and Wildlife Service and/or the National Marine Fisheries Service for activities with a No Effect determination.[130]

When FEMA undertakes specific actions that may affect listed species and their designated critical habitat, FEMA follows the procedures set forth in section 7(a)(2) to ensure compliance with this law. These procedures include a process for determining the effect of the proposed action on listed species and critical habitat. With few exceptions (such as emergencies) and as set forth in applicable statutes or regulations, FEMA must complete reviews for compliance before FEMA approves funding and starts work. The proposed rule would not change this process.[131]

*G. Paperwork Reduction Act of 1995*

Under the Paperwork Reduction Act of 1995 (PRA), as amended, 44 U.S.C.

[126] A determination of whether an action that is normally excluded requires additional evaluation because of extraordinary circumstances, focuses on the action's potential effects and considers the environmental significance of those effects in terms of both context and intensity. *See* Department of Homeland Security Instruction Manual 023–01–001–01, Revision 01, Implementation of the National Environmental Policy Act, at V–5 to V–6 (Nov. 6, 2014), *https://www.dhs.gov/sites/default/files/publications/DHS_Instruction%20Manual%20023-01-001-01%20Rev%2001_508%20Admin%20Rev.pdf.*

[127] *Id.* at A–1 to A–2.

[128] *See Id.* at V–4 to V–6.

[129] 16 U.S.C. 1538, 1539.

[130] *See* 50 CFR 402.13, 402.14.

[131] 50 CFR 402.13, 402.14.

3501–3520, an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless agency obtains approval from the Office of Management and Budget (OMB) for the collection and the collection displays a valid OMB control number.

In this proposed rule, FEMA is seeking a revision to an existing collection of information: OMB Control Number 1660–0017. This proposed rule serves as the 60-day comment period for this collection pursuant to 5 CFR 1320.12. FEMA invites the general public to comment on the proposed collection of information.

The proposed programmatic revisions to this collection of information are adding a requirement for respondents to identify legal considerations; in the list of procedures that must be included in a State/Tribal Administrative Plan, replacing management costs procedures with timely closeout procedures; adding a requirement that recipients address staffing plans when updating their Administrative Plans; and accounting for Tribal respondents for the Administrative Plan. FEMA estimates that these revisions will increase the annual cost to respondents by $23,572 and increase annual burden hours by 436 hours.

Collection of Information

*Title:* Public Assistance Program.

*Type of Information Collection:* Revision of a currently approved information collection.

*OMB Number:* 1660–0017.

*Form Titles and Numbers:* FEMA Form FF–104–FY–21–131 (formerly 009–0–49), Request for Public Assistance; FEMA Form FF–104–FY–21–132 (formerly 009–0–111), Quarterly Progress Reports; FEMA Form FF–104–FY–21–137 (formerly 009–0–123), Force Account Labor Summary Record; FEMA Form FF–104–FY–21–138 (formerly 009–0–124), Materials Summary Record; FEMA Form FF–104–FY–21–139 (formerly 009–0–125), Rented Equipment Summary; FEMA Form FF–104–FY–21–140 (formerly 009–0–126), Contract Work Summary; FEMA Form FF–104–FY–21–141 (formerly 009–0–127), Force Account Equipment Summary Record; FEMA Form FF–104–FY–21–135 (formerly 009–0–128), Applicant's Benefits Calculation Worksheet; FEMA Form FF–104–FY–21–145 (formerly FF 009–0–141), FAC–TRAX System; FEMA Template FT–104–FY–21–100, Equitable COVID–19 Response and Recovery: Vaccine Administration Information; FEMA Form FF–104–FY–22–233, Organization Profile; FEMA Form FF–104–FY–22–234, Recipient Incident Information; FEMA Form FF–104–FY–22–235, Applicant Impact Survey; FEMA Form FF–104–FY–22–238, Pre-Approval Request; FEMA Form FF–104–FY–22–236, Impact List; FEMA Form FF–104–FY–22–239, Project Application for Debris Removal; FEMA Form FF–104–FY–22–240, Project Application for Emergency Protective Measures; FEMA Form FF–104–FY–22–242, Project Application for Infrastructure Restoration; FEMA Form FF–104–FY–22–243, Project Application for Building Code and Floodplain Administration and Enforcement; FEMA Form FF–104–FY–22–244, Project Application for Management Costs; FEMA Form FF–104–FY–22–245, Damage Information; FEMA Form FF–104–FY–22–246, Environmental and Historic Preservation Addendum; FEMA Form FF–104–FY–22–247, Hazard Mitigation Addendum; FEMA Form FF–104–FY–22–241, Project Application for COVID–19; FEMA Form FF–104–FY–22–237, Donated Labor Sign-in; FEMA Form FF–104–FY–21–250, Tribal Administrative Plan; FEMA Form FF–104–FY–22–248, Time Extension; and FEMA Form FF–104–FY–22–249, State Administrative Plan.

*Abstract:* The information collected is utilized by FEMA to make determinations for Public Assistance awards based on the information supplied by the respondents.

*Affected Public:* State, Local, or Tribal Government.

*Number of Respondents:* 1,505.

*Number of Responses:* 635,269.

*Estimated Total Annual Burden Hours:* 341,635 hours.

ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS

| Type of respondent | Form name/form No. | Number of respondents | Number of responses per respondent | Total number of responses | Average burden per response (in hours) | Total annual burden (in hours) | Average hourly wage rate | Total annual respondent cost |
|---|---|---|---|---|---|---|---|---|
| Applicant ..... | Applicant Impact Survey FEMA Form FF–104–FY–22–235. | 60 | 1,000 | 60,000 | 0.1167 | 7,002 | $57.96 | $405,836 |
| Applicant ..... | Applicant's Benefits Calculation Worksheet FEMA Form FF–104–FY–21–135 (formerly 009–0–128). | 60 | 32 | 1,920 | 0.5 | 960 | 57.96 | 55,642 |
| Applicant ..... | Contract Information FEMA Form FF–104–FY–21–140 (formerly 009–0–126). | 60 | 100 | 6,000 | 0.1833 | 1,100 | 57.96 | 63,756 |
| Applicant ..... | Damage Information FEMA Form FF–104–FY–22–245. | 60 | 1,200 | 72,000 | 1.25 | 90,000 | 57.96 | 5,216,400 |
| Applicant ..... | Donated Labor Sign-in FEMA Form FF–104–FY–22–237. | 60 | 10 | 600 | 0.0667 | 40 | 57.96 | 2,318 |
| Applicant ..... | Environmental and Historic Preservation Information Addendum* FEMA Form FF–104–FY–22–246. | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Applicant ..... | Equitable Vaccine Administration Information Submission Template FEMA Template FT–104–FY–21–100. | 60 | 228 | 13,680 | 0.5 | 6,840 | 57.96 | 396,446 |
| Recipient/ ..... | FAC–TRAX System FEMA Form FF–104–FY–21–145 (formerly FF 009–0–141). | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Applicant ..... | Force Account Equipment Summary FEMA Form FF–104–FY–21–141 (formerly 009–0–127). | 60 | 32 | 1,920 | 0.25 | 480 | 57.96 | 27,821 |
| Applicant ..... | Force Account Labor Summary Record FEMA Form FF–104–FY–21–137 (formerly 009–0–127). | 60 | 32 | 1,920 | 0.5 | 960 | 57.96 | 55,642 |
| Applicant ..... | Hazard Mitigation Addendum* FEMA Form FF–104–FY–22–247. | 0 | 0 | 0 | 0 | 0 | 0 | 0 |

ESTIMATED ANNUALIZED BURDEN HOURS AND COSTS—Continued

| Type of respondent | Form name/form No. | Number of respondents | Number of responses per respondent | Total number of responses | Average burden per response (in hours) | Total annual burden (in hours) | Average hourly wage rate | Total annual respondent cost |
|---|---|---|---|---|---|---|---|---|
| Applicant ..... | Impact List FEMA Form FF–104–FY–22–236. | 60 | 1,000 | 60,000 | 0.5 | 30,000 | 57.96 | 1,738,800 |
| Applicant ..... | Materials and Summary Record FEMA Form FF–104–FY–21–138 (formerly 009–0–124). | 60 | 32 | 1,920 | 0.25 | 480 | 57.96 | 27,821 |
| Recipient/ ..... | Organization Profile FEMA Form FF–104–FY–22–233. | 60 | 1,000 | 60,000 | 0.3 | 18,000 | 57.96 | 1,043,280 |
| Applicant ..... | Pre-Approval Request FEMA Form FF–104–FY–22–238. | 60 | 500 | 30,000 | 0.5 | 15,000 | 57.96 | 869,400 |
| Applicant ..... | Project Application for Building Code and Floodplain Management and Enforcement FEMA Form FF–104–FY–22–243. | 60 | 5 | 300 | 0.2333 | 70 | 57.96 | 4,057 |
| Applicant ..... | Project Application for COVID–19 FEMA Form FF–104–FY–22–241. | 60 | 50 | 3,000 | 0.3667 | 1,100 | 57.96 | 63,756 |
| Applicant ..... | Project Application for Debris Removal FEMA Form FF–104–FY–22–239. | 60 | 1,000 | 60,000 | 0.75 | 45,000 | 57.96 | 2,608,200 |
| Applicant ..... | Project Application for Emergency Protective Measures FEMA Form FF–104–FY–22–240. | 60 | 1,000 | 60,000 | 0.75 | 45,000 | 57.96 | 2,608,200 |
| Applicant ..... | Project Application for Infrastructure Restoration FEMA Form FF–104–FY–22–242. | 60 | 1,200 | 72,000 | 0.75 | 54,000 | 57.96 | 3,129,840 |
| Applicant ..... | Project Application for Management Costs FEMA Form FF–104–FY–22–244. | 60 | 1,000 | 60,000 | 0.2167 | 13,002 | 57.96 | 753,596 |
| Applicant ..... | Quarterly Progress Report FEMA Form FF–104–FY–21–132 (formerly 009–0–111). | 60 | 4 | 240 | 0.6 | 144 | 57.96 | 8,346 |
| Recipient ..... | Recipient Incident Information FEMA Form FF–104–FY–22–234. | 60 | 1 | 60 | 0.0833 | 5 | 57.96 | 290 |
| Applicant ..... | Rented Equipment Summary Record FEMA Form FF–104–FY–21–139 (formerly 009–0–125). | 60 | 32 | 1,920 | 0.5 | 960 | 57.96 | 55,642 |
| Applicant ..... | Request for Appeals or Arbitrations & Recommendations/No Form. | 56 | 9 | 504 | 3 | 1,512 | 57.96 | 87,636 |
| Applicant ..... | Request for Appeals or Arbitrations & Recommendations from Hurricanes Katrina or Rita/No Form. | 4 | 5 | 20 | 3 | 60 | 57.96 | 3,478 |
| Applicant ..... | Request for Public Assistance FEMA Form FF–104–FY–21–131 (formerly 009–0–49). | 60 | 1,000 | 60,000 | 0.1167 | 7,002 | 57.96 | 405,836 |
| Recipient ..... | State/Territory Administrative Plan FEMA Form FF–104–FY–22–249. | 60 | 1 | 60 | 0.6 | 36 | 57.96 | 2,087 |
| Applicant ..... | Time Extension Request FEMA Form FF–104–FY–22–248. | 60 | 120 | 7,200 | 0.4 | 2,880 | 57.96 | 166,925 |
| Recipient ..... | Tribe Administrative Plan FEMA Form FF–104–FY–22–250. | 5 | 1 | 5 | 0.4167 | 2 | 57.96 | 116 |
| Total ..... | ..... | 1,505 | ..... | 635,269 | ..... | 341,635 | ..... | 19,801,167 |

The term Recipient refers to States, Tribes, and Territories. The term Applicant refers to States, Tribes, Territories, and local governments and certain private non-profit organizations.

*FEMA Form FF–104–FY–22–246, Environmental and Historic Preservation Addendum and FEMA Form FF–104–FY–22–247, Hazard Mitigation Addendum are addendums to the Project Applications. Burden hours are for these addendums are included with the estimated burden of the applicable project application.

*Estimated Total Annual Respondent Cost:* The estimated annual cost to respondents for the hour burden is $19,801,167.

*Estimated Respondents' Operations and Maintenance Costs:* There are no annual operations or maintenance costs associated with this information collection.

*Estimated Respondents' Capital and Start-Up Costs:* There are no annual capital or start-up costs associated with this information collection.

*Estimated Total Annual Cost to the Federal Government:* The estimated annual cost to the Federal Government is $2,001,955.

Comments

The public may submit comments as indicated in the **ADDRESSES** caption above. FEMA solicits comments to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

*H. Privacy Act/E-Government Act*

Under the Privacy Act of 1974, 5 U.S.C. 552a, an agency must determine whether implementation of a proposed regulation will result in a system of records. A ''record'' is any item, collection, or grouping of information about an individual that is maintained by an agency, including, but not limited

to, his/her education, financial transactions, medical history, and criminal or employment history and that contains his/her name, or the identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print or a photograph.[132] A ''system of records'' is a group of records under the control of an agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual. An agency cannot disclose any record that is contained in a system of records except by following specific procedures.

The E-Government Act of 2002, 44 U.S.C. 3501 note, also requires specific procedures when an agency takes action to develop or procure information technology that collects, maintains, or disseminates information that is in an identifiable form. This Act also applies when an agency initiates a new collection of information that will be collected, maintained, or disseminated using information technology if it includes any information in an identifiable form permitting the physical or online contacting of a specific individual.

In accordance with DHS policy, FEMA has completed a Privacy Threshold Analysis for this rule. DHS has determined this rulemaking does not require the development and publication of a new or modified System of Records Notice (SORN). The information collected has coverage under an existing Privacy Impact Assessment (PIA) and an existing SORN:

DHS/FEMA/PIA–013 Grant Management Programs; and

DHS/FEMA–009 Hazard Mitigation Assistance Grant Programs SORN.

The proposed rule does not impact the personally identifiable information (PII) that FEMA currently collects, stores, maintains, or disseminates. The rulemaking has adequate coverage under the above listed PIA and SORN.

*I. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments*

Executive Order 13175, 65 FR 67249 (Nov. 9, 2000), applies to agency regulations that have Tribal implications, that is, regulations that have substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. Under this Executive Order, to the extent practicable and permitted by law, no agency may promulgate any regulation that has Tribal implications, that imposes substantial direct compliance costs on Indian Tribal governments, and that is not required by statute, unless funds necessary to pay the direct costs incurred by the Indian Tribal government or the tribe in complying with the regulation are provided by the Federal Government, or the agency consults with Tribal officials.

Although Indian Tribal governments are potentially eligible applicants under the Public Assistance Program, FEMA has determined that this rule 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. The proposed revisions in this rule relating specifically to Indian Tribal governments are minor clarifying changes to reflect current practice. There is no substantial direct compliance cost associated with this proposed rule. The Public Assistance program is a voluntary program available to eligible Tribal governments acting as a recipient, as well as State and local governments and PNP organizations. The Public Assistance program provides funding to applicants, including Tribal governments, in need of emergency and disaster response assistance. Indian Tribal governments acting as recipients already comply with certain conditions, including submitting an administrative plan and FEMA-Tribal Agreement, in order to receive Public Assistance funding. FEMA does not expect the regulatory changes in this proposed rule to disproportionately affect Indian Tribal governments acting as recipients.

*J. Executive Order 13132, Federalism*

Executive Order 13132, 64 FR 43255 (Aug. 10, 1999), sets forth principles and criteria that agencies must adhere to in formulating and implementing policies that have federalism implications, that is, regulations that have ''substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.'' Federal agencies must closely examine the statutory authority supporting any action that would limit the policymaking discretion of the States, and to the extent practicable, must consult with State and local officials before implementing any such action.

FEMA has reviewed this proposed rule under Executive Order 13132 and has concluded that it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, this proposed rule does not have federalism implications as defined by the Executive Order. This rulemaking would not significantly affect the rights, roles, and responsibilities of States, and involves no preemption of State law. This rulemaking would amend a voluntary grant program that State, local, and Tribal governments and eligible PNP organizations may use to receive Federal grants to assist in the recovery from disasters. States are not required to seek grant funding, and this rulemaking does not limit their policymaking discretion.

*K. Executive Order 11988, Floodplain Management*

Executive Order 11988, 42 FR 26951 (May 25, 1977), as amended by Executive Order 13690, ''Establishing a Federal Flood Risk Management Standard (FFRMS) and a Process for Further Soliciting and Considering Stakeholder Input,'' (80 FR 6425, Feb. 4, 2015) and Executive Order 14030, ''Climate-Related Financial Risk,'' (86 FR 27967, May 25, 2021), requires each Federal agency to provide leadership and take action to reduce the risk of flood loss, to minimize the impact of floods on human safety, health and welfare, and to restore and preserve the natural and beneficial values served by floodplains in carrying out its responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. In carrying out these responsibilities, each agency must evaluate the potential effects of any actions it may take in a floodplain; ensure that its planning programs and budget requests reflect consideration of flood hazards and floodplain management; and prescribe procedures to implement the policies and requirements of the Executive Order.

Before promulgating any regulation, an agency must determine whether the proposed regulations will affect a floodplain(s), and if so, the agency must consider alternatives to avoid adverse effects and incompatible development

[132] *See* 5 U.S.C. 552a(a)(4).

in the floodplain(s). If the head of the agency finds that the only practicable alternative consistent with the law and with the policy set forth in Executive Order 11988 is to promulgate a regulation that affects a floodplain(s), the agency must, prior to promulgating the regulation, design or modify the regulation to minimize potential harm to or within the floodplain, consistent with the agency's floodplain management regulations and prepare and circulate a notice containing an explanation of why the action is proposed to be located in the floodplain.

The requirements of Executive Order 11988 apply in the context of the provision of Federal financial assistance relating to, among other things, construction and property improvement activities. However, the changes proposed in this rule would not affect floodplain management. The proposed rule would revise the Public Assistance regulations to reflect current statutory authority and make improvements to the administration of the Public Assistance program. When FEMA undertakes specific actions that may affect floodplain management, FEMA follows the procedures set forth in 44 CFR part 9 to ensure compliance with this Executive Order. These procedures include a specific, 8-step process for conducting floodplain management and wetland reviews. With few exceptions (such as emergencies) and as set forth in applicable statutes or regulations, FEMA must complete reviews for compliance before FEMA approves funding and starts work. The proposed rule would not change this process.

*L. Executive Order 11990, Protection of Wetlands*

Executive Order 11990, 42 FR 26961 (May 24, 1977), requires each Federal agency to provide leadership and take action to minimize the destruction, loss or degradation of wetlands, and to preserve and enhance the natural and beneficial values of wetlands in carrying out the agency's responsibilities for (1) acquiring, managing, and disposing of Federal lands and facilities; and (2) providing Federally undertaken, financed, or assisted construction and improvements; and (3) conducting Federal activities and programs affecting land use, including but not limited to water and related land resources planning, regulating, and licensing activities. Each agency, to the extent permitted by law, must avoid undertaking or providing assistance for new construction located in wetlands unless the head of the agency finds (1) that there is no practicable alternative to such construction, and (2) that the proposed action includes all practicable measures to minimize harm to wetlands which may result from such use. In making this finding the head of the agency may take into account economic, environmental, and other pertinent factors.

In carrying out the activities described in the Executive Order, each agency must consider factors relevant to a proposal's effect on the survival and quality of the wetlands. Among these factors are: public health, safety, and welfare, including water supply, quality, recharge and discharge; pollution; flood and storm hazards; and sediment and erosion; maintenance of natural systems, including conservation and long term productivity of existing flora and fauna, species and habitat diversity and stability, hydrologic utility, fish, wildlife, timber, and food and fiber resources; and other uses of wetlands in the public interest, including recreational, scientific, and cultural uses.

The requirements of Executive Order 11990 apply in the context of the provision of Federal financial assistance relating to, among other things, construction and property improvement activities. However, the changes proposed in this rule would not affect land use or wetlands. The proposed rule would revise the Public Assistance regulations to reflect current statutory authority and make improvements to the administration of the Public Assistance program.

When FEMA undertakes specific actions that may affect wetlands, FEMA follows the procedures set forth in 44 CFR part 9 to ensure compliance with this Executive Order. These procedures include a specific, 8-step process for conducting floodplain management and wetland reviews. With few exceptions (such as emergencies) and as authorized in applicable statutes or regulations, FEMA must complete reviews for compliance before FEMA approves funding and starts work. The proposed rule would not change this process.

*M. Executive Orders 12898 and 14096, Environmental Justice*

Under Executive Orders 12898, ''Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations,'' and 14096, ''Revitalizing Our Nation's Commitment to Environmental Justice for All'' (which builds upon Executive Order 12898 [133]) agencies must, as appropriate and consistent with applicable law, identify, analyze, and address the disproportionate and adverse human health and environmental effects (including risks) and hazards of rulemaking actions and other Federal activities on communities with environmental justice concerns.[134]

This rulemaking would not result in disproportionate and adverse effects on human health or the environment. This rulemaking involves grant funding under the Public Assistance program, a program that provides funding to States, local governments, Tribal governments, and PNP organizations to assist them in their emergency response and disaster response and recovery efforts. It would not have the effect of excluding persons from participation in or denying persons the benefit of this program, nor will it subject persons to discrimination because of race, color, or national origin. The Public Assistance program is administered consistent with the nondiscrimination requirements of 44 CFR 206.11 and section 308 of the Stafford Act, 42 U.S.C. 5151.

*N. OMB Circular A–119, Voluntary Consensus Standards*

''Voluntary consensus standards'' are standards developed or adopted by voluntary consensus standards bodies, both domestic and international. These standards include provisions requiring that owners of relevant intellectual property have agreed to make that intellectual property available on a non-discriminatory, royalty-free or reasonable royalty basis to all interested parties. OMB Circular A–119, ''Federal Participation in the Development and Use of Voluntary Consensus Standards and in Conformity Assessment Activities,'' directs agencies to use voluntary consensus standards in their regulatory actions in lieu of government-unique standards except where inconsistent with law or otherwise impractical. The policies in the Circular are intended to reduce to a minimum the reliance by agencies on government-unique standards.

Section 1235(b) of DRRA amended section 406(e) of the Stafford Act to require FEMA fund repair, restoration, reconstruction, or replacement in conformity with

the latest published editions of relevant consensus-based codes, specifications, and standards that incorporate the latest hazard-resistant design and establish minimum acceptable criteria for the design,

[133] Exec. Order No. 12898 of Feb. 11, 1994 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations), 59 FR 7629 (Feb. 16, 1994).

[134] For further information, including the definition of environmental justice, see Exec. Order No. 14096 of Apr. 21, 2023 (Revitalizing Our Nation's Commitment to Environmental Justice for All), 88 FR 25251 (Apr. 26, 2023).

construction, and maintenance of residential structures and facilities that may be eligible for assistance under [the Stafford] Act for the purposes of protecting the health, safety, and general welfare of a facility's users against disasters.

This rule proposes to codify this requirement in FEMA's regulations at 44 CFR 206.226(c)(1). FEMA's interim guidance on DRRA section 1235(b) provides more information on which voluntary consensus codes fall within the scope of this provision.[135]

*O. Congressional Review of Agency Rulemaking*

Under the Congressional Review of Agency Rulemaking Act (CRA), 5 U.S.C. 801–808, before a rule can take effect, the Federal agency promulgating the rule must submit to Congress and to the Government Accountability Office (GAO) a copy of the rule, a concise general statement relating to the rule, including whether it is a major rule, the proposed effective date of the rule, a copy of any benefit-cost analysis, descriptions of the agency's actions under the Regulatory Flexibility Act and the Unfunded Mandates Reform Act, and any other information or statements required by relevant executive orders. FEMA will send this rule to the Congress and to GAO pursuant to the CRA if the rule is finalized.

This rule is not a ''major rule'' within the meaning of the CRA. It would not have an annual effect on the economy of $100,000,000 or more, it would not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, and it would not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic and export markets.

**List of Subjects in 44 CFR Part 206**

Administrative practice and procedure, Coastal zone, Community facilities, Disaster assistance, Fire prevention, Grant programs—housing and community development, Housing, Insurance, Intergovernmental relations, Loan programs—housing and community development, Natural resources, Penalties, Reporting and recordkeeping requirements.

[135] Consensus-Based Codes, Specifications and Standards for Public Assistance, FEMA Recovery Interim Policy FP–104–009–11 Ver. 2.1, Appendix A (Dec. 20, 2019), available at *https://www.fema.gov/sites/default/files/2020-07/fema_DRRA-1235b-public-assistance-codes-standards-interim-policy.pdf.*

For the reasons discussed in the preamble, the Federal Emergency Management Agency proposes to amend 44 CFR part 206 as follows:

## PART 206—FEDERAL DISASTER ASSISTANCE

■ 1. The authority citation for part 206 continues to read as follows:

**Authority:** Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121 through 5207; Homeland Security Act of 2002, 6 U.S.C. 101 *et seq.;* Department of Homeland Security Delegation 9001.1; sec. 1105, Pub. L. 113–2, 127 Stat. 43 (42 U.S.C. 5189a note).

### Subpart A—General

■ 2. In § 206.2:
■ a. Revise paragraphs (a)(4), (a)(6), (a)(10), (a)(14), (a)(15), (a)(18), (a)(19), (a)(20), and (a)(24);
■ b. Redesignate paragraphs (a)(26) and (a)(27) as (a)(28) and (a)(29), respectively; and
■ c. Add new paragraphs (a)(26) and (a)(27).

The revisions and additions read as follows:

**§ 206.2 Definitions.**

(a) * * *

* * * * *

(4) *Concurrent, multiple major disasters:* In considering a request for an advance, the term concurrent multiple major disasters means major disasters that occur within a 12-month period immediately preceding the major disaster for which an advance of the non-Federal share is requested pursuant to section 319 of the Stafford Act.

* * * * *

(6) *Designated area:* Any emergency or major disaster-affected portion of a State that has been determined eligible for Federal assistance.

* * * * *

(10) *Federal agency:* Any department, independent establishment, Government corporation, or other agency of the executive branch of the Federal Government, including the United States Postal Service, but will not include the American National Red Cross.

* * * * *

(14) *Hazard mitigation:* Any cost-effective measure that will reduce the potential for damage to a facility from future disaster impacts.

* * * * *

(15) *Individual assistance:* Supplementary Federal assistance provided under the Stafford Act to individuals and families adversely affected by a major disaster or an emergency. Such assistance may be provided directly by the Federal Government or through State, local, or Indian Tribal governments, or disaster relief organizations. For further information, see subparts D, E, and F of these regulations.

* * * * *

(18) *Mission assignment:* Work order issued by the Regional Administrator, Associate Administrator for the Office of Response and Recovery, or Administrator, to a Federal agency directing completion by that agency of a specified task and citing funding, other managerial controls, and guidance.

* * * * *

(19) *Private nonprofit organization:* Any nongovernmental agency or entity that currently has:

(i) An effective ruling letter from the U.S. Internal Revenue Service granting tax exemption under section 501(c), (d), or (e) of the Internal Revenue Code of 1986, as amended;

(ii) Satisfactory evidence from the State or Indian Tribal government that the organization or entity is a nonprofit one organized or doing business under State or Tribal law; or

(iii) If the organization is exempt from the requirement to apply for 501(c)(3) status and is exempt from requirements to apply for tax exempt status under applicable State or Tribal law, the organization must provide articles of association, bylaws, or other organizing documents indicating that it is an organized entity and a certification that it is compliant with Internal Revenue Code section 501(c)(3) and State or Tribal law requirements.

(20) *Public Assistance:* Supplementary Federal assistance provided under the Stafford Act to State, local, and Indian Tribal governments, and certain private, nonprofit organizations other than assistance for the direct benefit of individuals and households. For further information, see subparts G (Public Assistance Project Administration), H (Public Assistance Eligibility), I (Public Assistance Insurance Requirements), J (Coastal Barrier Resources Act), K (Community Disaster Loans), and M (Minimum Standards) of this part. Fire Management Assistance Grants under section 420 of the Stafford Act are also considered Public Assistance; see part 204 of this subchapter.

* * * * *

(24) *State or Tribal emergency plan:* As used in section 401 or section 501 of the Stafford Act means the State or Tribal plan that is designated specifically for State or Indian Tribal

government level response to emergencies or major disasters and which sets forth actions to be taken by the State, Indian Tribal government, and local governments, including those for implementing Federal disaster assistance.

* * * * *

(26) *Tribal Authorized Representative (TAR):* The person empowered by the Tribal Executive to execute, on behalf of the Indian Tribal government, all necessary documents for disaster assistance.

(27) *Tribal Coordinating Officer:* The person appointed by the Tribal Executive to act in cooperation with the Federal Coordinating Officer to administer disaster recovery efforts.

* * * * *

**§ 206.11 [Amended]**

■ 3. Amend § 206.11 as follows:

■ a. Remove the word ''shall'' wherever it appears, and add in its place the word ''will''.

■ b. In paragraph (b), before the words ''or economic status'' add ''disability, English proficiency,''.

**§ 206.12 [Amended]**

■ 4. Amend § 206.12 as follows:

■ a. In paragraph (a), remove the words ''and other voluntary organizations'' and add in their place the words ''long-term recovery groups, domestic hunger relief organizations, and other relief or voluntary organizations''.

■ b. In paragraph (b), remove the words ''the American Red Cross'' and add in their place the words ''the American National Red Cross'', and remove the words ''and other voluntary organizations'' and add in their place the words ''long-term recovery groups, domestic hunger relief organizations, and other relief or voluntary organizations''.

■ c. Remove the word ''shall'' wherever it appears, and add in its place the word ''will''.

## Subpart C—Emergency Assistance

■ 5. In § 206.62, revise paragraphs (a), (b), (c), and (g) to read as follows:

**§ 206.62 Available assistance.**

* * * * *

(a) Direct any Federal agency, with or without reimbursement, to utilize its authorities and the resources granted to it under Federal law (including personnel, equipment, supplies, facilities, and managerial, technical and advisory services) in support of State, Indian Tribal government, and local emergency assistance efforts to save lives, protect property and public health and safety, and lessen or avert the threat of a catastrophe;

(b) Coordinate all disaster relief assistance (including voluntary assistance) provided by Federal agencies, private organizations, and State, local, and Indian Tribal governments;

(c) Provide technical and advisory assistance to affected State, local, and Indian Tribal governments for:

(1) The performance of essential community services;

(2) Issuance of warnings of risks or hazards;

(3) Public health and safety information, including dissemination of such information;

(4) Provision of health and safety measures; and

(5) Management, control, and reduction of immediate threats to public health and safety;

* * * * *

(g) Assist State, local, and Indian Tribal governments in the distribution of medicine, food, and other consumable supplies, and emergency assistance.

## Subpart G—Public Assistance Project Administration

■ 6. Revise § 206.200 to read as follows:

**§ 206.200 General.**

(a) This subpart establishes procedures for the administration of Public Assistance awards approved under the provisions of the Stafford Act.

(b) The Stafford Act requires that FEMA deliver eligible assistance as quickly and efficiently as possible consistent with Federal laws and regulations.

(c) The recipient and subrecipient must adhere to the requirements of the Stafford Act and to these regulations when administering Public Assistance awards.

(d) 2 CFR part 200 applies to all Public Assistance awards and to all recipients and subrecipients of Public Assistance awards except where its provisions are inconsistent with the Stafford Act or these regulations.

■ 7. Revise § 206.201 to read as follows:

**§ 206.201 Definitions used in this subpart.**

*Applicant* means a State agency, Indian Tribal government, local government, or a private nonprofit organization or institution that owns or operates a private nonprofit facility as defined in § 206.221, submitting an application to the recipient for assistance under the Public Assistance program.

*Award* means the financial assistance that the recipient receives from FEMA. The award is based on the total eligible Federal share of all approved projects.

*Facility* means building, structure, system, or equipment, built or manufactured, or an improved and maintained natural feature. Land used for agricultural purposes is not a facility.

*Host-State.* A State or Indian Tribal government that by agreement with FEMA provides sheltering and/or evacuation support to evacuees from an impact-State. An Indian Tribal government may also be referred to as a ''Host-Tribe.''

*Impact-State.* The State for which the President has declared an emergency or major disaster and that, due to a need to evacuate and/or shelter affected individuals outside the State, requests such assistance from FEMA pursuant to § 206.209.

*Indian Tribal government* means any federally recognized governing body of an Indian or Alaska Native Tribe, band, nation, pueblo, village, or community that the Secretary of the Interior acknowledges to exist as an Indian Tribe under the Federally Recognized Tribe List Act of 1994, 25 U.S.C. 479a. This does not include Alaska Native corporations, the ownership of which is vested in private individuals.

*Permanent work* means work performed pursuant to section 406 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5172.

*Predisaster design* means the size or capacity of a facility as originally designed and constructed or subsequently modified by changes or additions to the original design. It does not mean the capacity at which the facility was being used at the time the major disaster occurred if different from the most recent designed capacity.

*Project* is a logical grouping of work required as a result of the declared major disaster or emergency. A project may include eligible work at several sites.

*Project approval* means the process in which the Regional Administrator, or designee, reviews a proposed project and approves the work and costs on a Project Application or related Project Applications.

*Project Application* is used to document the location, scope of work, cost or cost estimate, terms and conditions, and information required for approval. For permanent work, the form is also used to document damage description and dimensions.

*Recipient* means the government that receives an award directly from FEMA and which is accountable for the use of the funds provided. The recipient is the

entire legal entity even if only a particular component of the entity is designated in the award document. Except as provided in § 206.202(f), the State or Indian Tribal government for which the emergency or major disaster is declared is the recipient. However, an Indian Tribal government may choose under a declaration provided to the State to be either a recipient of FEMA, or a subrecipient of the State. If an Indian Tribal government elects to be a recipient of FEMA under a declaration provided to the State, it will assume the responsibilities of the ''recipient'' or ''State'' as described in this part with respect to administration of the Public Assistance program.

*Resiliency* means the ability to prepare for threats and hazards, adapt to changing conditions, and withstand and recover rapidly from adverse conditions and disruptions.

*Resilient* means able to prepare for threats and hazards, adapt to changing conditions, and withstand and recover rapidly from adverse conditions and disruptions.

*Site* means an individual building, structure, location, or system section.

*Subaward* means an award of financial assistance provided by the recipient to a subrecipient.

*Subrecipient* means the government or other legal entity that receives a subaward from the recipient and which is accountable to the recipient for the use of the funds provided.

■ 8. In § 206.202, revise paragraphs (a) through (e), (f)(1), and (f)(2) to read as follows:

**§ 206.202 Application procedures.**

(a) *General.* This section describes the policies and procedures that FEMA uses to process Public Assistance awards to a recipient. The recipient is responsible for processing subawards to subrecipients pursuant to 44 CFR part 206, the recipient's own policies and procedures, and the applicable requirements of 2 CFR part 200.

(b) *Recipient.* The recipient is responsible for administering all funds provided under the Public Assistance program. The recipient's responsibilities include:

(1) Ensuring that all potential applicants are aware of available assistance under the Public Assistance program;

(2) Providing support for project identification and development activities, including site inspections and scope of work and cost development;

(3) Providing technical advice and assistance to eligible subrecipients;

(4) Informing subrecipients of the status of applications for Public Assistance funding, including FEMA's approval of the Project Application and the process for disbursement of funds; and

(5) Submitting documents necessary for the approval of subawards.

(c) *Request for Public Assistance (Request).* The recipient must submit a completed *Request* to the Regional Administrator, or designee, for each Public Assistance applicant. The recipient must submit *Requests* to the Regional Administrator no later than 30 calendar days after the area is designated in an emergency or major disaster declaration.

(d) *Project Applications.*

(1) An applicant's authorized local representative is responsible for representing the applicant and for ensuring that the applicant has identified all eligible work and submitted all costs or cost estimates for disaster-related damage. The applicant, assisted by the recipient or FEMA as appropriate, must prepare a Project Application for each project.

(2) Within 90 calendar days following FEMA's approval of the *Request for Public Assistance,* the applicant must identify and report all impacts the applicant proposes be included on the Project Applications.

(3) For work not completed prior to or during the project development period, the applicant must conduct any site inspections necessary to validate incident impacts and obtain all information necessary to complete a detailed description of the impacts. Within 30 calendar days following a site inspection or 120 calendar days following FEMA's approval of the *Request for Public Assistance,* whichever is later, the applicant must also provide the recipient and FEMA all other documentation necessary to determine eligible work and costs.

(4) When the estimated cost of work at a site is less than $3,900 that work is not eligible and FEMA will not approve funding for the site. This minimum threshold amount will be reviewed annually and may be adjusted to reflect changes in the Consumer Price Index for All Urban Consumers published by the Department of Labor.

(e) *Award notification.*

(1) The recipient must complete and send to the Regional Administrator, or designee, a Standard Form (SF) 424, Application for Federal Assistance, and a SF 424D, Assurances for Construction Programs, before FEMA obligates any Public Assistance funds to the recipient. Upon request and after receipt of the SF 424 and SF 424D, the Regional Administrator, or designee, may obligate funds to the recipient based on the approved Project Applications. The recipient will then pay claims in accordance with § 206.206 based on the Project Applications approved for each subrecipient.

(2) The recipient will notify the subrecipient of FEMA's approval of a subaward.

(f) * * *

(1) *Host-State/Tribe Evacuation and/or Sheltering.*

(i) *General.* A host-State/Tribe is eligible for an award under sections 403 or 502 of the Stafford Act for sheltering and/or evacuation support when an impact-State/Tribe requests direct Federal assistance for sheltering and/or evacuation support pursuant to § 206.209. To receive this award, a host-State/Tribe must enter into a FEMA-Host-State/Tribe Agreement, amend its State/Tribal Administrative Plan pursuant to § 206.208, and submit a Standard Form SF 424 Application for Federal Assistance directly to FEMA to apply for reimbursement of eligible costs for evacuating and/or sheltering individuals from an impact-State/Tribe. Upon award, the host-State/Tribe assumes the responsibilities of the ''recipient'' under this part with respect to its award.

(ii) *Force Account Labor Costs.* For the performance of eligible evacuation and sheltering support under sections 403 or 502 of the Stafford Act, the straight-time salaries and benefits of a host-State/Tribe's permanently employed personnel are eligible for reimbursement. This is an exception to § 206.228(b).

(2) *Time limitations.* The Regional Administrator, or designee, may extend the time limit shown in paragraphs (c) and (d) of this section when the recipient justifies and makes a request in writing. The justification must be based on extenuating circumstances beyond the recipient's and subrecipient's control.

■ 9. Revise § 206.203 to read as follows:

**§ 206.203 Federal funding for large and small projects.**

(a) *Cost sharing.* All projects approved under FEMA Public Assistance awards will be subject to the cost sharing provisions established in the FEMA-State/Tribe Agreement and the Stafford Act.

(b) *Large projects.* When the approved estimate of eligible costs for an individual project is $1,000,000 or greater, Federal funding will equal the Federal share of the actual eligible costs documented by a recipient. This minimum threshold amount will be reviewed annually and may be adjusted to reflect changes in the Consumer Price

Index for All Urban Consumers published by the Department of Labor.

(c) *Small projects.* When the approved estimate of costs for an individual project is less than $1,000,000, Federal funding will equal the Federal share of the approved estimate of eligible costs. This amount will be reviewed annually and may be adjusted as indicated in paragraph (b) of this section.

(d) *Applicability date.* The dollar threshold provided in paragraphs (b) and (c) of this section applies to project applications that have not been obligated as of August 3, 2022 for major disasters and emergencies declared on or after March 13, 2020.

**§§ 206.204 through 206.209 [Redesignated as §§ 206.205 through 206.210]**

■ 10. Redesignate §§ 206.204 through 206.209 as §§ 206.205 through 206.210, respectively.

■ 11. Add new § 206.204 to read as follows:

**§ 206.204 Funding options—improved projects and alternate projects.**

(a) *Improved projects*—(1) *Purpose.* A subrecipient may request an improved project when it desires to restore the predisaster function of a damaged facility and make improvements. Improved projects may only be approved for permanent work.

(2) *Approval.* The subrecipient must obtain the recipient's written approval prior to the start of project construction. The recipient must notify the Regional Administrator, or designee, of its approval in writing.

(3) *Deadlines.* Work completion deadlines, set forth in § 206.205, apply to the completion of the improved project.

(4) *Funding.* Public Assistance funding for improved projects will be limited to the Federal share of the approved estimate of eligible costs that would be associated with repairing or replacing the damaged facility to its predisaster design, or to the actual costs of completing the improved project, whichever is less.

(b) *Alternate projects*—(1) *Purpose.* An alternate project may be requested in any case where a subrecipient determines that the public welfare would not be best served by restoring the function of a disaster-damaged public or private nonprofit facility. An alternate project may only be approved for permanent work.

(2) *Approval.* Prior to the start of construction on any alternate project, the recipient must submit for approval by the Regional Administrator, or designee, the following: a description of the project(s); schedule of work, including starting date and targeted completion date; the projected cost of the project(s); and supporting documentation identifying any environmental or historic preservation issues and any other legal considerations. An applicant must receive approval from the Regional Administrator prior to the start of construction on an alternate project.

(3) *Deadlines.* Work completion deadlines, set forth in § 206.205, apply to the completion of alternate projects.

(4) *Funding*—(i) *Amount.* Public Assistance funding for alternate projects for damaged public and private nonprofit facilities is limited to the Federal share of the FEMA-approved estimate of the total eligible cost of repairing, restoring, reconstructing, or replacing the original facility to its predisaster function, or to the actual costs of completing the alternate project, whichever is less.

(ii) *Use of funds*—(A) *Public facilities.* Funds awarded for alternate projects may be used to repair or expand public facilities, construct new public facilities, purchase eligible capital equipment, fund hazard mitigation measures, and demolish the original damaged facility when demolition is an associated expense of the alternate project. Funds awarded for alternate projects may not be used to pay the non-Federal share of any project, nor any operating expense. Alternate project funds awarded to a State, local, or Indian Tribal government under this paragraph may not be used for any public facility located in a regulatory floodway (as defined in section 59.1 of title 44, Code of Federal Regulations (or a successor regulation)), or for any uninsured public facility located in a special flood hazard area identified by the Administrator of FEMA under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 *et seq.*).

(B) *Private Nonprofit Facilities.* Funds awarded for alternate projects may be used to repair or expand other eligible private nonprofit facilities owned or operated by the subrecipient; construct new eligible facilities to be owned or operated by the subrecipient; purchase equipment needed to repair, restore, expand, or construct an eligible facility; to fund hazard mitigation measures that the subrecipient determines to be necessary to meet a need for the subrecipient's eligible services and functions in the area affected by the major disaster; and demolish the original structure when demolition is an associated expense of the alternate project. These funds may not be used to pay the non-Federal share of any project, nor any operating expense. Alternate project funds made available to a subrecipient under this paragraph may not be used for any private nonprofit facility located in a regulatory floodway (as defined in section 59.1 of title 44, Code of Federal Regulations (or a successor regulation)), or any uninsured private nonprofit facility located in a special flood hazard area identified by the Administrator of FEMA under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 *et seq.*).

■ 12. Amend newly redesignated § 206.205 as follows:

■ a. Revise paragraph (c), the introductory text to paragraph (d), paragraph (d)(2), the introductory text to paragraph (e)(1), paragraphs (e)(2), and (f); and

■ b. Add paragraph (e)(3).

The revisions and addition read as follows:

**§ 206.205 Project performance.**

* * * * *

(c) *Time limitations for completion of work*—

(1) *Deadlines.* The work completion deadlines shown below are set from the date that a major disaster or emergency is declared and apply to all projects approved under the award.

COMPLETION DEADLINES

| Type of work | Months |
|---|---|
| Debris removal and emergency protective measures | 6 |
| Permanent work | 18 |

(2) *Exceptions*—

(i) FEMA and the recipient may impose lesser deadlines for the completion of work under paragraph

(c)(1) of this section if considered appropriate.

(ii) Based on extenuating circumstances or unusual project requirements beyond the control of the subrecipient, the recipient may extend the deadlines under paragraph (c)(1) of this section for an additional 6 months for debris removal and emergency protective measures, with the exception of extensions of temporary relocation deadlines, which require prior FEMA approval. The recipient may extend the deadlines under paragraph (c)(1) of this section for an additional 30 months, on a project-by-project basis, for permanent work. However, all extensions of deadlines for temporary relocation require prior FEMA approval.

(d) *Requests for time extensions.* A request for a time extension beyond the recipient's authority must be submitted by the recipient to the Regional Administrator, or designee, prior to the expiration of the last approved time extension and must include the following:

* * * * *

(2) A detailed written justification for the delay and a projected completion date. The justification must be based on extenuating circumstances beyond the recipient's and subrecipient's control. The Regional Administrator must review the request and make a determination. The Regional Administrator will notify the recipient of his/her determination in writing. If the Regional Administrator approves the request, the approval notice will reflect the new completion date and any other requirements the Regional Administrator may determine necessary to ensure that the new completion date is met. If the Regional Administrator denies the time extension request, FEMA may reimburse the recipient for eligible project costs incurred only up to the latest approved completion date. If the work is not completed, no Federal funding will be provided for that project unless the completed work is distinct from the uncompleted work.

(e) * * *

(1) *Categories.* During the execution of approved work, a subrecipient may find that the actual project costs exceed the approved Project Application estimates. Such cost overruns normally fall into the following three categories:

* * * * *

(2) *Large projects.* The subrecipient must evaluate each cost overrun and may, when justified, submit a request to the recipient for additional funding. The request for additional funding should be made as soon as practicable to allow FEMA or the recipient the opportunity to inspect the uncompleted project to validate that the additional costs are eligible. All requests for approval of additional funding must contain sufficient documentation to support the eligibility of all claimed work and costs. The recipient will make a written recommendation, and must provide it with the subrecipient's request and all supporting documentation, to the Regional Administrator, or designee. The Regional Administrator will notify the recipient in writing of the final determination.

(3) *Small projects.* FEMA will not normally review an overrun for an individual small project. When a subrecipient discovers a significant overrun related to the total final cost for all of its small projects, the subrecipient may submit a request for additional funding. The request must be made within 90 calendar days following the completion of the last of a subrecipient's small projects.

(f) *Progress reports.* The recipient must submit a quarterly progress report to the Regional Administrator, or designee. The Regional Administrator and the recipient must agree upon the date for submission of the first report. Progress reports must describe the status of open large projects.

■ 13. Revise newly redesignated § 206.206 to read as follows:

**§ 206.206 Payment of claims.**

(a) *Small Projects.* FEMA will make payment of the Federal share of small projects to the recipient upon approval of the Project Application. The recipient will make payment of the Federal share to the subrecipient, consistent with State or Tribal laws, as soon as practicable after Federal approval of funding. The recipient must certify that all small projects were completed in accordance with FEMA approvals and that the recipient contribution to the non-Federal share, as specified in the FEMA-State Agreement or FEMA-Tribal Agreement, has been made to each subrecipient, if applicable. The recipient's certification must be made within 90 calendar days of the last approved small project completion date of record. The amount spent by a subrecipient on small projects is not required to be specified in the recipient's certification. The Federal payment for small projects will not be reduced if all of the approved funds are not spent to complete a project. However, failure to complete a project may require that the Federal payment be refunded.

(b) *Large projects*—(1) The subrecipient must submit cost documentation for each large project to the recipient for final payment within 90 calendar days of completion of the approved scope of work for that Project Application. The recipient must submit cost documentation for each large project to the Regional Administrator as soon as practicable, but not later than 90 calendar days after the subrecipient has submitted documentation for final payment. The recipient must make an accounting to the Regional Administrator of eligible costs for each approved large project. In submitting the accounting the recipient must certify that reported costs were incurred in the performance of eligible work, that the approved work was completed, that the project is in compliance with the provisions of the FEMA-State Agreement or FEMA-Tribal Agreement, and that payments for that project have been made in accordance with 2 CFR 200.305.

(2) The Regional Administrator, or designee, will review the accounting to determine the eligible amount of reimbursement for each large project and approve eligible costs. If a discrepancy between reported costs and approved funding exists, the Regional Administrator may conduct field reviews to gather additional information. If discrepancies in the claim cannot be resolved through a field review, a Federal audit may be conducted. If the Regional Administrator determines that eligible costs vary from the approved estimate, the Regional Administrator will adjust the funding to reflect the actual eligible costs as necessary.

(3) The recipient will make payment of the Federal share to the subrecipient as soon as practicable after the Federal obligation of funding, consistent with State or Tribal laws.

(4) The Regional Administrator, or designee, may extend the time limits shown in paragraphs (1), (2) and (3) of this section when the recipient justifies and makes a request in writing. The justification must be based on extenuating circumstances beyond the recipient's and subrecipient's control.

**§ 206.206 [Redesignated as § 206.207 and amended]**

■ 14. In newly redesignated § 206.207, amend paragraph (a) as follows:

■ a. Remove the words ''*Applicant* has the same meaning as the definition at § 206.201(a)'' and add in their place the words ''*Applicant* has the same meaning as the definition at § 206.201''; and

■ b. Remove the words ''*Recipient* has the same meaning as the definition at § 206.201(m)'' and add in their place the words ''*Recipient* has the same meaning as the definition at § 206.201''.

■ 15. Amend newly redesignated § 206.208 by revising paragraph (a), the introductory text to paragraph (b), and paragraphs (b)(1), (b)(1)(i), (b)(1)(iii)(G), (H), and (K); (b)(3) and (4); and (c) to read as follows:

**§ 206.208 Administrative and audit requirements.**

(a) *General.* 2 CFR part 200 sets forth uniform administrative requirements for Federal awards, including certain provisions that apply to all awards and subawards in this part.

(b) *State/Tribal administrative plan*—(1) The recipient must develop a plan for the administration of the Public Assistance program that includes at a minimum, the items listed below:

(i) The designation of the recipient agency or agencies which will have the responsibility for program administration.

* * * * *

(iii) * * *

(G) Compliance with the applicable administrative requirements of 2 CFR part 200 and 44 CFR part 206;

(H) Compliance with the applicable audit requirements of 2 CFR 200.500–521;

* * * * *

(K) Ensuring the timely closing out of subawards, subrecipients, and awards.

* * * * *

(3) The recipient must submit, and receive approval from the Regional Administrator, or designee, of an administrative plan before FEMA will approve awards for an emergency or major disaster. The recipient must submit an updated plan to the Regional Administrator annually. In each disaster for which Public Assistance is available, the Regional Administrator will request the recipient to prepare any amendments required to meet current policy guidance, or necessary to address the recipient staffing plan for administering the Public Assistance program for the particular disaster.

(4) The recipient must ensure that the approved administrative plan is incorporated into the State or Tribal emergency plan.

(c) *Audit*—(1) *Non-Federal audit.* For recipients or subrecipients, requirements for a non-Federal audit are contained in 2 CFR 200.500–521.

(2) *Federal audit.* In accordance with 2 CFR 200.500–521, FEMA may elect to conduct a Federal audit of the award or any of the subawards.

■ 16. Amend newly redesignated § 206.209 by revising paragraphs (a), (b) introductory text, (b)(1) introductory text, (b)(1)(i) through (iii), (b)(2) and (3), and (c) through (e) to read as follows:

**§ 206.209 Direct Federal assistance.**

(a) *General.* When a State or Indian Tribal government lacks the capability to perform or to contract for eligible emergency protective measures or debris removal under sections 402, 403, 407, 502(a)(1), (4) through (7), or 503 of the Stafford Act, it may request that the work be accomplished by a Federal agency. In addition, assistance is also available under section 418 of the Stafford Act for emergency communications, and section 419 of the Stafford Act for emergency public transportation. Direct Federal assistance is subject to the cost sharing provisions outlined in § 206.203(a) of this subpart. Direct Federal assistance is also subject to the eligibility criteria contained in Subpart H of these regulations. FEMA will reimburse other Federal agencies in accordance with Subpart A of these regulations.

(b) *Requests for assistance.* All requests for direct Federal assistance must be submitted by the recipient to the Regional Administrator and must include:

(1) A written agreement that the State or Indian Tribal government will:

(i) Provide without cost to the United States all lands, easements, and rights-of-ways necessary to accomplish the approved work;

(ii) Hold and save the United States free from damages due to the requested work, and must indemnify the Federal Government against any claims arising from such work;

(iii) Provide reimbursement to FEMA for the non-Federal share of the cost of such work in accordance with the provisions of the FEMA-State Agreement or FEMA-Tribal Agreement; and

* * * * *

(2) A certification and explanation from the State or Indian Tribal government that the State, local, or Indian Tribal government cannot perform or contract for performance of the requested work.

(3) A written agreement from an eligible applicant that such applicant will be responsible for the items in paragraph (b)(1)(i) and (ii) of this section, in the event that a State or Indian Tribal government is legally unable to provide the written agreement.

(c) *Implementation*—(1) If FEMA approves the request, FEMA may perform or contract for the work itself, or will, as appropriate, issue a mission assignment to the appropriate Federal agency. The mission assignment to the Federal agency will define the scope of eligible work, the estimated cost of the eligible work and the billing period frequency. The Federal agency must not exceed the approved funding limit without the authorization of the Regional Administrator.

(2) The Regional Administrator will not approve FEMA funding for any part of the requested work that falls within the more specific statutory authority of another Federal agency. In such case, the unapproved portion of the request will be referred to the appropriate agency for action.

(3) If an impact-State/Tribe requests assistance in providing evacuation and sheltering support outside an impact-State/Tribe, FEMA may directly reimburse a host-State/Tribe for such eligible costs through an award to a host-State/Tribe under an impact-State/Tribe's declaration, consistent with § 206.202(f)(1). FEMA may grant an award to a host-State/Tribe when FEMA determines that a host-State/Tribe has sufficient capability to meet some or all of the sheltering and/or evacuation needs of an impact-State/Tribe, and a host-State/Tribe agrees in writing to provide such support to an impact-State/Tribe.

(d) *Time limitation.* The time limitation for completion of work by a Federal agency under a mission assignment is 60 calendar days after the President's declaration. Based on extenuating circumstances or unusual project requirements, the Regional Administrator may extend this time limitation.

(e) *Project management*—(1) The performing Federal agency must ensure that the work is completed in accordance with the Regional Administrator's approved scope of work, costs, and time limitations. The performing Federal agency must also keep the Regional Administrator and recipient advised of work progress and other project developments. It is the responsibility of the performing Federal agency to ensure compliance with applicable Federal, State, Tribal, and local legal requirements. A final inspection report will be completed upon termination of all direct Federal assistance work. Final inspection reports will be signed by a representative of the performing Federal agency and the State or Indian Tribal government. Once the final eligible cost is determined (including agency overhead), FEMA will bill the State or Indian Tribal government for the non-Federal share of the mission assignment in accordance with the cost sharing provisions of the FEMA-State Agreement or FEMA-Tribal Agreement, as applicable.

(2) Pursuant to the agreements provided in the request for assistance the recipient will assist the performing Federal agency in all State, Indian Tribal government, and local jurisdictional matters. These matters include securing local building permits and rights of entry, control of traffic and pedestrians, and compliance with local building ordinances.

**§ 206.209 [Redesignated as § 206.210 and amended]**

■ 17. Amend newly redesignated § 206.210 as follows:
■ a. In the paragraph (b) introductory text, remove the word ''hereinafter'';
■ b. In paragraphs (b) and (d), remove ''§ 206.206'' wherever it appears and add in its place ''§ 206.207'';
■ c. In paragraph (e)(4), remove the words ''Project Worksheet(s)'' and add in their place the words ''Project Application(s)''; and
■ d. In paragraph (k)(3), remove the word ''shall'' and add in its place the word ''will''.

## Subpart H—Public Assistance Eligibility

**§ 206.220 [Amended]**

■ 18. Amend § 206.220 as follows:
■ a. In the first sentence, remove the words ''public assistance'' and add in their place the words ''Public Assistance''; and
■ b. In the second sentence, add the word ''the'' after the words ''must also conform to''.
■ 19. Revise § 206.221 to read as follows:

**§ 206.221 Definitions.**

*Assistance animal* means an animal that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviates identified symptoms or effects of a person's disability. Although dogs are the most common type of assistance animal, other animals can also be assistance animals.

*Educational institution* means:

(1) Any elementary school as defined by the Elementary and Secondary Education Act of 1965, as amended, at title 20 U.S.C. 7801(19); or

(2) Any secondary school as defined by the Elementary and Secondary Education Act of 1965, as amended, at title 20 U.S.C. 7801(45); or

(3) Any institution of higher education as defined by the Higher Education Act of 1965, as amended, at title 20 U.S.C. 1001(a).

*Force account* means an applicant's own labor forces and equipment.

*Household pet* means a domesticated animal that is traditionally kept in the home for personal rather than for commercial purposes, can travel in commercial carriers, and be housed in temporary facilities. Household pets do not include reptiles (except turtles), amphibians, fish, insects/arachnids, farm animals (including horses), and animals kept for racing purposes.

*Immediate threat* means:

(1) Imminent danger requiring an urgent response to address serious risks to lives or public health and safety, or to avoid damage from an incident; or

(2) The threat to lives or public health and safety, or of damage from an incident that can reasonably be expected to occur within 5 years of the declared incident—for flood incidents specifically, the threat from a 5-year flood (a flood that has a 20 percent chance of occurring in any given year).

*Improved property* means a facility or item of equipment that was built, constructed, or manufactured, or an improved and maintained natural feature. Land used for agricultural purposes such as for crops and livestock is not improved property.

*Private nonprofit facility* means any private nonprofit educational (without regard to the religious character of the facility), center-based childcare, utility, irrigation, emergency, medical, rehabilitational, or custodial care facility, including a facility for older adults or people with disabilities, and other facility providing essential social services to the general public.

(1) *Educational facility* means a private nonprofit facility consisting of classrooms plus related buildings, supplies, equipment, and utilities of an educational institution necessary or appropriate for instructional, administrative, and support purposes.

(2) *Center-based childcare* means a private nonprofit facility that the State or Tribal Department of Children and Family Services, Department of Human Services, or similar agency, recognizes as a licensed childcare facility.

(3) *Utility* means a private nonprofit facility consisting of buildings, structures, or systems of energy, communication, water supply, sewage collection and treatment, or other similar public service facilities. Private nonprofit irrigation facilities are not ''utilities'' and are defined below.

(4) *Irrigation facility* means those facilities that provide water for essential services of a governmental nature to the general public. Irrigation facilities include water for fire suppression, generating and supplying electricity, and drinking water supply; they do not include water for agricultural purposes.

(5) *Emergency facility* means those buildings, structures, equipment, or systems used to provide emergency services, such as fire protection, ambulance, or rescue, to the general public, including the administrative and support facilities essential to the operation of such emergency facilities even if not contiguous.

(6) *Medical facility* means any hospital, outpatient facility, rehabilitation facility, or facility for long term care as such terms are defined in section 645 of the Public Health Service Act (42 U.S.C. 291o) and any similar facility offering diagnosis or treatment of mental or physical injury or disease, including the administrative and support facilities essential to the operation of such medical facilities even if not contiguous.

(7) *Rehabilitational facility* means a facility that provides alcohol and drug treatment and other rehabilitational services.

(8) *Custodial care facility* means those buildings, structures, or systems including those for essential administration and support, which are used to provide institutional care for persons who require close supervision and some physical constraints on their daily activities for their self-protection, but do not require day-to-day medical care.

(9) *Essential social service facility* means a private nonprofit facility that is a museum, zoo, performing arts facility, community arts center, community center, library, homeless shelter, senior citizen center, rehabilitation facility, shelter workshop, food bank, broadcasting facility, house of worship, or a facility that provides health and safety services of a governmental nature. Such a facility must provide essential social services to the general public.

*Private nonprofit organization* means any nongovernmental agency or entity that currently has:

(1) An effective ruling letter from the U.S. Internal Revenue Service, granting tax exemption under sections 501(c), (d), or (e) of the Internal Revenue Code of 1986, as amended;

(2) Satisfactory evidence from the State or Indian Tribal government that the organization or entity is a nonprofit one organized or doing business under State or Tribal law; or

(3) If the organization is exempt from the requirement to apply for 501(c)(3) status and is exempt from requirements to apply for tax exempt status under applicable State or Tribal law, the organization must provide articles of association, bylaws, or other organizing documents indicating that it is an organized entity and a certification that

it is compliant with Internal Revenue Code section 501(c)(3) and State or Tribal law requirements.

*Public entity* means an organization formed for a public purpose whose direction and funding are provided by one or more political subdivisions of the State.

*Public facility* means the following facilities owned by a State, local, or Indian Tribal government: any flood control, navigation, irrigation, reclamation, public power, sewage treatment and collection, water supply and distribution, watershed development, or airport facility; any non-Federal-aid street, road, or highway; and any other public building, structure, or system, including those used for educational, recreational, or cultural purposes; or any park.

*Service animal* means any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability, as defined in the Americans with Disabilities Act. Other species of animals, whether wild or domestic, trained or untrained, are not service animals for the purposes of this definition.

*Standards* means codes, specifications or standards required for the construction of facilities.

■ 20. Amend § 206.222 by revising the introductory text, and paragraphs (b) and (c) to read as follows:

**§ 206.222 Applicant eligibility.**

The following entities are eligible to apply for assistance under the State or Tribal Public Assistance award:

* * * * *

(b) Private nonprofit organizations or institutions which own or operate a private nonprofit facility as defined in § 206.221.

(c) Indian Tribal governments or authorized tribal organizations and Alaska Native villages or organizations, but not Alaska Native Corporations, the ownership of which is vested in private individuals.

■ 21. Amend § 206.223 as follows:

■ a. Revise paragraphs (a)(1) through (3), and (b) and (c);

■ b. Remove paragraph (d);

■ c. Redesignate paragraph (e) as paragraph (d); and

■ d. Add new paragraph (e).

The revisions and addition read as follows:

**§ 206.223 General work eligibility.**

(a) * * *

(1) Be required as the result of the emergency or major disaster incident;

(2) Be located within the designated area of an emergency or major disaster declaration, except that sheltering, evacuation, and emergency operation center activities may be located outside the designated area; and

(3) Be the legal responsibility of the eligible applicant.

(b) *Private nonprofit.* For work to be eligible, it must be performed on a private nonprofit facility as defined in § 206.221 that is owned or operated by an organization meeting the definition of a private nonprofit organization as defined in § 206.221.

(c) *Rural community, unincorporated town or village, or other public entity facilities.* Work performed on these facilities may be eligible when an application is submitted through the State or a political subdivision of the State.

* * * * *

(e) *Duplication of Benefits.* The subrecipient must notify the recipient of any benefits anticipated from any source for the same purpose as FEMA funding. The recipient has a continuing obligation to notify FEMA of any benefits available to the subrecipient that address the same work. Recipients and subrecipients must pursue recovery of all available benefits, including those from potential third-party liability. FEMA will disallow or recoup from the recipient amounts that would constitute a duplication of benefits.

■ 22. Amend § 206.224 by revising the introductory text to paragraph (a) and paragraphs (a)(4) and (b) to read as follows:

**§ 206.224 Debris removal.**

(a) *Public interest.* When FEMA determines that it is in the public interest to remove debris and wreckage from publicly and privately owned lands and waters, the Regional Administrator may provide assistance for the removal of such debris. Debris removal is in the public interest when it is necessary to:

* * * * *

(4) Mitigate the risk to life and property by removing substantially damaged structures and associated appurtenances as needed to convert property acquired through a FEMA hazard mitigation program to uses compatible with open space, recreation, or wetlands management practices. Such removal must be completed within two years of the declaration date, unless the Regional Administrator extends this period.

(b) *Debris removal from private property.* When it is in the public interest for an eligible applicant to remove debris from private property in urban, suburban, and rural areas, debris removal is eligible. This may include large lots but does not include areas used for crops and livestock or unused areas.

* * * * *

■ 23. Amend § 206.225 as follows:

■ a. Revise the section heading;

■ b. Revise paragraphs (a)(2), (a)(3)(i) and (ii), and (c) and (d);

■ c. In paragraph (b), remove the word ''events'' and add in its place the word ''incidents''; and

■ d. Add paragraphs (e) and (f).

The revisions and addition read as follows:

**§ 206.225 Emergency protective measures.**

(a) * * *

* * * * *

(2) In determining whether emergency protective measures are required, the Regional Administrator may require certification by local, State, Tribal, or Federal officials that a threat exists, including identification and evaluation of the threat and a recommendation of the emergency protective measures necessary to eliminate, lessen, or avert the threat.

(3) * * *

(i) Eliminate, lessen, or avert immediate threats to life, public health, or safety; or

(ii) Eliminate, lessen, or avert immediate threats of significant damage to improved public or private property through measures that are cost-effective.

* * * * *

(c) *Emergency communications.* FEMA may provide direct Federal assistance in accordance with § 206.209 for effective emergency communications necessary for the purpose of carrying out disaster relief functions as deemed appropriate. This includes furnishing appropriate auxiliary aids where necessary to afford an individual with a disability an equal opportunity to participate in, and enjoy the benefits of, disaster relief functions. Emergency communications are intended to supplement but not replace normal communications that remain operable after a major disaster.

(d) *Emergency public transportation.* FEMA may provide direct Federal assistance in accordance with § 206.209 for emergency public transportation to meet emergency needs and to provide transportation, including but not limited to paratransit services for individuals with disabilities, to public places and such other places as necessary for the community to resume its normal pattern of life as soon as possible. Such transportation is intended to

supplement but not replace predisaster transportation facilities that remain operable after a major disaster.

(e) *Rescue, care, shelter, and essential needs of household pets and service and assistance animals.* The rescue, care, shelter, and provision of essential needs to household pets and service and assistance animals is eligible. The work, tasks, or support provided or performed by a service or assistance animal must be directly related to the individual's disability.

(f) *Temporary relocation.* Temporary relocation may be available for applicants that own or operate a public or private nonprofit facility, including administrative, support, and ancillary facilities essential to the operation of the facility, even if not contiguous, that provides an eligible essential community service. Essential community services are those services performed by governmental entities or private nonprofit organizations that are necessary to save lives, protect and preserve property or public health and safety, or preserve the proper function and health of the community at large. Essential community services include, but are not limited to, emergency services (police, fire protection, and rescue), emergency medical care, prisons, education, election and polling, and utilities. This assistance may be eligible emergency protective measures if: (1) the facility was damaged to the extent that it cannot be occupied safely, and restoration cannot be completed without suspending operations of the facility for an unacceptable period of time; or (2) the facility was not damaged but it lacks a critical utility or operational item (such as potable water, electricity, or road access) and a temporary facility would restore services to the community in less time than the completed restoration of the disrupted critical utility or operational item at the current facility.

■ 24. Revise and republish § 206.226 as follows:

**§ 206.226 Restoration of damaged facilities.**

Work to restore (repair, reconstruct, or replace) eligible facilities on the basis of the predisaster design, as defined in § 206.201, of such facilities as they existed immediately prior to the disaster and in conformity with the following is eligible:

(a) *Assistance under other Federal agency (OFA) programs.* Assistance will not be made available under the Stafford Act when another Federal agency has specific authority to restore facilities damaged or destroyed by an incident which is declared a major disaster.

(b) *Beaches.*

(1) Replacement of sand on an unimproved natural beach is not eligible.

(2) Improved beaches. Work on an improved beach may be eligible under the following conditions:

(i) The beach was constructed by the placement of sand (of proper grain size) to a designed elevation, width, and slope; and

(ii) A maintenance program involving periodic renourishment of sand must have been established and adhered to by the applicant.

(c) *Codes and standards.*

(1) *FEMA codes, specifications, and standards.* Minimum codes, specifications, and standards for repair and replacement of eligible facilities are the latest published editions of relevant consensus-based codes, specifications, and standards that incorporate the latest hazard-resistant designs and establish minimum acceptable criteria for the design, construction, and maintenance of facilities for the purpose of protecting the health, safety and general welfare of the facilities' users against disasters.

(2) *Other codes and standards.* For the costs of Federal, State, Tribal, and local repair or replacement codes and standards which change the predisaster construction of a facility and are different, but not less stringent, than the applicable code, specification, or standard established under paragraph (1) to be eligible, the codes and standards must:

(i) Apply to the type of restoration required;

(ii) Be appropriate to the predisaster use of the facility;

(iii) Be found reasonable, in writing, and formally adopted and implemented by the State, local, or Indian Tribal government on or before the disaster declaration date or be a legal Federal requirement applicable to the type of restoration;

(iv) Apply uniformly to all similar types of facilities within the jurisdiction of the owner of the facility; and

(v) Be in effect and enforced at the time of a disaster.

(d) *Disaster damage.* Damage that is eligible for restoration under this section must be a result of the major disaster. Deterioration, loss of useful life, or aging of a facility are not disaster damage.

(e) *Equipment and furnishings.* If equipment and furnishings are damaged beyond repair, comparable items are eligible as replacement items.

(f) *Hazard mitigation.* The Regional Administrator may approve or require cost-effective hazard mitigation measures for restoration of facilities. The cost of any approved hazard mitigation measures or requirements for hazard mitigation placed on restoration projects by FEMA will be an eligible cost for FEMA assistance.

(g) *Library books and publications.* Replacement of library books and publications is based on an inventory of the quantities of various categories of books or publications damaged or destroyed. Cataloging and other work incidental to replacement are eligible.

(h) *Mitigation planning.* In order to receive assistance under this section, the State or Indian Tribal government applying to FEMA as a recipient must have in place a FEMA approved State or Tribal Mitigation Plan, as applicable, in accordance with 44 CFR part 201.

(i) *Private nonprofit facilities.* Eligible private nonprofit facilities may receive funding under the following conditions:

(1) The facility provides critical services, which include power, water (including water provided by an irrigation organization or facility), sewer services, wastewater treatment, communications (including broadcast and telecommunications), education, emergency medical care, fire department services, emergency rescue, and nursing homes; or

(2) The private nonprofit organization has applied for a disaster loan under section 7(b) of the Small Business Act (15 U.S.C. 636(b)) and

(i) The Small Business Administration has declined the organization's application; or

(ii) Has eligible damages greater than the maximum amount of the loan for which it is eligible, in which case the excess damages are eligible for FEMA assistance.

(j) *Relocation.*

(1) The Regional Administrator may approve funding for and require restoration of a damaged facility that is not repairable, per paragraph (k)(1) of this section, at a new location when:

(i) The facility is and will be subject to repetitive heavy damage;

(ii) The approval is not barred by applicable statutory or regulatory requirements; and

(iii) The overall project is cost-effective.

(2) When relocation is required by the Regional Administrator, eligible work includes land acquisition and the construction of ancillary facilities such as roads and utilities, in addition to work normally eligible as part of a facility reconstruction. Demolition and removal of the old facility is also an eligible cost.

(3) When relocation is required by the Regional Administrator, no future FEMA funding for repair or replacement

of a facility at the original site will be approved, except those facilities that conform with an open space use in accordance with 44 CFR part 80.

(4) When relocation is required by the Regional Administrator, and, instead of relocation, the applicant requests approval of an alternate project under § 206.204(b), eligible costs will be limited to the estimate of restoration at the original location excluding hazard mitigation measures, or actual project costs, whichever is less.

(5) If relocation of a facility is not feasible or cost-effective, the Regional Administrator will disapprove Federal funding for the original location when he/she determines in accordance with 44 CFR parts 9, 201, or subpart M of this part 206, that restoration in the original location is not allowed. In such cases, the applicant may apply for an alternate project.

(k) *Repair vs. replacement.*

(1) A facility is considered repairable when the estimated repair cost for disaster damage does not exceed 50 percent of the cost of replacing the facility to its predisaster design and function, and it is feasible to repair the facility so that it can perform the function for which it was being used as well as it did immediately prior to the disaster.

(2) If a damaged facility is not repairable in accordance with paragraph (k)(1) of this section, approved restorative work may include replacement of the facility. The applicant may elect to perform repairs to the facility, in lieu of replacement, if such work is in conformity with applicable standards. However, eligible costs must be limited to the less expensive of repairs or replacement.

(3) An exception to the limitation in paragraph (c)(2)(ii) of this section may be allowed for facilities eligible for or on the National Register of Historic Properties. If an applicable standard requires repair in a certain manner, costs associated with that standard will be eligible.

(l) *Restrictions*—(1) *Converted facilities.* If a facility was being used for purposes other than those for which it was designed, the eligible cost of restoration will be limited to the lesser cost of restoring the facility to its original design or to the design for the purpose the facility was being used prior to the disaster.

(2) *Inactive facilities.* A facility that was not in active use at the time of the disaster is not eligible except in those instances where the facility was only temporarily inoperative for repairs or remodeling, or where active use by the applicant was firmly established in an approved budget or the owner can demonstrate to FEMA's satisfaction an intent to begin use within a reasonable time.

**§ 206.227 [Amended]**

■ 25. Amend § 206.227 as follows:

■ a. Remove the word ''snowstorms'' and add in its place the word ''snowfall''; and

■ b. Remove the word ''event'' and add in its place the word ''incident''.

■ 26. Revise and republish § 206.228 to read as follows:

**§ 206.228 Allowable costs.**

General policies for determining allowable costs are established in 2 CFR 200, subpart E, subject to the more specific provisions set forth in this part and the Stafford Act. Further exceptions to those policies as allowed in 2 CFR 200, subpart E and 2 CFR 200.102 are explained below.

(a) *Eligible Force Account Equipment Costs.* Reimbursement for ownership and operation costs of applicant-owned equipment used to perform eligible work must be provided in accordance with the following guidelines:

(1) *Rates established under State or Tribal guidelines.* In those cases where an applicant uses reasonable rates which have been established or approved under State or Tribal guidelines, in its normal daily operations, reimbursement for applicant-owned equipment which has an hourly rate of $75 or less must be based on such rates. Reimbursement for equipment which has an hourly rate in excess of $75 will be determined on a case by case basis by FEMA.

(2) *Rates established under local guidelines.* Where local guidelines are used to establish equipment rates, reimbursement will be based on those rates or rates in a Schedule of Equipment Rates published by FEMA, whichever is lower. If an applicant certifies that its locally established rates do not reflect actual costs, reimbursement may be based on the FEMA Schedule of Equipment Rates, but the applicant will be expected to provide documentation if requested. If an applicant wishes to claim an equipment rate which exceeds the FEMA Schedule, it must document the basis for that rate and obtain FEMA approval of an alternate rate.

(3) *No established rates.* The FEMA Schedule of Equipment Rates will be the basis for reimbursement in all cases where an applicant does not have established equipment rates.

(b) *Force Account Labor Costs.* The straight- or regular-time salaries and benefits of a recipient's or subrecipient's permanently employed personnel are:

(1) Eligible in calculating the cost of eligible permanent repair, restoration, and replacement of facilities under section 406 of the Stafford Act;

(2) Eligible in calculating the cost of eligible debris removal under sections 407 and 502(a)(5) of the Stafford Act; and

(3) Not eligible in calculating the cost of other eligible emergency protective measures under sections 403 and 502 of the Stafford Act, except for those costs associated with host state evacuation and sheltering, as established in § 206.202.

## Subpart K—Community Disaster Loans

■ 27. Amend § 206.361 as follows:

■ a. In paragraphs (a), (d), (e), and (g), remove the words ''Disaster Assistance Directorate'' and add in their place the words ''Recovery Directorate'' wherever they appear;

■ b. In paragraph (e), remove the word ''extensions'' and add in its place the word ''extension'';

■ c. In paragraph (f), remove the word ''shall'' and add in its place the word ''must'' wherever it appears, and remove the word ''nonFederal'' and add in its place the word ''non-Federal'';

■ d. In paragraphs (g) and (h), remove the word ''shall'' and add in its place the word ''will'' wherever it appears;

■ e. In paragraph (h), remove the word ''grants'' and add in its place the word ''awards''; and

■ f. Revise paragraph (b).

The revision reads as follows:

**§ 206.361 Loan program.**

* * * * *

(b) *Amount of loan.* The amount of the loan is based upon need, not to exceed 25 percent of the operating budget of the local government for the fiscal year in which the disaster occurs, but must not exceed $5 million; or, if the loss of tax and other revenues of the local government as a result of the major disaster is at least 75 percent of the annual operating budget of that local government for the fiscal year in which the major disaster occurs, the amount of the loan must not exceed 50 percent of the annual operating budget of that local government for the fiscal year in which the major disaster occurs, and must not exceed $5 million. The term *fiscal year* as used in this subpart means the local government's fiscal year.

* * * * *

**§ 206.363 [Amended]**

■ 28. Amend § 206.363 as follows:

■ a. In paragraph (a)(1), remove the words ''Disaster Assistance Directorate'' and add in their place the words ''Recovery Directorate''; and
■ b. In paragraph (b)(1), remove the words ''or emergency'' from the first sentence.
■ 29. Amend § 206.364 as follows:
■ a. In paragraph (a)(1):
■ 1. Remove the word ''shall'' and add in its place the word ''must'' wherever it appears;
■ 2. In the first sentence, remove the word ''GAR'' and add in its place the words ''Governor's Authorized Representative (GAR) or Tribal Authorized Representative (TAR)''; and
■ 3. In the third sentence, remove the word ''GAR'' and add in its place the words ''GAR or TAR''.
■ b. In paragraph (a)(2), remove the words ''Governor's Authorized Representative'' and add in their place the words ''GAR or TAR'';
■ c. In paragraphs (b)(1), (b)(3), and (b)(4), remove the word ''shall'' and add in its place the word ''must'' wherever it appears;
■ d. In paragraphs (c)(1), (c)(2), (d)(2)(i) and (d)(2)(ii), remove the words ''Disaster Assistance Directorate'' and add in their place the words ''Recovery Directorate'' wherever they appear;
■ e. In paragraphs (c)(1) and (c)(2), remove the word ''shall'' and add in its place the word ''will'' wherever it appears;
■ f. In paragraph (c)(2), after the word ''sixty'', add the word ''calendar''; and
■ g. Revise paragraph (d)(1)(ii).

The revision reads as follows:

**§ 206.364 Loan application.**

* * * * *

(d) * * *

(1) * * *

* * * * *

(ii) 25 percent of the operating budget of the local government for the fiscal year in which the disaster occurs, but will not exceed $5 million; or if the loss of tax and other revenues of the local government as a result of the major disaster is at least 75 percent of the annual operating budget of that local government for the fiscal year in which the major disaster occurs, 50 percent of the annual operating budget of that local government for the fiscal year in which the major disaster occurs, and will not exceed $5 million. The term fiscal year as used in this subpart means the local government's fiscal year.

* * * * *

**Deanne Criswell,**

*Administrator, Federal Emergency Management Agency.*

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