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Presidential Documents

Title 3—

The President

Proclamation 10689 of December 27, 2023

50th Anniversary of the Endangered Species Act, 2023

By the President of the United States of America

A Proclamation

Fifty years ago, the Congress passed one of the world's most critical conservation laws—the Endangered Species Act. Ever since, the Endangered Species Act has prevented 99 percent of all fish, wildlife, and plants under its protection from going extinct. This law has safeguarded the incredible biodiversity across our Nation, supported the recovery of imperiled species, and conserved the habitats they depend on. As we observe this anniversary, my Administration recommits to conserving America's flora and fauna for generations to come.

Before the Endangered Species Act, Federal law lacked a unified framework to protect species facing extinction, including plants and animals that have long populated this country. When these species vanish, it jeopardizes the ecosystems and people that depend on them. Because America's biodiversity is central to our national heritage and identity, courageous activists and scientists refused to let our precious wildlife disappear. With these activists and scientists leading the way, a group of bipartisan members of Congress came together to pass the Endangered Species Act. This law expanded the endangered species list, established new protections for them, and empowered agencies to enforce any violations of those protections. I was proud to vote for and contribute to the passage of the Endangered Species Act back then, and I am proud now of its lasting legacy. Because of these protections, nearly 300 species have avoided extinction—from the American alligator to the bald eagle, our national symbol.

My Administration has remained committed to restoring the full power and promise of the Endangered Species Act and conserving our Nation's lands and waters. We proposed two rules that restore critical parts of the Endangered Species Act that were weakened during the previous administration and recommit to using the best available science to manage species. Additionally, our Inflation Reduction Act invests billions of dollars in conservation efforts—like forest management, ecosystem restoration, watershed protection, and other efforts that will support the recovery of imperiled wildlife and their habitats. That funding also includes $125 million for endangered species, directly benefiting more than 300 species currently listed under the Endangered Species Act.

From day one of my Administration, I have taken historic steps to conserve our natural treasures for the ages. During my first week in office, I issued an Executive Order establishing the country's first-ever National Conservation Goal to conserve at least 30 percent of our lands and waters by 2030. That goal is at the heart of my ''America the Beautiful'' initiative to support locally led, voluntary conservation and restoration efforts across the country. We are delivering on those efforts—during my first year in office, we protected more lands and waters than any American President since John F. Kennedy. As we have pursued these conservation efforts, we have continued to work with farmers, ranchers, fishermen, landowners, Indigenous peoples, and rural communities, who do the everyday work of sustaining and cultivating our lands.

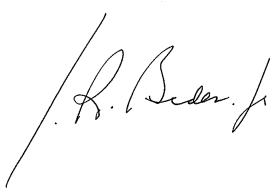
Additionally, my Administration began the designation process for multiple new national marine sanctuaries, including the Hudson Canyon in the Atlantic Ocean, the Chumash Heritage National Marine Sanctuary off the coast of Southern California, and more than 700,000 square miles around the Pacific Remote Islands. If completed, the Pacific Remote Islands sanctuary would be among the largest marine protected areas on the planet. The Department of the Interior has also begun the process of conserving more than 13 million acres of lands of significant natural and cultural value in America's Western Arctic.

Finally, we cannot adequately protect our Nation's biodiversity if we do not combat the existential threat of climate change. That is why my Inflation Reduction Act made the largest investment in climate and conservation ever. Along with funding from the Bipartisan Infrastructure Law, these investments have helped protect our iconic outdoor spaces, implement climate-smart agriculture practices, preserve our historic sites, and make our Nation more resilient to the devastating impacts of climate change. I also signed an Executive Order to protect America's forests, support nature-based solutions to climate change, and initiate the first National Nature Assessment to evaluate the state of our lands, waters, and wildlife.

As we celebrate the 50th anniversary of the Endangered Species Act, we recognize the incredible progress we have made over the past five decades to protect endangered species as well as all that is possible when we come together to conserve our planet. Together, we can ensure that all our Nation's treasures—its lands, water, and all the incredible wildlife it holds—will be enjoyed for generations to come.

NOW, THEREFORE, I, JOSEPH R. BIDEN JR., President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim December 28, 2023, as the 50th Anniversary of the Endangered Species Act. I call upon Americans to honor all the progress we have made toward protecting endangered species and to work together to conserve our Nation's incredible biodiversity.

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



[FR Doc. 2023–28935

Filed 12–29–23; 8:45 am]

Billing code 3395–F4–P

Presidential Documents

Presidential Determination No. 2024–03 of December 27, 2023

Presidential Determination and Waiver Pursuant to Section 303 of the Defense Production Act of 1950, as Amended, on Essential Medicines, Medical Countermeasures, and Critical Inputs

Memorandum for the Secretary of Health and Human Services

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 303 of the Defense Production Act of 1950, as amended (the ''Act'') (50 U.S.C. 4533), it is hereby ordered as follows:

Section 1. *Determination.* (a) I hereby determine, pursuant to section 303(a)(5) of the Act, that:

(i) the essential medicines, medical countermeasures, and critical inputs referenced in subsection (b) of this section are industrial resources, materials, or critical technology items essential to the national defense;

(ii) without Presidential action under section 303 of the Act, United States industry cannot reasonably be expected to provide the capability for the needed industrial resources, materials, or critical technology items in a timely manner; and

(iii) purchases, purchase commitments, or other action pursuant to section 303 of the Act are the most cost-effective, expedient, and practical alternative method for meeting the need.

(b) The scope of projects implemented pursuant to section 303 of the Act under the determination in this section is limited to drug and biologic essential medicines, medical countermeasures, and critical inputs identified, as of the date of this determination, pursuant to section 3(c) of Executive Order 13944 of August 6, 2020 (Combating Public Health Emergencies and Strengthening National Security by Ensuring Essential Medicines, Medical Countermeasures, and Critical Inputs Are Made in the United States).

Sec. 2. *Waiver of Statutory Requirements.* Pursuant to section 303(a)(7)(B) of the Act, I find that action to expand the domestic production capabilities for essential medicines, medical countermeasures, and critical inputs is necessary to avert an industrial resource or critical technology item shortfall that would severely impair national defense capability. Therefore, I waive the requirements of section 303(a)(5)–(a)(6) of the Act for the purpose of expanding the domestic production capabilities for essential medicines, medical countermeasures, and critical inputs needed for national defense.

Sec. 3. *General Provisions.* (a) Nothing in this determination shall be construed to impair or otherwise affect:

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

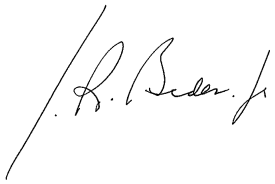
(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

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

(c) This determination is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by

any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(d) You are authorized and directed to publish this determination in the *Federal Register*



THE WHITE HOUSE,
Washington, December 27, 2023

[FR Doc. 2023–28947
Filed 12–29–23; 8:45 am]
Billing code 4150–42–P

Rules and Regulations

Federal Register

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

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

NUCLEAR REGULATORY COMMISSION

10 CFR Part 20

[NRC–2023–0218]

Regulatory Guide: Health Physics Surveys for Byproduct Material at NRC-Licensed Processing and Manufacturing Plants

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide: withdrawal.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is withdrawing Regulatory Guide (RG) 8.21, ''Health Physics Surveys for Byproduct Material at NRC-Licensed Processing and Manufacturing Plants.'' This RG is being withdrawn because there is more up-to-date guidance in NUREG–1556, ''Consolidated Guidance About Materials Licenses,'' making RG 8.21 obsolete.

DATES: The effective date of the withdrawal of RG 8.21 is January 2, 2024.

ADDRESSES: Please refer to Docket ID NRC–2023–0218 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0218. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov.* For technical questions, contact the individuals listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *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.*
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FOR FURTHER INFORMATION CONTACT: Don Lowman, telephone: (301) 415–5452; email: *Don.Lowman@nrc.gov,* or Harriet Karagiannis, Office of Nuclear Regulatory Research, telephone: 301–415–2493; email: *Harriet.Karagiannis@nrc.gov.* Both are staff of the Office of Nuclear Regulatory Research at the U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION: The NRC is withdrawing RG 8.21, ''Health Physics Surveys for Byproduct Material at NRC-Licensed Processing and Manufacturing Plants.'' The NRC staff issued RG 8.21 in 1979 to describe the methods and procedures considered acceptable by the NRC staff to comply with the survey requirements found in part 20 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Standards for Protection Against Radiation.'' Although 10 CFR part 20 was revised in 1991 (May 21, 1991; 56 FR 23390), RG 8.21 was not updated.

Since the staff had consolidated and followed the latest guidance pertinent to materials licensees found in NUREG–1556, ''Consolidated Guidance About Materials Licenses,'' RG 8.21 became outdated. Specifically, guidance for the advanced survey/measurement techniques and other more recent survey procedures are currently included in NUREG–1556, Volume 12, Revision 1 (ADAMS Accession No. ML18136A704). Issues identified during the periodic reviews of RG 8.21 in 2012 and 2023 include: 1) the citations to the regulations described in RG 8.21 were not consistent with those listed in the 1991 revision of 10 CFR 20, 2) several of the references were outdated (*e.g.,* some references were dated from the 1950's and no longer available to the public), and 3) the latest advances since 1979 in survey/measurement techniques and equipment that have been effective were not included in RG 8.21. For these reasons and because NUREG–1556 provides current health physics survey guidance to NRC byproduct material licensees, the NRC determined that RG 8.21 is no longer needed and is being withdrawn.

Withdrawal of an RG means that the guide no longer provides useful information or has been superseded by other guidance, technological innovations, congressional actions, or other events. The withdrawal of RG 8.21 does not alter any prior or existing NRC licensing approval or the acceptability of licensee commitments to RG 8.21. Although RG 8.21 is withdrawn, current licensees may continue to use it, and withdrawal does not affect any existing licenses or agreements. However, RG 8.21 should not be used in future requests or applications for NRC licensing actions.

Dated: December 26, 2023.

For the Nuclear Regulatory Commission.

Stephen M. Wyman,

Acting Chief, Regulatory Guide and Programs Management Branch, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 2023–28797 Filed 12–29–23; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 113

[Notice 2023–19]

Candidate Salaries

AGENCY: Federal Election Commission.

ACTION: Final rule.

SUMMARY: The Commission is revising its regulations concerning the use of campaign funds by a candidate's principal campaign committee to pay compensation to the candidate. The Commission is issuing these rules in response to a Petition for Rulemaking filed by a former candidate for the United States House of Representatives.

DATES: The effective date is March 1, 2024.

FOR FURTHER INFORMATION CONTACT: Amy L. Rothstein, Assistant General Counsel for Policy, Joseph P. Wenzinger, Attorney, or Cheryl A.

Hemsley, Attorney, 1050 First Street NE, Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is revising its regulations at 11 CFR part 113 concerning the use of campaign funds by a candidate's principal campaign committee to pay compensation to the candidate. Specifically, the Commission is revising the criteria for determining whether a candidate is eligible to receive compensation from campaign funds, the maximum amount of compensation that a candidate may receive from campaign funds, and the period during which a candidate may receive compensation from campaign funds. The Commission is also making miscellaneous changes to its regulations on candidate compensation for purposes of continuity, clarity, and administration. The Commission is not, at this time, addressing the use of campaign funds to pay a candidate's health insurance premiums and dependent care costs. The Commission's advisory opinions addressing the use of campaign funds to pay a candidate's dependent care costs remain in effect. Members of the public may also submit requests for additional advisory opinions on those subjects.

Transmitting Final Rules to Congress

Before promulgating rules or regulations to carry out the provisions of the Federal Election Campaign Act of 1971, as amended (the ''Act''),[1] the Commission transmits the rules or regulations to the Speaker of the House of Representatives and the President of the Senate for a thirty-legislative-day review period.[2] The effective date of this final rule is March 1, 2024.

I. Background

The Act prohibits a candidate's authorized committee from converting campaign funds to ''personal use.'' [3] ''Personal use'' is defined as the use of campaign funds ''to fulfill any commitment, obligation, or expense of a person that would exist irrespective of the candidate's election campaign or individual's duties as a holder of Federal office.'' [4] The Act and Commission regulations provide a non-exhaustive list of expenses that, when paid using campaign funds, constitute *per se* conversion of those funds to personal use.[5] The Commission determines on a case-by-case basis whether the use of campaign funds to pay expenses other than those listed would be a prohibited conversion of the funds to personal use.[6]

A. Candidates' Salaries

The Act does not identify the use of campaign funds to pay candidate salaries as *per se* personal use. In Advisory Opinion 1999–01 (Greene), however, the Commission concluded that the Act would prohibit a federal candidate from using campaign funds to pay himself a salary because the candidate would indirectly use the funds to pay his mortgage, utilities, groceries, and clothing—all of which are *per se* personal use.[7]

In 2002, the Commission proposed to codify this conclusion in a regulation.[8] The proposed regulation would have prohibited candidates ''from using campaign funds to pay themselves salaries or otherwise compensate themselves in any way for income lost as a result of campaigning for Federal office.'' [9] The Commission received several public comments opposing this proposal, and no public comments supporting it. Comments argued that the use of campaign funds to pay candidates' salaries would not fulfill a commitment, obligation, or expense that would exist irrespective of the campaign, and therefore satisfies the Act's ''irrespective'' test because, ''were it not for their campaign responsibilities, candidates would not have to leave their jobs and give up their salaries.'' [10]

The Commission ''agree[d] with the commenters that the payment of a salary to a candidate is not a prohibited personal use as defined under Commission regulations.'' [11] The Commission explained that this use of campaign funds satisfied the ''irrespective'' test because, ''but for the candidacy, the candidate would be paid a salary in exchange for services rendered to an employer.'' [12] Moreover, the Commission stated, a ''salary paid to a candidate would be in return for the candidate's services provided to the campaign and the necessity of that salary would not exist irrespective of the candidacy.'' [13]

The Commission included in the final regulation various safeguards against abuse. To be a permissible use of campaign funds, the salary paid to a candidate must not exceed the lesser of the minimum salary paid to a ''Federal officeholder holding the Federal office that the candidate seeks'' or the earned income received by the candidate the year before becoming a candidate.[14] Further, any earned income that a candidate receives from salary or wages from any source other than campaign funds counts against the minimum salary paid to a federal officeholder as described in the regulation.[15] In addition, candidates must provide income tax records for the relevant years and other evidence of earned income upon the Commission's request.[16] The regulation also provides that campaign funds cannot be used to pay a candidate's salary before the filing deadline for access to the primary election ballot for the federal office that the candidate seeks, as determined by state law, or January 1 of each even-numbered year in states that do not conduct primaries.[17] Finally, the regulation requires salary payments to be computed on a pro-rata basis and prohibits candidates who are also federal officeholders from receiving salary payments from campaign funds.[18]

B. Candidates' Childcare Expenses

The Act and Commission regulations do not include the use of campaign funds to pay candidates' childcare expenses as a *per se* personal use. The Commission has addressed this use of campaign funds in several advisory opinions, and has approved the use of campaign funds to pay candidates' overnight childcare expenses incurred when the candidates travel for their own

[1] 52 U.S.C. 30101–45.

[2] *Id.* 30111(d).

[3] *Id.* 30114(b).

[4] *Id.* 30114(b)(2); *see also* 11 CFR 113.1(g) (defining ''personal use'').

[5] *See* 52 U.S.C. 30114(b)(2); 11 CFR 113.1(g)(1)(i).

[6] *See* 11 CFR 113.1(g)(1)(ii) (providing non-exhaustive list of expenses to be determined for personal use on a case-by-case basis).

[7] Advisory Opinion 1999–01 (Greene) at 4.

[8] Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds (''2002 Proposed Rule''), 67 FR 55348 (Aug. 29, 2002), *https://www.govinfo.gov/content/pkg/FR-2002-08-29/pdf/02-21893.pdf.*

[9] *Id.* at 55353.

[10] Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds (''2002 Final Rule''), 67 FR 76962, 76971 (Dec. 13, 2002), *https://sers.fec.gov/fosers/showpdf.htm?docid=8982#page=10.*

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] 11 CFR 113.1(g)(1)(i)(I).

[15] *Id.*

[16] *Id.*

[17] *Id.* Under this regulation, if the candidate wins the primary election, his or her principal campaign committee may pay him or her a salary from campaign funds through the date of the general election, up to and including the date of any general election runoff. If the candidate loses the primary, withdraws from the race, or otherwise ceases to be a candidate, no salary payments may be paid beyond the date he or she is no longer a candidate. In odd-numbered years in which a special election for a federal office occurs, the principal campaign committee for that office may pay the candidate a salary from campaign funds starting on the date the special election is set and ending on the day of the special election.

[18] *Id.*

campaigns,[19] and to pay caregiver expenses and full-time daycare when candidates' campaign responsibilities and activities prevented them from caring for their children themselves.[20] In each of these advisory opinions, the Commission concluded that the candidate could use campaign funds to pay the candidate's childcare expenses to the extent that the expenses were a ''direct result of campaign activity,'' because such expenses would not have existed irrespective of the candidate's campaign.[21]

C. Candidates' Medical Insurance Premiums

The Act and Commission regulations do not include the use of campaign funds to pay candidates' medical insurance premiums as a *per se* personal use, and the Commission has not addressed this issue in advisory opinions.[22] The Commission has, however, addressed the use of campaign funds to pay health insurance premiums in an enforcement matter. In MUR 7068 (Mowrer for Iowa), the Commission found reason to believe that a congressional candidate and his campaign committee had improperly converted campaign funds to personal use by using funds from the candidate's principal campaign committee to reimburse the candidate for payment of his health insurance premiums.

D. Petition for Rulemaking

On March 23, 2021, the Commission received a Petition for Rulemaking from Ms. Nabilah Islam, a former candidate for the United States House of Representatives in Georgia.[23] The Petition asked the Commission to amend Section 113.1(g) of its regulations to expand the category of candidates eligible to receive compensation from their authorized committees and the duration of their eligibility, and to authorize the use of campaign funds to pay candidates' health insurance premiums.[24]

The Petition asserted that ballot access deadlines for state primaries, which ''vary wildly based on state law,'' [25] leave many candidates with short periods for receiving a salary under the Commission's regulation.[26] Moreover, the Petition alleged that the current maximum salary limitation ''leaves candidates who are full time caretakers or who have had gaps in employment out in the cold,'' [27] and that rising health insurance costs act as a barrier to the prospective candidacies of ''working class people.'' [28]

The Petition asked the Commission to ''lower the barriers for working Americans to run for Federal office'' by amending its personal use regulations at 11 CFR 113.1(g) to:

(1) Extend the date on which a candidate may begin drawing a campaign salary to at least 180 days before the primary election; [29]

(2) Establish a minimum candidate salary of no less than the annualized salary of $15 per hour; [30] and

(3) Expressly permit a candidate to use campaign funds to pay the costs of any health benefit plan already provided to other campaign employees beginning on the date the candidate is eligible to receive a campaign salary.[31]

E. Public Comments on the Petition

On May 23, 2021, the Commission published a Notification of Availability (''NOA'') seeking public comment on the Petition.[32] The Commission received 22 comments in response, 14 of which supported initiating a rulemaking, agreeing generally that the Petition's proposals would make it easier for individuals of modest means who are not already federal officeholders to run for federal office.[33] Several comments noted that the current candidate salary regulation offers little assistance to full-time caregivers or those who have experienced a recent financial hardship because candidate salaries cannot currently exceed the amount of income earned in the year before their candidacy. Comments also indicated that the period during which a candidate is eligible to receive a salary is too short and does not reflect the financial costs and other demands of campaigning today. These comments generally agreed that a candidate's campaign committee should be able to use campaign funds to pay the candidate's health insurance premiums. Five comments opposed initiating a rulemaking.

F. Notice of Proposed Rulemaking

On December 12, 2022, the Commission published a Notice of Proposed Rulemaking (''NPRM'') in the **Federal Register**, proposing to amend its regulations regarding the use of campaign funds to pay candidates' compensation, including salaries, health insurance premiums, and dependent care costs.[34]

In the NPRM, the Commission proposed several changes to its personal use regulations, including a reorganization of the Commission's current regulations at 11 CFR 113.1(g)(1) through (8) addressing personal use, and the candidate salary regulation at 11 CFR 113.1(g)(1)(i)(I). The Commission proposed to remove, reserve, and redesignate several paragraphs [35] and add new paragraph (g)(6) to address candidate compensation.

The Commission proposed the new paragraph 11 CFR 113.1(g)(6) to have seven subparagraphs as follows, each of which is explained further below:

- New 11 CFR 113.1(g)(6)(i), to prohibit federal officeholders from receiving compensation as candidates from campaign funds. This prohibition already appears in the Commission's regulation.[36] The Commission is adopting this proposal.
- New 11 CFR 113.1(g)(6)(ii), to limit the amount of compensation that a candidate could receive from campaign funds. The Commission proposed six alternative compensation caps, each of which would have enabled principal campaign committees to compensate

[19] Advisory Opinion 2022–07 (Swalwell); Advisory Opinion 1995–42 (McCrery).

[20] Advisory Opinion 2018–06 (Liuba for Congress); Advisory Opinion 2019–13 (MJ for Texas).

[21] Advisory Opinion 2022–07 (Swalwell) at 3–4; Advisory Opinion 2019–13 (MJ for Texas) at 3; Advisory Opinion 2018–07 (Liuba for Congress) at 3; Advisory Opinion 1995–42 (McCrery) at 2; *c.f.* Advisory Opinion 2005–09 (Dodd) at 3 (approving proposed use of campaign funds to pay travel expenses for candidate's children to accompany their parents ''provided that the parents are traveling to participate in a function directly connected to the Senator's bona fide official responsibilities''); Advisory Opinion 1995–20 (Roemer) at 2 (approving proposed use of campaign funds to pay travel expenses of candidate's young children when they travel with candidate and his wife for campaign events, where such travel is ''only required because of the campaign'').

[22] The petitioner had previously requested an advisory opinion to clarify whether a candidate's health insurance premiums were a permissible campaign expense, *see* Advisory Opinion Request 2020–01 (Nabilah for Georgia), but her request became moot when she stopped being a candidate.

[23] Petition for Rulemaking to Improve Candidate Salary Rules (''Petition'') (Mar. 23, 2021), *https://sers.fec.//showpdf.htm?docid=413694.*

[24] *Id.* at 4–5.

[25] *Id.* at 3–4.

[26] *Id.* at 4 (noting, for example, that in Pennsylvania in 2018, Congressional candidates were eligible to receive a salary for only 56 days).

[27] *Id.* at 4–5.

[28] *Id.* at 5.

[29] *Id.* at 4, 6.

[30] *Id.* at 4–5.

[31] *Id.* at 5.

[32] Rulemaking Petition: Candidate Salaries, Notification of Availability (''NOA''), 86 FR 23300 (May 3, 2021), *https://sers.fec.gov/fosers/showpdf.htm?docid=413869.*

[33] The comments are available on the Commission's website at *https://sers.fec.gov/fosers/* , referencing REG 2021–01 (Candidate Salaries).

[34] Candidate Salaries, Notice of Proposed Rulemaking (''NPRM''), 87 FR 75945 (Dec. 12, 2022), *https://sers.fec.gov/fosers/showpdf.htm?docid=421006.*

[35] The Commission proposed to remove and reserve 11 CFR 113.1(g)(1)(i)(I) and redesignate current paragraphs (g)(6), (g)(7), and (g)(8) as (g)(7), (g)(8), and (g)(9), respectively.

[36] *See* 11 CFR 113.1(g)(1)(i)(I).

candidates even if they had not earned income the year prior to becoming a candidate. The Commission is adopting a modified version of these proposals.

- New 11 CFR 113.1(g)(6)(iii), to define ''compensation'' for purposes of the regulation. This definition does not currently appear in Commission regulations. The Commission proposed three alternative definitions, each of which would have defined compensation to include direct payments to the candidate and payments for at least some other employee-related benefits, such as health insurance premiums or dependent care costs. The Commission is adopting a modified version of these proposals.
- New 11 CFR 113.1(g)(6)(iv), to require a candidate's committee to reduce the maximum amount of compensation that the candidate could receive from campaign funds by the amount of any earned income the candidate received while also receiving compensation from campaign funds. This provision would have revised a requirement already in the Commission's regulation.[37] The Commission is adopting a modified version of this proposal.
- New 11 CFR 113.1(g)(6)(v), to establish the period during which a candidate would be eligible to receive compensation from campaign funds. This provision would have increased the length of the eligibility period already in Commission regulations.[38] The Commission is adopting a modified version of this proposal.
- New 11 CFR 113.1(g)(6)(vi), to prohibit a candidate's principal campaign committee that seeks to settle debts for less than their full value from paying compensation to the candidate or satisfying a debt to the candidate for compensation, and to prohibit any debt settlement plan created under 11 CFR 116.7 from providing for the payment of compensation to the candidate before all other creditors are paid. These prohibitions do not currently appear in the Commission's regulations. The Commission is adopting a modified version of this proposal.
- New 11 CFR 113.1(g)(6)(vii), to require a candidate who receives compensation from campaign funds to provide evidence of prior earned income upon the request of the Commission in certain circumstances, and to require a candidate to maintain and preserve such evidence for three years, pursuant to the Commission's regulations on the preservation of records. This provision would have revised a requirement currently appearing in the Commission's regulation.[39] The Commission is adopting this proposal.

G. Public Comments on the NPRM

The Commission received 62 written comments in response to the NPRM. Ten comments were submitted by or on behalf of 15 organizations, 3 were submitted by former candidates for federal office, and 49 were from other individuals.

As explained further below, these comments unanimously supported some version of the Commission's proposals to permit principal campaign committees to compensate candidates who did not receive income in the year prior to becoming a candidate, although the comments varied widely in the alternatives they supported. These comments echoed the Petition and comments on the Petition in pointing out that the current regulation does not allow full-time caregivers, or those who have had a recent gap in employment, to receive compensation from campaign funds. The comments also supported allowing candidates to obtain compensation from campaign funds at the start of their campaigns. These comments cited, as did the Petitioner and comments on the Petition, the wide disparity among state ballot access deadlines and the demands that modern campaigns place on candidates as early as the start of their campaigns. The comments also supported allowing winning candidates to accept compensation from campaign funds until they are sworn into office; some comments additionally urged the Commission to extend the eligibility period for losing candidates by allowing them to continue accepting campaign funds for a short period after the end of their candidacies to wind down their campaign committees. The comments also generally agreed that a candidate's campaign committee should be able to use campaign funds to pay the candidate's health insurance premiums or dependent care costs.

H. Public Hearing

On March 22, 2023, the Commission held a public hearing on Candidate Salaries. The Commission heard testimony from 11 witnesses, all but one of whom supported making changes to the Commission's regulations on candidate compensation. The witnesses included one Member of Congress, five former congressional candidates, a legal academic, and representatives from four organizations: a national labor organization, a national party committee, and two public interest organizations that advocate for campaign finance reform. After the hearing, four witnesses submitted additional information to the Commission.

As explained further below, the Member of Congress and former congressional candidates testified to the hardships they faced in running for federal office, due to the limited time period that candidates are eligible to receive compensation from campaign funds under the current regulation. These witnesses also expressed support for many of the Commission's proposals. The legal academic and most of the witnesses representing organizations generally argued that the cap on candidate compensation should be untethered from previous earnings, that the date of eligibility should be moved to the start of candidacy, and that candidates should be able to receive benefits from campaign funds.

One witness argued that the payment of any candidate compensation violates the Act's ''irrespective'' test because it allows candidates to pay indirectly for personal living expenses. The witness suggested that the Commission should either repeal the current regulation or not increase the ability of candidates to receive compensation under it.

II. Revised 11 CFR Part 113.1—Definitions

Considering the issues raised in the Petition, public comments, and witness testimony,[40] the Commission is amending its regulations regarding the use of campaign funds for compensation to candidates, as described below. The Commission has previously concluded that ''the payment of a salary to the candidate is not a prohibited personal use as defined under the Commission regulations since, but for the candidacy, the candidate would be paid a salary in exchange for services rendered to an employer.'' [41] Nothing has occurred to change the Commission's conclusion in this regard. Instead, the Commission intends to revise its regulations to reflect more accurately the appropriate amount of campaign funds that may be used to ''compensate candidates for lost income that is forgone due to becoming a candidate.'' [42]

As proposed in the NPRM, the Commission is also reorganizing its

[37] *See id.*

[38] *See id.*

[39] *See id.*

[40] For purposes of this document, ''comment'' applies to both written comments and supplemental information and oral testimony at the public hearing.

[41] 2002 Final Rule, 67 FR at 76972.

[42] *Id.*

current regulations at 11 CFR 113.1(g)(1) through (8) addressing personal use [43] and adding new paragraph (g)(6) to address candidate compensation. This reorganization is being made for purposes of clarity and to accommodate the regulatory revisions set out in this Notice.

A. New 11 CFR 113.1(g)(6)(i)—Federal Officeholders

The Commission's current regulations prohibit a federal officeholder who is also a federal candidate from receiving a salary from campaign funds.[44] The Commission explained that, in the absence of this prohibition, ''an incumbent officeholder would be receiving two salaries, one from his or her campaign and one for his or her official duties.'' [45]

In the NPRM, the Commission proposed to maintain this prohibition at 11 CFR 113.1(g)(6)(i) by providing that a federal officeholder may not receive compensation as a candidate from campaign funds. The Commission received no comments on this proposal. The Commission is maintaining this prohibition and moving it to new 11 CFR 113.1(g)(6)(i).

B. New 11 CFR 113.1(g)(6)(ii)—Candidate Compensation Cap

Under the current regulation, salary payments from campaign funds to a candidate are limited to the lesser of the minimum salary for the federal office that the candidate seeks, or the earned income that the candidate received during the year prior to becoming a candidate.[46] Accordingly, candidates may receive salary payments from campaign funds only if they earned income the year prior to becoming a candidate.

In the NPRM, the Commission proposed six alternatives (Proposed Compensation Cap Alternatives A through F) for revising the cap on the amount of compensation a candidate may receive from campaign funds. The Commission proposed these alternatives because, as indicated in the Petition and comments on the Petition, the current regulation does not adequately address ''income that is forgone due to becoming a candidate,'' [47] especially by individuals who had a gap in employment or an unusually low level of income the year before becoming a candidate. The Commission sought comment on whether it should adopt any of the proposals or a combination of aspects of the proposals.

For each alternative, the Commission proposed to require principal campaign committees to calculate the compensation and cap at the daily rate, rounded to the nearest dollar. Under this approach, the compensation and cap would be allocated based on the number of days per year that the candidate spent campaigning.

In addition to comments on specific alternatives as described below, the comments supporting the NPRM's proposals agreed that the Commission should expand the pool of candidates eligible to receive compensation from campaign funds to include people who otherwise might be prevented from campaigning due to a lack of funds, such as students, caregivers, and those who lost jobs before becoming a candidate. Several comments also agreed that no candidate should be able to accept compensation from campaign funds exceeding the salary for the federal office sought by the candidate.

Proposed Alternatives A, B, and C

Proposed Compensation Cap Alternatives A, B, and C did not consider a candidate's prior earned income in setting a cap on the amount of compensation the candidate could receive from campaign funds.

Proposed Compensation Cap Alternative A (50% minimum officeholder salary approach) would have capped the amount of campaign funds that a candidate's principal campaign committee could use to pay compensation to the candidate at 50% of the minimum salary for the federal office sought. This cap would have applied to all candidates for the same office, regardless of the amount of income they earned the year before becoming a candidate. Five comments generally supported the approach taken in Alternative A, but differed as to whether the cap should be set at 50% or 100% of the salary for the office sought by the candidate.

Proposed Compensation Cap Alternative B (hourly minimum wage approach) would have capped a candidate's compensation from campaign funds at the daily rate of the annualized hourly minimum wage. *Annualized hourly minimum* wage was defined as the amount an individual receiving the federal minimum wage would earn by working 40 hours a week for 52 weeks, except that an individual residing in a state with a higher minimum wage than the federal minimum wage could use the state minimum wage. Three comments opposed Alternative B, arguing that the annualized hourly minimum wage was too low to provide a living wage to candidates, not objectively justifiable, and neither compensated candidates for the services demanded by a modern campaign nor reasonably accounted for their opportunity costs incurred in running for office. No comments supported this alternative.

Proposed Compensation Cap Alternative C ($15 per hour approach) would have capped candidate compensation based on the amount an individual receiving $15 per hour would earn by working 40 hours per week for 52 weeks—calculated at the daily rate—rather than the federal or state minimum wage. Three comments opposed Alternative C, arguing that this alternative was too low to provide a living wage to candidates, not objectively justifiable, and would neither compensate candidates for their services to a campaign nor reasonably account for their opportunity costs incurred in running for office. No comments supported this alternative.

Proposed Alternatives D, E, and F

Proposed Compensation Cap Alternatives D, E, and F, like the current regulation, would have considered the candidate's previous earned income, but in different ways.

Proposed Compensation Cap Alternative D (prior 12-month income approach) would have capped a candidate's compensation from campaign funds at the candidate's earned income in the 12-month period before becoming a candidate or the annualized hourly minimum wage, whichever was greater, but not to exceed the minimum annual salary for the office sought by the candidate. One comment supported Alternative D, because it would ensure that all candidates could receive at least the annualized minimum wage and enable candidates who had earned more during the relevant period to receive commensurately more compensation from campaign funds.

Proposed Compensation Cap Alternative E (three-year income approach) would have enabled a candidate to receive compensation from campaign funds up to the average annual income that the candidate had earned during the most recent three calendar years in which the candidate earned income prior to becoming a candidate, capped by the salary for the office sought by the candidate. No comments supported this alternative.

[43] Specifically, the Commission is removing and reserving 11 CFR 113.1(g)(1)(i)(I); redesignating current paragraphs (g)(6), (g)(7), and (g)(8) as (g)(7), (g)(8), and (g)(9), respectively; and adding new paragraph (g)(6) to address candidate compensation.

[44] 11 CFR 113.1(g)(1)(i)(I). The term ''federal officeholder'' is defined at 11 CFR 113.1(c).

[45] 2002 Final Rule, 67 FR at 76972.

[46] 11 CFR 113.1(g)(1)(i)(I).

[47] NPRM, 87 FR at 75948 (quoting 2002 Final Rule, 67 FR at 76972).

Proposed Compensation Cap Alternative F (three-year income with minimum wage approach) would have been the same as Alternative E, while also offering candidate committees the option of paying candidates up to the annualized minimum wage if the minimum wage was greater than the candidate's prior average earned income. Two comments supported Alternative F with modifications and two comments opposed it.

Final Rule

After considering the comments, the Commission is adopting a variation of Proposed Compensation Cap Alternative E. Under new 11 CFR 113.1(g)(6)(ii), the use of campaign funds by a candidate's principal campaign committee to pay compensation to the candidate is not personal use, provided that the compensation does not exceed the lesser of 50% of the minimum annual salary paid to a Member of the U.S. House of Representatives (regardless of the specific office sought), and the average annual income that the candidate earned during the most recent five calendar years in which the candidate earned income prior to becoming a candidate. The new regulation requires the average annual income and 50% of the minimum House Member salary to be calculated at the daily rate, rounded to the nearest dollar.

Example 1: Candidate A earned an average annual income of $35,000 in the most recent five calendar years in which Candidate A earned income prior to becoming a candidate, which means the daily rate is $96 for purposes of the compensation cap ($35,000/365, rounded to the nearest dollar). The minimum annual House Member salary is $174,000, which means the daily rate is $238 (($174,000 × 50%)/365, rounded to the nearest dollar). Under these facts, Candidate A's compensation is capped at $96 per day because the daily rate of the candidate's 5-year average earned income is less than the daily rate of 50% of the minimum House Member salary.

Example 2: Candidate B earned an average annual income of $100,000 in the most recent five calendar years in which Candidate B earned income prior to becoming a candidate, which means the daily rate is $274 ($100,000/365). The minimum annual House Member salary is $174,000, which means the daily rate is $238 (($174,000 × 50%)/365), rounded to the nearest dollar). Under these facts, Candidate B's compensation is capped at $238 per day because the daily rate of 50% of the minimum House Member salary is less than the daily rate of Candidate B's 5-year average earned income.

Example 3: Candidate C becomes a candidate in 2023. Candidate C earned income averaging $60,000 per year in 2021, 2019, 2018, 2017, and 2016, but did not earn any income in 2022 or 2020. Because Candidate C's 5-year average earned income in the five most recent calendar years in which Candidate C earned income was $60,000, which is less than 50% of the minimum House Member salary of $174,000 in 2023, Candidate C would be entitled to receive $164 per day ($60,000/365) in compensation from campaign funds in 2023.

Like Proposed Compensation Cap Alternative E and the current regulation, the revised compensation cap allows a candidate's principal campaign committee to use campaign funds to pay the candidate compensation up to the lesser of the candidate's pre-candidacy earned income and a percentage of the minimum annual salary paid to a federal officeholder. The revised cap, however, allows the principal campaign committee to consider the candidate's prior earned income over a period of five years, instead of three years as proposed in the NPRM and one year as in the current regulation. The Commission intends this longer look-back to provide a more realistic estimate of the income a candidate forgoes in running for office; averaging income earned over a longer period is intended to moderate any aberrations in the candidate's prior annual earnings.

The Commission's revised regulation also differs from Proposed Compensation Cap Alternative E and the Commission's current regulation in that it places an upper-level cap at 50% of the minimum annual salary paid to a Member of the U.S. House of Representatives, rather than 100% of the minimum annual salary paid to a federal officeholder holding the office that the candidate seeks. These changes are intended to better reflect substantial differences between running for federal office and holding federal office, especially in a higher-level position such as the presidency or a leadership position in Congress. Officeholders have significant duties under the Constitution, and their salaries are set by the political branches subject to Constitutional restraints.[48] Officeholders must continue to execute the duties of their offices while campaigning and they accordingly receive their full salaries while campaigning. Candidates who do not hold office may also choose to continue their employment while running for office, but should they decide otherwise and prefer to campaign full-time, the Commission notes that half of the minimum congressional salary exceeds the current median household income in the United States.[49] Limiting candidate compensation in this way helps protect against personal enrichment from one's candidacy and is tailored to real financial need. Moreover, the record before the Commission does not establish the need for salaries exceeding this amount, with near-universal agreement in comments that changes to the Commission's regulations were needed to allow individuals of modest means to run for office.

The Commission is not adopting the other alternative cap proposals presented in the NPRM or comments. Although several comments presented policy arguments in favor of the other proposals (such as the desirability of providing a fair living wage, enhancing the diversity of candidates, and reducing bias that favors incumbents), these proposals would have enabled candidates to receive an amount of compensation from campaign funds that was divorced from the candidate's prior earnings history, and therefore did not reflect the candidate's demonstrated earning potential and income forgone by running for office. As the Commission has stated previously, the payment of campaign funds to a candidate is not personal use when it ''compensate[s] candidates for lost income that is forgone due to becoming a candidate.'' [50]

In the Commission's view, a candidate's earned income history over the most recent five years that the candidate earned income, capped by 50% of the minimum House Member salary, provides a better picture of the income forgone by a candidate running for office.

C. New 11 CFR 113.1(g)(6)(iii)—Definition of ''Compensation''

As explained above, the Act does not specifically address compensation to candidates in its provisions on the personal use of campaign funds. While the Commission's current regulations permit the use of campaign funds to pay a ''salary'' to a candidate in certain circumstances, the regulations do not define ''salary'' or explicitly address the use of campaign funds to pay such

[48] *See* U.S. Const. amend. XXVII.

[49] In 2022, half of the annual salary for Members of the House of Representatives under 2 U.S.C. 4501(1)(A) was $87,000, while the real median household income was $74,580. Income in the United States: 2022, United States Census Bureau, Sept. 12, 2023, *https://www.census.gov/library/publications/2023/demo/p60-279.html.*

[50] 2002 Final Rule, 67 FR at 76972.

employment-related benefits as health insurance premiums or dependent care costs. Nor do the Commission's current regulations define ''compensation'' in this context.

In the NPRM, the Commission proposed three alternative definitions of ''compensation,'' each of which included ''direct payments to the candidate,'' as well as payments for at least some other employment-related benefits. Several comments on the NPRM generally supported these proposals. One comment was concerned that the proposed definitions could be read to encompass payments to candidates for non-compensation purposes, such as campaign expense reimbursements and loan repayments.

The Commission agrees with this concern. The term ''compensation'' is intended to include only payments to a candidate to make up for salary forgone by becoming a candidate and is not intended to make otherwise permissible payments, such as candidate expense reimbursements and candidate loan repayments, subject to the compensation cap. Accordingly, new 11 CFR 113.1(g)(6)(iii) defines ''compensation'' as ''direct payments to the candidate unless the payments are otherwise permitted by law, such as candidate expense reimbursements and candidate loan repayments under 11 CFR part 116.''

The Commission is not addressing the payment of a candidate's health insurance premiums and dependent care costs in these final rules. Although several comments supported including payments for these benefits in the definition of ''compensation,'' arguing that such benefits are inextricably linked to employment and requiring candidates to forgo those benefits while campaigning could prevent some individuals from running for federal office, the advisory opinion process is better suited to addressing this use of campaign funds. Determining whether an impermissible conversion of campaign funds to personal use would result from a campaign committee's payment of a candidate's health insurance premiums or dependent care costs is a fact-specific inquiry.[51] Accordingly, the Commission has decided to continue its current practice of addressing this issue on a case-by-case basis through the advisory opinion process.[52] The Commission's advisory opinions addressing the use of campaign funds to pay a candidate's or officeholder's dependent care costs remain in effect. Any person whose factual circumstances differ materially from those described in these advisory opinions may request an advisory opinion.

D. New 11 CFR 113.1(g)(6)(iv)—Outside Earned Income

As noted above, the Commission's current regulation caps the amount of campaign funds that a candidate may receive in salary from the candidate's principal campaign committee at either (1) the amount of income earned by the candidate in the 12-month period immediately preceding candidacy, or (2) the minimum annual salary for the federal office that the candidate seeks, whichever amount is lower. For purposes of this calculation, the current regulation further requires the minimum salary of the office that the candidate seeks to be reduced by the amount of any earned income that the candidate receives from salaries or wages from any source other than the candidate's principal campaign committee.[53] The Commission has explained that it requires campaign committees to count any outside earned income received by a candidate against the officeholder salary limit to ''prevent candidates from paying themselves a salary from campaign funds on top of other earned income that they receive from other sources, such as from private sector employment, to the extent that such combined payments exceed the minimum annual salary for the Federal office that the candidate is seeking.'' [54] The current regulation does not, however, require a campaign committee to count outside income earned by a candidate against the limit set by the amount of pre-candidacy income earned by a candidate.

In the NPRM, the Commission proposed new 11 CFR 113.1(g)(6)(iv) to rectify the apparent imbalance in the salary cap reduction by requiring the amount earned by a candidate from other sources to count against the maximum amount of compensation that a candidate can receive from campaign funds, rather than counting against only the minimum annual salary for the office sought by the candidate. Although these final rules incorporate a standard tied to the minimum House Member salary even if the candidate is not seeking that office, the NPRM's proposal regarding the reduction for outside earned income remains otherwise unchanged.

Three comments supported the proposed regulation. They indicated that it would enhance oversight of candidates receiving compensation from campaign funds and was particularly apt considering the Commission's proposed expansion of candidates' ability to accept compensation from campaign funds and the period during which they may do so. No comment opposed the proposal.

The Commission agrees that earned income a candidate receives from non-campaign sources should count against the maximum amount of compensation that the candidate can receive from campaign funds. If a candidate earns income from outside sources while campaigning for federal office, that income has not been lost to campaigning, and the Commission discerns no reason for treating outside earned income differently based on whether the applicable compensation cap is set by the candidate's pre-candidacy earned income or the minimum House Member salary. Therefore, the Commission is adopting the proposal at new 11 CFR 113.1(g)(6)(iv) to require a candidate's principal campaign committee to reduce the maximum amount of permissible candidate compensation from campaign funds by the amount of income earned by the candidate from other sources after the candidate files a Statement of Candidacy.[55]

[51] For example, in Advisory Opinion 2022–07 (Swalwell), the Commission concluded that an officeholder could use campaign funds to pay overnight childcare expenses that he incurred when traveling for his own campaign but did not approve a response to the question whether the officeholder could use campaign funds to pay childcare expenses incurred when he campaigned for others. In Advisory Opinion 2019–13 (MJ for Texas), the Commission concluded that a candidate who left her job to work full-time on her campaign could use campaign funds to pay for full-time daycare for her children, where she would spend the ''vast majority'' of her time away from her family on campaign activities and would reimburse the campaign for childcare costs incurred when not campaigning. In Advisory Opinion 2018–06 (Liuba for Congress), the Commission concluded that a candidate who had given up her in-home consulting work to campaign and hired a caregiver for her children could use campaign funds to pay childcare expenses when her campaign responsibilities prevented her from caring for the children herself.

[52] *See, e.g.,* Advisory Opinion 2022–07 (Swalwell) at 4 (approving use of campaign funds to pay candidate's childcare expenses to extent expenses are the ''direct result of campaign activity''); Advisory Opinion 2019–13 (MJ for Texas) at 3 (same); Advisory Opinion 2018–07 (Liuba for Congress) at 3 (same); *see also* Advisory Opinion 1995–42 (McCrery) at 2 (approving use of campaign funds to pay childcare expenses when Congressman and spouse attend campaign events, where expenses result only from campaign activity and otherwise would not exist).

[53] 11 CFR 113.1(g)(1)(i)(I).

[54] 2002 Final Rule, 67 FR at 76972.

[55] The final rule differs from the proposed rule in one additional respect. The proposed rule would have reduced the maximum amount of compensation that a candidate could receive from campaign funds if the candidate earned income

Continued

Example 1: Candidate A earned an annual average of $60,000 during the most recent five calendar years in which Candidate A earned income before becoming a candidate, and the minimum House Member salary is $174,000 per year. Because $60,000 is less than half of the minimum House Member salary ($87,000), Candidate A could receive up to $164/day ($60,000/365). But, if Candidate A earns $30,000 in income from outside sources after filing a Statement of Candidacy with the Commission, the maximum amount that Candidate A may receive as compensation from campaign funds must be reduced by $30,000, meaning that the total compensation paid to the candidate may not exceed $82/day (($60,000 − $30,000)/365).

Example 2: Candidate B earned an annual average of $100,000 during the most recent five calendar years in which Candidate B earned income before becoming a candidate, and the minimum annual House Member salary is $174,000 per year. Because half of the Minimum Officeholder Salary ($87,000) is less than $100,000, Candidate B could receive up to $238/day. But, if Candidate B earns $30,000 in income from outside sources while also receiving compensation from campaign funds, the maximum amount that Candidate B may receive as compensation from campaign funds must be reduced by $30,000, meaning that the total compensation paid to the candidate may not exceed $156/day (($87,000 − $30,000)/365).

E. New 11 CFR 113.1(g)(6)(v)—Eligibility Period

The Commission's current regulation prohibits the use of campaign funds to pay a candidate's salary before the filing deadline for access to the primary election ballot for the federal office that the candidate seeks, as determined by state law, or January 1 of each even-numbered year in states that do not conduct primaries.[56]

In the NPRM, the Commission proposed to allow candidates to begin receiving compensation from campaign funds on the date the candidate's principal campaign committee files a Statement of Organization with the Commission, regardless of when the candidate is required to file for ballot access under state law. This proposal was intended to reflect more accurately when a candidate may start to forgo salary because of the campaign, and to apply uniform criteria for when candidates' principal campaign committees may start using campaign funds to compensate the candidate.

The comments generally supported this proposal. Echoing the Petition, several comments argued that ballot access deadlines are an inaccurate means of determining when a candidate begins losing income due to campaigning, and the lack of uniformity in state ballot access deadlines militates against using those deadlines to trigger candidates' eligibility to receive compensation from campaign funds. The comments largely agreed with the Commission's proposal to allow candidates to begin drawing compensation from campaign funds on the date that their principal campaign committee files a Statement of Organization with the Commission, but two comments suggested that the eligibility period should begin when the candidate files the Statement of Candidacy.

The Commission is adopting new 11 CFR 113.1(g)(6)(v) to allow candidates to begin receiving compensation from campaign funds on the date they file their Statement of Candidacy, rather than on the date of the state's filing deadline for ballot access as under the current regulation or when a principal campaign committee files a Statement of Organization with the Commission as proposed. The comments indicate that campaigns often start well before the state's filing deadline for ballot access under state law. Moreover, under the Act and Commission regulations, each candidate must file a new Statement of Candidacy with the Commission for each election in which the candidate runs for office, but a principal campaign committee is not required to file a new Statement of Organization for each election. The Statement of Candidacy is the first document that a campaign must file with the Commission.[57] Therefore, the Commission has determined that the filing of a Statement of Candidacy will serve as a more accurate standard than the state's deadline for filing for ballot access or a Statement of Organization for determining when a campaign begins and when a candidate becomes eligible to receive compensation from campaign funds in each election. Moreover, the new regulation will help promote uniformity in determining the start of the eligibility period.[58]

The current regulation prohibits the use of campaign funds to pay a candidate's salary after the date the candidate loses the primary election, withdraws from the race, or otherwise ceases to be a candidate or, if the candidate wins the primary, after the date of the general election or general election runoff.[59] For special elections occurring in odd-numbered years, the eligibility period runs until the date of the special election.

In the NPRM, the Commission proposed to extend the eligibility period for candidates who win the general election, general election runoff, special election, or special election runoff by allowing them to continue receiving compensation from campaign funds up to the date they are sworn into office, rather than on the date of the election as under the current regulation. For losing candidates and any other individual who ceases to be a candidate, such as by withdrawing from the race, the Commission proposed to continue the approach under the current regulation and prohibit compensation from being paid beyond the date of losing the election or otherwise ceasing to be a candidate.[60]

Many of the comments supported the Commission's proposal to permit winning candidates to receive compensation from campaign funds up to the date they are sworn into office, rather than the date of the election, and two suggested lengthening the period for losing candidates as well. One comment argued that losing candidates should be permitted to receive compensation for a reasonable period, such as 60 days after the election, and another organization suggested 1 or 2

from outside sources ''while the candidate receives compensation from campaign funds.'' In response to a comment, the final rule provides, instead, that the maximum amount of compensation a candidate can receive from campaign funds must be reduced if the candidate earns income from outside sources ''after the candidate files a Statement of Candidacy under 11 CFR 101.3(a).'' This revision is intended to avoid the impression that the compensation cap will be affected only if the candidate earns income from outside sources simultaneously with the receipt of compensation from campaign funds.

[56] 11 CFR 113.1(g)(1)(i)(I).

[57] A candidate must file a Statement of Candidacy within 15 days after becoming a candidate, 11 CFR 101(a), and a principal campaign committee must file a Statement of Organization within 10 days after the candidate's Statement of Candidacy, 11 CFR 102.1(a).

[58] The final rules differ from the proposed rules in one additional respect. In the NPRM, the Commission proposed to provide that, in the case of a special election, a candidate's principal campaign committee could pay the candidate compensation starting on the date the special election is set. The Commission received no comments on this proposal and as noted above, received ample comments supporting the notion that a candidate should be eligible to receive compensation upon filing a Statement of Candidacy. The Commission discerns no reason to differentiate special elections from other types of elections in this respect. Therefore, under these final rules, candidates, whether in special elections or regularly scheduled elections, may begin receiving compensation from campaign funds upon filing their Statement of Candidacy with the Commission.

[59] 11 CFR 113.1(g)(1)(i)(I).

[60] *Id.*

months, so that the candidates may wind down their campaigns.

The Commission is adopting new 11 CFR 113.1(g)(6)(B) to enable all candidates to accept compensation from campaign funds for 20 calendar days after winning or losing the election or otherwise ceasing to become a candidate. As the comments pointed out, all candidates must spend time after a campaign winding down their campaigns, and a 20-day period reflects the timelines of reportable activity for post-general election reports.[61] The Commission is extending the same rationale to candidates who lose primary elections or otherwise drop out of the race to maintain consistency between candidates who do and do not advance to the general election.

F. New 11 CFR 113.1(g)(6)(vi)—Debts and Debt Settlement

To prevent candidates from enriching themselves at the expense of other campaign creditors, the Commission proposed in the NPRM to prohibit any principal campaign committee seeking to settle debts for less than full value from paying compensation to the candidate or satisfying a debt to the candidate for compensation. In addition, under the proposal, any debt settlement plan created under 11 CFR 116.7 would be prohibited from providing for the payment of compensation to the candidate before all other creditors are paid.

The Commission received two comments supporting this proposal, at least in part. One comment said the proposed revision is necessary for sufficient oversight of candidates receiving compensation from campaign funds. The other agreed that a principal campaign committee's debt to a candidate for compensation should be subordinated to debts owed to the committee's other creditors in any debt settlement plan, but suggested that committees seeking to settle debts for less than the full value should also be permitted to settle a debt for compensation with the candidate.

The Commission does not agree with the latter comment's suggestion. New 11 CFR 113.1(g)(6)(vi) is intended to prevent a principal campaign committee from paying compensation to a candidate at the expense of the committee's other creditors. When a principal campaign committee seeks to settle debts for less than the full amount owed, any campaign funds that the committee pays to the candidate for compensation are funds that could have been, but are not being, paid to help make other creditors whole. Accordingly, new 11 CFR 113.1(g)(6)(vi) prohibits a principal campaign committee from settling or satisfying a debt for compensation to the candidate, or otherwise paying compensation to the candidate, when seeking to settle debts to others for less than the full amount owed.

G. New 11 CFR 113.1(g)(6)(vii)—Evidence of Earned Income

The Commission's current regulations require any candidate receiving a salary from campaign funds to provide income tax records and other evidence of earned income upon request of the Commission.[62] In the NPRM, the Commission proposed in Proposed Compensation Cap Alternatives D, E, and F to maintain this requirement at new 11 CFR 113.1(g)(6)(vii). The Commission received one comment supporting the proposal as necessary for sufficient oversight of candidates receiving compensation from campaign funds. The Commission agrees. Because income earned by a candidate during certain time periods is a material consideration in determining the maximum compensation that the candidate may receive from campaign funds, new 11 CFR 113.1(g)(6)(vii) maintains the current requirement that candidates who receive compensation from campaign funds must provide income tax records or other evidence of earned income upon request of the Commission.

The Commission is also adopting a proposal from the NPRM to require candidates to maintain and preserve evidence of earned income for three years after their principal campaign committees file reports disclosing the payment of compensation to the candidates, pursuant to 11 CFR 102.9 and 104.14(b). The Commission received no comments on this proposal. Sections 102.9 and 104.14(b) already require political committees and their authorized agents to keep certain records of committee disbursements[63] and to maintain those records for three years after filing a report to which such records relate.[64] New 11 CFR 113.1(g)(6)(vii) clarifies that this record retention requirement applies to evidence of a candidate's earned income, as well.

[61] *See id.* 104.5(a)(2)(ii)(B).

[62] *Id.* 113.1(g)(1)(i)(I).

[63] *Id.* 102.9(b). Such records include bank records, vouchers, worksheets, receipts, bills, and accounts. *Id.* 104.14(b)(1).

[64] *Id.* 102.9(c).

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the final rules do not have a significant economic impact on a substantial number of small entities. The final rules provide flexibility to principal campaign committees that choose to use campaign funds to pay their candidates compensation. Any final rule that could be construed as placing an obligation on a principal campaign committee would apply only to campaigns that choose to pay their candidates compensation. The final rules would not impose any new recordkeeping, reporting, or financial obligations on principal campaign committees that do not choose to pay their candidates compensation, and any such new obligations that are imposed on principal campaign committees that do choose to pay compensation to their candidates would be minimal. Thus, to the extent that any entities affected by these final rules might fall within the definition of ''small businesses'' or ''small organizations,'' the economic impact of complying with these rules is not significant.

List of Subjects in 11 CFR Part 113

Campaign funds.

For the reasons set out in the preamble, the Federal Election Commission amends 11 CFR chapter 1 as follows:

PART 113—PERMITTED AND PROHIBITED USES OF CAMPAIGN ACCOUNTS

■ 1. The authority citation for part 113 continues to read as follows:

Authority: 52 U.S.C. 30102(h), 30111(a)(8), 30114, and 30116.

§ 113.1 [Amended]

■ 2. In § 113.1:
■ a. Remove and reserve paragraph (g)(1)(i)(I);
■ b. Redesignate paragraphs (g)(6) through (g)(8) as paragraphs (g)(7) through (g)(9);
■ c. Add new paragraph (g)(6).

The addition reads as follows:

(6) *Candidate compensation.* (i) A Federal officeholder, as defined in paragraph (c) of this section, must not receive compensation as a candidate from campaign funds.

(ii) The use of campaign funds by a candidate's principal campaign committee to pay compensation to the candidate is not personal use, provided that the compensation does not exceed the lesser of: 50% of the minimum annual salary paid to a Member of the

United States House of Representatives under 2 U.S.C. 4501, and the average annual income that the candidate earned during the most recent five calendar years in which the candidate earned income prior to becoming a candidate. The committee must calculate compensation, minimum annual salary, and average annual income at the daily rate, rounded to the nearest dollar.

(iii) For the purposes of this paragraph, *compensation* means direct payments to the candidate unless the payments are otherwise permitted by law, such as candidate expense reimbursements and candidate loan repayments under 11 CFR part 116.

(iv) The candidate's principal campaign committee must reduce the maximum amount of candidate compensation permissible under this paragraph (g)(6) by the amount of any earned income the candidate receives from any other source after filing a Statement of Candidacy under 11 CFR 101.1(a).

(v)(A) Compensation shall not accrue or be paid to a candidate before the date the candidate files a Statement of Candidacy with the Commission. *See* 11 CFR 101.1(a).

(B) A candidate's principal campaign committee may pay the candidate compensation from campaign funds up to 20 days after the candidate wins the general election, general election runoff, special election, or special election runoff, or otherwise ceases to be a candidate, such as by losing an election or withdrawing from the race.

(vi) Any principal campaign committee seeking to settle debts for less than the full value may not pay compensation to the candidate or settle or satisfy a debt to a candidate for compensation.

(vii) The candidate must provide evidence of earned income from the relevant years upon the request of the Commission. Any such evidence of earned income must be maintained and preserved for three years after the report disclosing the disbursement is filed, pursuant to 11 CFR 102.9 and 104.14(b).

Dated: December 14, 2023.

On behalf of the Commission,

Dara S. Lindenbaum,

Chair, Federal Election Commission.

[FR Doc. 2023–27906 Filed 12–29–23; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1706; Project Identifier MCAI–2023–00039–T; Amendment 39–22625; AD 2023–24–08]

RIN 2120–AA64

Airworthiness Directives; Bombardier, Inc., Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. This AD was prompted by reports that the nose wheel steering selector valve (SSV) can be slow to deactivate under low temperature conditions. This AD requires replacing the affected SSV with a re-designed SSV that has an improved response time. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 6, 2024.

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

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1706; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For service information identified in this final rule, contact Bombardier Business Aircraft Customer Response Center, 400 Côte-Vertu Road West, Dorval, Québec H4S 1Y9, Canada; telephone 514–855–2999; email *ac.yul@aero.bombardier.com;* website *bombardier.com.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2023–1706.

FOR FURTHER INFORMATION CONTACT: Gabriel Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain Bombardier, Inc., Model BD–700–1A10 and BD–700–1A11 airplanes. The NPRM published in the **Federal Register** on August 9, 2023 (88 FR 53823). The NPRM was prompted by AD CF–2023–02, dated January 11, 2023, issued by Transport Canada, which is the aviation authority for Canada (referred to after this as the MCAI). The MCAI states that following a runway excursion on a different model, an investigation revealed that the nose wheel SSV can be slow to deactivate under low temperature conditions. A similar SSV is installed on the airplanes to which this AD is applicable. In the event of an un-commanded steering input, a slow SSV deactivation could lead to a delayed transition to free caster mode and result in an aircraft runway excursion.

In the NPRM, the FAA proposed to require replacing the affected SSV with a re-designed SSV that has an improved response time. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1706.

Discussion of Final Airworthiness Directive

Comments

The FAA received a comment from NetJets. The following presents the comment received on the NPRM and the FAA's response.

Request To Add Bombardier Part Numbers

NetJets suggested adding Bombardier part numbers GW415–6275–1 & GW415–6275–3 to paragraph (g) of the proposed AD, in addition to Safran part numbers, as stated in SB 700–32–6021, paragraph 3., MATERIAL INFORMATION. NetJets stated that, at new aircraft delivery, the Bombardier part numbers are provided in the documentation of the aircraft. The FAA infers that NetJets would like to ensure the proper identification of the parts.

The FAA concurs with the suggestion. To aid in identifying the parts, paragraph (g) of this AD has been changed to add the referenced Bombardier part numbers.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comments received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, and any other changes described previously, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed the following Bombardier service information.

- Service Bulletin 700–32–044, Revision 01, dated December 7, 2022.
- Service Bulletin 700–32–6021, Revision 01, dated December 7, 2022.
- Service Bulletin 700–32–6507, Revision 01, dated December 7, 2022.
- Service Bulletin 700–1A11–32–031, Revision 01, dated December 7, 2022.
- Service Bulletin 700–32–5021, Revision 01, dated December 7, 2022.
- Service Bulletin 700–32–5507, Revision 01, dated December 7, 2022.

This service information specifies procedures for replacing the affected SSV with a re-designed SSV. These documents are distinct since they apply to different airplane configurations. This service information is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in the **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 442 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
4 work-hours × $85 per hour = $340	$5,542	$5,882	Up to $2,599,844.

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

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–24–08 Bombardier, Inc.: Amendment 39–22625; Docket No. FAA–2023–1706; Project Identifier MCAI–2023–00039–T.

(a) Effective Date

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

(b) Affected ADs

None.

(c) Applicability

This AD applies to the Bombardier, Inc., airplanes, certificated in any category, identified in paragraphs (c)(1) through (6) of this AD.

(1) Model BD–700–1A10 airplanes, as identified in Bombardier Service Bulletin 700–32–044, Revision 01, dated December 7, 2022.

(2) Model BD–700–1A10 airplanes, as identified in Bombardier Service Bulletin 700–32–6021, Revision 01, dated December 7, 2022.

(3) Model BD–700–1A10 airplanes, as identified in Bombardier Service Bulletin 700–32–6507, Revision 01, dated December 7, 2022.

(4) Model BD–700–1A11 airplanes, as identified in Bombardier Service Bulletin 700–1A11–32–031, Revision 01, dated December 7, 2022.

(5) Model BD–700–1A11 airplanes, as identified in Bombardier Service Bulletin 700–32–5021, Revision 01, dated December 7, 2022.

(6) Model BD–700–1A11 airplanes, as identified in Bombardier Service Bulletin 700–32–5507, Revision 01, dated December 7, 2022.

(d) Subject

Air Transport Association (ATA) of America Code 32, Landing gear.

(e) Unsafe Condition

This AD was prompted by reports that the nose wheel steering selector valve (SSV) can be slow to deactivate under low temperature

conditions. The FAA is issuing this AD to address a possible delayed transition to free caster mode in the event of an un-commanded steering input. The unsafe condition, if not addressed, could result in an aircraft runway excursion.

(f) Compliance

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

(g) Required Action

Within 66 months or 3,200 flight hours, whichever occurs first after the effective date of this AD: Replace SSV part number (P/N) 23600–101 (Bombardier P/N GW415–6275–1) with SSV P/N 23600–103 (Bombardier P/N GW415–6275–3) in accordance with the Accomplishment Instructions of the applicable Bombardier service bulletin listed in figure 1 to paragraph (g) of this AD.

Figure 1 to Paragraph (g)—Service Bulletin References

Model	Bombardier Service Bulletin	Issue Date
BD-700-1A10	700-32-044, Revision 01	December 7, 2022
BD-700-1A10	700-32-6021, Revision 01	December 7, 2022
BD-700-1A10	700-32-6507, Revision 01	December 7, 2022
BD-700-1A11	700-1A11-32-031, Revision 01	December 7, 2022
BD-700-1A11	700-32-5021, Revision 01	December 7, 2022
BD-700-1A11	700-32-5507, Revision 01	December 7, 2022

(h) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the applicable Bombardier service bulletin listed in figure 2 to paragraph (h) of this AD.

Figure 2 to Paragraph (h)—Credit Service Bulletins

Model	Bombardier Service Bulletin	Issue Date
BD-700-1A10	700-32-044	November 24, 2022
BD-700-1A10	700-32-6021	November 24, 2022
BD-700-1A10	700-32-6507	November 24, 2022
BD-700-1A11	700-1A11-32-031	November 24, 2022
BD-700-1A11	700-32-5021	November 24, 2022
BD-700-1A11	700-32-5507	November 24, 2022

(i) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to ATTN: Program Manager, Continuing Operational Safety, at the address identified in paragraph (j)(2) of this AD or email to: *9-AVS-AIR-730-AMOC@faa.gov.* If mailing information, also submit information by email. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(j) Additional Information

(1) Refer to Transport Canada AD CF–2023–02, dated January 11, 2023, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–1706.

(2) For more information about this AD, contact Gabriel Kim, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email *9-avs-nyaco-cos@faa.gov.*

(k) Material Incorporated by Reference

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

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

(i) Bombardier Service Bulletin 700–32–044, Revision 01, dated December 7, 2022.

(ii) Bombardier Service Bulletin 700–32–6021, Revision 01, dated December 7, 2022.

(iii) Bombardier Service Bulletin 700–32–6507, Revision 01, dated December 7, 2022.

(iv) Bombardier Service Bulletin 700–1A11–32–031, Revision 01, dated December 7, 2022.

(v) Bombardier Service Bulletin 700–32–5021, Revision 01, dated December 7, 2022.

(vi) Bombardier Service Bulletin 700–32–5507, Revision 01, dated December 7, 2022.

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

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

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov*.

Issued on November 29, 2023.

Victor Wicklund,

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

[FR Doc. 2023–28800 Filed 12–29–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–2243; Project Identifier MCAI–2023–00699–T; Amendment 39–22631; AD 2023–25–04]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is superseding Airworthiness Directive (AD) 2022–08–04, which applied to all Airbus SAS Model A300 series airplanes. AD 2022–08–04 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations. Since the FAA issued AD 2022–08–04, the FAA has determined new or more restrictive airworthiness limitations are necessary. This AD continues to require the actions of AD 2022–08–04, and requires new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective January 17, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain publication listed in this AD as of January 17, 2024.

The Director of the Federal Register approved the incorporation by reference of a certain other publication listed in this AD as of June 16, 2022 (87 FR 29037, May 12, 2022).

The FAA must receive comments on this AD by February 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–2023–2243; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The street address for Docket Operations is listed above.

Material Incorporated by Reference:

- For material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2023–2243.

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

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites you to send any written data, views, or arguments about this final rule. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2023–2243; Project Identifier MCAI–2023–00699–T'' at the beginning of your comments. The most helpful comments reference a specific portion of the final rule, explain the reason for any recommended change, and include supporting data. The FAA will consider all comments received by the closing date and may amend this final rule because of those comments.

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

Confidential Business Information

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

Background

The FAA issued AD 2022–08–04, Amendment 39–22007 (87 FR 29037, May 12, 2022) (AD 2022–08–04), for all Airbus SAS Model A300 series airplanes. AD 2022–08–04 was prompted by an MCAI originated by EASA, which is the Technical Agent for the Member States of the European Union. EASA issued AD 2021–0134, dated June 1, 2021 (EASA AD 2021–0134), to correct an unsafe condition.

AD 2022–08–04 required revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations described in Airbus A300

Airworthiness Limitations Section (ALS) Part 2 Damage Tolerant Airworthiness Limitation Items (DT–ALI) Revision 03, Variation 3.2 (Variation 3.2). The FAA issued AD 2022–08–04 to address possible reduced structural integrity of the airplane.

Actions Since AD 2022–08–04 Was Issued

Since the FAA issued AD 2022–08–04, EASA superseded EASA AD 2021–0134 and issued EASA AD 2023–0104, dated May 24, 2023 (EASA AD 2023–0104) (also referred to as the MCAI), to correct an unsafe condition for all Airbus SAS Model A300 series airplanes. The FAA has removed Airbus SAS Model A300 B2–1A, B2–1C, B2K–3C, and B2–203 airplanes from the FAA type certificate. Therefore, this AD does not include those airplanes in the applicability.

The MCAI states that since EASA AD 2021–0134 was issued, Airbus published Airbus A300 ALS Part 2 DT–ALI Revision 03, Variation 3.4 (Variation 3.4), which supersedes Variation 3.2. Variation 3.4, as defined in EASA AD 2023–0104, contains new and more restrictive tasks and introduces Maintenance Program Publication Triggers (MPPT), reflecting the limit of validity (LOV) of the engineering data that supports the structural maintenance program. Therefore, EASA AD 2023–0104 takes over the requirements of EASA AD 2021–0134 and requires accomplishment of the actions and compliance with the new MPPT specified in Variation 3.4.

The MCAI also stated it had previously issued AD 2017–0207, dated October 12, 2017 (EASA AD 2017–0207); AD 2020–0110R1, dated May 27, 2020 (EASA AD 2020–0110R1); AD 2021–0134; and AD 2021–0181, dated July 30, 2021 (EASA AD 2021–0181); requiring the actions described in Airbus A300 Airbus A300 ALS Part 2 DT–ALI Revision 03, Variation 3.1, Variation 3.2, and Variation 3.3, respectively. EASA AD 2017–0207 corresponds to FAA AD 2018–19–17, Amendment 39–19417 (83 FR 48207, September 24, 2018). EASA AD 2020–0110R1 corresponds to certain actions in FAA AD 2020–23–11, Amendment 39–21327 (85 FR 75838, November 27, 2020). EASA AD 2021–0181 corresponds to FAA AD 2022–05–06, Amendment 39–21957 (87 FR 10956, February 28, 2022). After those EASA ADs were issued, Airbus published Variation 3.4, as defined in EASA AD 2023–0104. The MCAI states that it does not supersede EASA ADs 2017–0207, 2020–0110R1, and 2021–0181. However, the MCAI does affect EASA AD 2017–0207 and specifies that where it requires a task (limitation) that is required by EASA AD 2017–0207 (which corresponds to FAA AD 2018–19–17), the instructions of Variation 3.4 invalidate (terminate) the instructions of Airbus A300 Airbus A300 ALS Part 2 DT–ALI Revision 03. Therefore, accomplishing the actions required by paragraph (j) of this AD terminates the corresponding requirements of AD 2018–19–17 for the tasks identified in the service information referenced in EASA AD 2023–0104 only. This AD also replaces the LOVs specified in paragraph 1.3 of Airbus A300 Airworthiness Limitations Section (ALS), Part 2—Damage Tolerant Airworthiness Limitation Items (DT–ALI), Revision 03, dated August 28, 2017, as required by FAA AD 2018–19–17.

The FAA is issuing this AD to address possible reduced structural integrity of the airplane.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–2243.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0104 specifies procedures for new or more restrictive airworthiness limitations, which includes updated airplane LOV language and MPPTs.

This AD also requires EASA AD 2021–0134, dated June 1, 2021, which the Director of the Federal Register approved for incorporation by reference as of June 16, 2022 (87 FR 29037, May 12, 2022).

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

FAA's Determination

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

Requirements of This AD

This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, which are specified in EASA AD 2023–0104 described previously, as incorporated by reference.

This AD requires revisions to certain operator maintenance documents to include new actions (*e.g.,* inspections). Compliance with these actions is required by 14 CFR 91.403(c). For airplanes that have been previously modified, altered, or repaired in the areas addressed by this AD, the operator may not be able to accomplish the actions described in the revisions. In this situation, to comply with 14 CFR 91.403(c), the operator must request approval for an alternative method of compliance (AMOC) according to paragraph (n)(1) of this AD.

Explanation of Required Compliance Information

In the FAA's ongoing efforts to improve the efficiency of the AD process, the FAA developed a process to use some civil aviation authority (CAA) ADs as the primary source of information for compliance with requirements for corresponding FAA ADs. The FAA has been coordinating this process with manufacturers and CAAs. As a result, the incorporation by reference of EASA AD 2021–0134 is retained and EASA AD 2023–0104 is incorporated by reference in this AD. This AD requires compliance with EASA AD 2021–0134 and EASA AD 2023–0104 in their entirety through that incorporation, except for any differences identified as exceptions in the regulatory text of this AD. Using common terms that are the same as the heading of a particular section in EASA AD 2021–0134 or EASA AD 2023–0104 does not mean that operators need comply only with that section. For example, where the AD requirement refers to ''all required actions and compliance times,'' compliance with this AD requirement is not limited to the section titled ''Required Action(s) and Compliance Time(s)'' in EASA AD 2021–0134 or EASA AD 2023–0104. Service information required by EASA AD 2021–0134 and EASA AD 2023–0104 for compliance will be available at *regulations.gov* under Docket No. FAA–2023–2243 after this AD is published.

Airworthiness Limitation ADs Using the New Process

The FAA's process of incorporating by reference MCAI ADs as the primary source of information for compliance with corresponding FAA ADs has been limited to certain MCAI ADs (primarily those with service bulletins as the primary source of information for accomplishing the actions required by the FAA AD). However, the FAA is now

expanding the process to include MCAI ADs that require a change to airworthiness limitation documents, such as airworthiness limitation sections.

For these ADs that incorporate by reference an MCAI AD that changes airworthiness limitations, the FAA requirements are unchanged. Operators must revise the existing maintenance or inspection program, as applicable, to incorporate the information specified in the new airworthiness limitation document. The airworthiness limitations must be followed according to 14 CFR 91.403(c) and 91.409(e).

The previous format of the airworthiness limitation ADs included a paragraph that specified that no alternative actions (*e.g.,* inspections) or intervals may be used unless the actions and intervals are approved as an AMOC in accordance with the procedures specified in the AMOCs paragraph under ''Additional AD Provisions.'' This new format includes a ''New Provisions for Alternative Actions and Intervals'' paragraph that does not specifically refer to AMOCs, but operators may still request an AMOC to use an alternative action or interval.

FAA's Justification and Determination of the Effective Date

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

There are currently no domestic operators of these products. Accordingly, notice and opportunity for prior public comment are unnecessary, pursuant to 5 U.S.C. 553(b)(3)(B). In addition, for the forgoing reason(s), the FAA finds that good cause exists pursuant to 5 U.S.C. 553(d) for making this amendment effective in less than 30 days.

Regulatory Flexibility Act (RFA)

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

Costs of Compliance

Currently, there are no affected U.S.-registered airplanes. For any affected airplane that may be imported and placed on the U.S. Register in the future, the FAA provides the following cost estimates to comply with this AD:

The FAA estimates the total cost per operator for the retained actions from AD 2022–08–04 to be $7,650 (90 work-hours × $85 per work-hour).

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the agency recognizes that this number may vary from operator to operator. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate.

The FAA estimates the total cost per operator for the new action to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

(2) Will not affect intrastate aviation in Alaska.

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

■ 2. The FAA amends § 39.13 by:
■ a. Removing Airworthiness Directive (AD) 2022–08–04, Amendment 39–22007 (87 FR 29037, May 12, 2022); and
■ b. Adding the following new AD:

2023–25–04 Airbus SAS: Amendment 39–22631; Docket No. FAA–2023–2243; Project Identifier MCAI–2023–00699–T.

(a) Effective Date

This airworthiness directive (AD) is effective January 17, 2024.

(b) Affected ADs

This AD replaces AD 2022–08–04, Amendment 39–22007 (87 FR 29037, May 12, 2022) (AD 2022–08–04). This AD affects AD 2018–19–17, Amendment 39–19417 (83 FR 48207, September 24, 2018) (AD 2018–19–17).

(c) Applicability

This AD applies to all Airbus SAS Model A300 B4–2C, B4–103, and B4–203 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code 05, Time Limits/Maintenance.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address possible reduced structural integrity of the airplane.

(f) Compliance

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

(g) Retained Revision of the Existing Maintenance or Inspection Program, With No Changes

This paragraph restates the requirements of paragraph (g) of AD 2022–08–04, with no changes. Except as specified in paragraph (h) of this AD: Comply with all required actions

and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2021–0134, dated June 1, 2021 (EASA AD 2021–0134). Accomplishing the revision of the existing maintenance or inspection program required by paragraph (j) of this AD terminates the requirements of this paragraph.

(h) Retained Exceptions to EASA AD 2021–0134, With No Changes

This paragraph restates the exceptions specified in paragraph (h) of AD 2022–08–04, with no changes.

(1) Where EASA AD 2021–0134 refers to its effective date, this AD requires using June 16, 2022 (the effective date of AD 2022–08–04).

(2) Where paragraph (1) of EASA AD 2021–0134 specifies ''This AD invalidates the LOV [limit of validity] as specified in Airbus A300 ALS Part 2 Revision 03 [EASA AD 2017–0207],'' this AD replaces the LOVs specified in paragraph 1.3 of Airbus A300 Airworthiness Limitations Section (ALS), Part 2—Damage Tolerant Airworthiness Limitation Items (DT–ALI), Revision 03, dated August 28, 2017, as required by FAA AD 2018–19–17.

(3) Paragraph (2) of EASA AD 2021–0134 specifies revising ''the approved AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after June 16, 2022 (the effective date of AD 2022–08–04).

(4) The ''Remarks'' section of EASA AD 2021–0134 does not apply to this AD.

(i) Retained Restrictions on Alternative Actions and Intervals With a New Exception

This paragraph restates the requirements of paragraph (i) of AD 2022–08–04, with a new exception. Except as required by paragraph (j) of this AD, after the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) or intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2021–0134.

(j) New Revision of the Existing Maintenance or Inspection Program

Except as specified in paragraph (k) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, EASA AD 2023–0104, dated May 24, 2023 (EASA AD 2023–0104). Accomplishing the revision of the existing maintenance or inspection program required by this paragraph terminates the requirements of paragraph (g) of this AD.

(k) Exceptions to EASA AD 2023–0104

(1) This AD does not adopt the requirements specified in paragraphs (1), (2), and (3) of EASA AD 2023–0104.

(2) Where paragraph (4) of EASA AD 2023–0104 specifies ''Within 12 months after the effective date of this AD, revise the AMP,'' this AD requires replacing those words with ''Within 90 days after the effective date of this AD, revise the existing maintenance or inspection program, as applicable.''

(3) The initial compliance time for doing the tasks specified in paragraph (4) of EASA AD 2023–0104 is at the associated thresholds as incorporated by the requirements of paragraph (4) of EASA AD 2023–0104, or within 90 days after the effective date of this AD, whichever occurs later.

(4) This AD does not adopt the provisions specified in paragraph (5) of EASA AD 2023–0104.

(5) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0104.

(l) Replacement of LOVs and Terminating Action for AD 2018–19–17

(1) Accomplishing the actions required by paragraph (j) of this AD replaces the LOVs specified in paragraph 1.3 of Airbus A300 Airworthiness Limitations Section (ALS), Part 2-Damage Tolerant Airworthiness Limitation Items (DT–ALI), Revision 03, dated August 28, 2017, as required by AD 2018–19–17.

(2) Accomplishing the actions required by paragraph (j) of this AD terminates the corresponding requirements of AD 2018–19–17 for the tasks identified in the service information referenced in AD 2023–0104 only.

(m) New Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (j) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2023–0104.

(n) Additional AD Provisions

The following provisions also apply to this AD:

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

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

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

(o) Additional Information

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

(p) Material Incorporated by Reference

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

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

(3) The following service information was approved for IBR on January 17, 2024.

(i) European Union Aviation Safety Agency (EASA) AD 2023–0104, dated May 24, 2023.

(ii) [Reserved]

(4) The following service information was approved for IBR on June 16, 2022 (87 FR 29037, May 12, 2022).

(i) EASA AD 2021–0134, dated June 1, 2021.

(ii) [Reserved]

(5) EASA ADs 2023–0104 and 2021–0134, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website at *ad.easa.europa.eu.*

(6) You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. This material may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–2243.

(7) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations,* or email *fr.inspection@nara.gov.*

Issued on December 8, 2023.

Victor Wicklund,

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

[FR Doc. 2023–28802 Filed 12–29–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1823; Project Identifier MCAI–2023–00314–T; Amendment 39–22628; AD 2023–25–01]

RIN 2120–AA64

Airworthiness Directives; MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.) Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for certain MHI RJ Model CL–600–2C10 (Regional Jet Series 700, 701 & 702), CL–600–2C11 (Regional Jet Series 550), CL–600–2D15 (Regional Jet Series 705), CL–600–2D24 (Regional Jet Series 900), and CL–600–2E25 (Regional Jet Series 1000) airplanes. This AD was prompted by a report of a passenger seat Y-belt (lap belt) re-installed in the wrong orientation, due to an incorrect maintenance manual. This AD requires inspecting certain Y-belts for correct installation and damage and corrective actions if necessary. This AD also prohibits the use of certain revisions of a maintenance task. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 6, 2024.

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

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1823; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For MHI RJ service information identified in this final rule, contact MHI RJ Aviation Group, Customer Response Center, 3655 Ave. des Grandes-Tourelles, Suite 110, Boisbriand, Québec J7H 0E2 Canada; North America toll-free telephone 833–990–7272 or direct-dial telephone 450–990–7272; fax 514–855–8501; email *thd.crj@mhirj.com*; website *mhirj.com*.
- You may view this service information at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available at *regulations.gov* under Docket No. FAA–2023–1823.

FOR FURTHER INFORMATION CONTACT: Fatin Saumik, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email: *9-avs-nyaco-cos@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to certain MHI RJ Model CL–600–2C10 (Regional Jet Series 700, 701 & 702), CL–600–2C11 (Regional Jet Series 550), CL–600–2D15 (Regional Jet Series 705), CL–600–2D24 (Regional Jet Series 900), and CL–600–2E25 (Regional Jet Series 1000) airplanes. The NPRM published in the **Federal Register** on September 13, 2023 (88 FR 62709). The NPRM was prompted by AD CF–2023–10, dated February 17, 2023, issued by Transport Canada, which is the aviation authority for Canada (referred to after this as the MCAI). The MCAI states that following maintenance on a Model CL–600–2C10 airplane, a Y-belt (also known as lap belt) was re-installed in the wrong orientation. The MCAI further states that the instructions contained within the aircraft maintenance manual (AMM) on how to install the passenger seat Y-belts, showed an incorrect orientation of the Y-belt assembly. The MCAI confirms the manufacturer updated the AMM tasks and these instructions have been corrected. Y-belts installed in the wrong orientation, if not corrected, could result in passenger injury due to head impact on the front monument during an emergency landing.

In the NPRM, the FAA proposed to require inspecting certain Y-belts for correct installation and damage and corrective actions if necessary. The FAA also proposed to prohibit the use of certain revisions of a maintenance task. The FAA is issuing this AD to address the unsafe condition on these products.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1823.

Discussion of Final Airworthiness Directive

Comments

The FAA received no comments on the NPRM or on the determination of the cost to the public.

Conclusion

This product has been approved by the aviation authority of another country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

The FAA reviewed MHI RJ Service Bulletin 670BA–25–135, Revision B, dated November 25, 2022. This service information specifies procedures to inspect for correct installation (as shown in certain maintenance tasks) of each passenger seat Y-belt. This service information also specifies corrective actions, which include re-installing each incorrectly installed Y-belt per certain maintenance tasks and addressing damage (includes dents or misshapen hooks that attach the belt to the seat).

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

Costs of Compliance

The FAA estimates that this AD affects 606 airplanes of U.S. registry. The FAA estimates the following costs to comply with this AD:

ESTIMATED COSTS FOR REQUIRED ACTIONS

Labor cost	Parts cost	Cost per product	Cost on U.S. operators
2 work-hours × $85 per hour = $170	$0	$170	$103,020

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

ESTIMATED COSTS OF ON-CONDITION ACTIONS

Labor cost	Parts cost	Cost per product
Up to 0.5 work-hours × $85 per hour = $43	Up to $550 per Y-belt assembly	Up to $593.

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–25–01 MHI RJ Aviation ULC (Type Certificate Previously Held by Bombardier, Inc.): Amendment 39–22628; Docket No. FAA–2023–1823; Project Identifier MCAI–2023–00314–T.

(a) Effective Date

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

(b) Affected ADs

None.

(c) Applicability

This AD applies to MHI RJ Aviation ULC (Type Certificate previously held by Bombardier, Inc.) airplanes, certificated in any category, identified in paragraphs (c)(1) through (3) of this AD.

(1) Model CL–600–2C10 (Regional Jet Series 700, 701 & 702) and CL–600–2C11 (Regional Jet Series 550) airplanes, serial numbers (S/N) 10001 through 10348 inclusive.

(2) Model CL–600–2D15 (Regional Jet Series 705) and CL–600–2D24 (Regional Jet Series 900) airplanes, S/N 15001 through 15499 inclusive.

(3) Model CL–600–2E25 (Regional Jet Series 1000) airplanes, S/N 19001 through 19064 inclusive.

(d) Subject

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

(e) Unsafe Condition

This AD was prompted by a report of a passenger seat Y-belt (lap-belt) re-installed in the wrong orientation, due to an incorrect maintenance manual. The FAA is issuing this AD to detect and address Y-belts that are incorrectly installed. The unsafe condition, if not addressed, could result in passenger injury due to head impact on the front monument during an emergency landing.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Within 24 months after the effective date of this AD, inspect each Y-belt for correct installation and damage and, if any incorrect installation or damage is found, within 24 months after the effective date of this AD, do all applicable corrective actions, in accordance with paragraph B, ''Procedure,'' of the Accomplishment Instructions of MHI RJ Service Bulletin 670BA–25–135, Revision B, dated November 25, 2022. For this AD, damage includes dents or misshapen hooks that attach the belt to the seat.

Note 1 to paragraph (g): Y-belts are also known as lap belts.

(h) Exceptions to Service Information

Where paragraph B, ''Procedure,'' of the Accomplishment Instructions of MHI RJ Service Bulletin 670BA–25–135, Revision B, dated November 25, 2022, specifies to ''refer to AMM'' replace those words with ''in accordance with AMM.''

(i) Maintenance Task Prohibition

As of the effective date of this AD, it is prohibited to use MHI RJ Aviation ULC Aircraft Maintenance Manual (AMM) task 25–21–04–400–801, revision 69 or earlier.

(j) Credit for Previous Actions

This paragraph provides credit for actions required by paragraph (g) of this AD, if those actions were performed before the effective date of this AD using the service information

identified in paragraph (j)(1) or (2) of this AD, provided the actions were done using MHI RJ AMM Revision 70, dated May 25, 2022, or Revision 71, dated December 16, 2022.

(1) MHI RJ Service Bulletin 670BA–25–135, dated June 1, 2022.

(2) MHI RJ Service Bulletin 670BA–25–135, Revision A, dated August 30, 2022.

(k) Additional AD Provisions

The following provisions also apply to this AD.

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (l)(2) of this AD. Information may be emailed to: *9-AVS-AIR-730-AMOC@faa.gov*. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the responsible Flight Standards Office.

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

(l) Additional Information

(1) Refer to Transport Canada AD CF–2023–10, dated February 17, 2023, for related information. This Transport Canada AD may be found in the AD docket at *regulations.gov* under Docket No. FAA–2023–1823.

(2) For more information about this AD, contact Fatin Saumik, Aviation Safety Engineer, FAA, 1600 Stewart Avenue, Suite 410, Westbury, NY 11590; telephone 516–228–7300; email: *9-avs-nyaco-cos@faa.gov*.

(3) Service information identified in this AD that is not incorporated by reference is available at the addresses specified in paragraphs (m)(3) and (4) of this AD.

(m) Material Incorporated by Reference

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

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

(i) MHI RJ Service Bulletin 670BA–25–135, Revision B, dated November 25, 2022.

(ii) [Reserved]

(3) For MHI RJ Aviation ULC service information identified in this AD, contact MHI RJ Aviation Group, Customer Response Center, 3655 Ave. des Grandes-Tourelles, Suite 110, Boisbriand, Québec J7H 0E2 Canada; North America toll-free telephone 833–990–7272 or direct-dial telephone 450–990–7272; fax 514–855–8501; email *thd.crj@mhirj.com*; website *mhirj.com*.

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

(5) You may view this material at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, visit *www.archives.gov/federal-register/cfr/ibr-locations* or email *fr.inspection@nara.gov*.

Issued on December 5, 2023.

Victor Wicklund,

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

[FR Doc. 2023–28801 Filed 12–29–23; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2023–1822; Project Identifier MCAI–2023–00653–T; Amendment 39–22624; AD 2023–24–07]

RIN 2120–AA64

Airworthiness Directives; Airbus SAS Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The FAA is adopting a new airworthiness directive (AD) for all Airbus SAS Model A310 airplanes. This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. This AD requires revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in a European Union Aviation Safety Agency (EASA) AD, which is incorporated by reference. The FAA is issuing this AD to address the unsafe condition on these products.

DATES: This AD is effective February 6, 2024.

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

ADDRESSES:

AD Docket: You may examine the AD docket at *regulations.gov* under Docket No. FAA–2023–1822; or in person at Docket Operations between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this final rule, the mandatory continuing airworthiness information (MCAI), any comments received, and other information. The address for Docket Operations is U.S. Department of Transportation, Docket Operations, M–30, West Building Ground Floor, Room W12–140, 1200 New Jersey Avenue SE, Washington, DC 20590.

Material Incorporated by Reference:

- For EASA material incorporated by reference in this AD, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this material on the EASA website at *ad.easa.europa.eu.*
- You may view this material at the FAA, Airworthiness Products Section, Operational Safety Branch, 2200 South 216th St., Des Moines, WA. For information on the availability of this material at the FAA, call 206–231–3195. It is also available in the AD docket at *regulations.gov* under Docket No. FAA–2023–1822.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@faa.gov*.

SUPPLEMENTARY INFORMATION:

Background

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 by adding an AD that would apply to all Airbus SAS Model A310 series airplanes. The NPRM published in the **Federal Register** on September 8, 2023 (88 FR 61990). The NPRM was prompted by AD 2023–0092, dated May 5, 2023, issued by EASA, which is the Technical Agent for the Member States of the European Union (EASA AD 2023–0092) (also referred to as the MCAI). The MCAI states that new or more restrictive airworthiness limitations have been developed.

In the NPRM, the FAA proposed to require revising the existing maintenance or inspection program, as applicable, to incorporate new or more restrictive airworthiness limitations, as specified in EASA AD 2023–0092. The FAA is issuing this AD to address fatigue cracking, damage, or corrosion in principal structural elements.

You may examine the MCAI in the AD docket at *regulations.gov* under Docket No. FAA–2023–1822.

Discussion of Final Airworthiness Directive

Comments

The FAA received comments from FedEx who supported the NPRM without change.

Conclusion

This product has been approved by the aviation authority of another

country and is approved for operation in the United States. Pursuant to the FAA's bilateral agreement with this State of Design Authority, it has notified the FAA of the unsafe condition described in the MCAI referenced above. The FAA reviewed the relevant data, considered the comment received, and determined that air safety requires adopting this AD as proposed. Accordingly, the FAA is issuing this AD to address the unsafe condition on this product. Except for minor editorial changes, this AD is adopted as proposed in the NPRM. None of the changes will increase the economic burden on any operator.

Related Service Information Under 1 CFR Part 51

EASA AD 2023–0092 describes new or more restrictive airworthiness tasks for airplane structures. This material is reasonably available because the interested parties have access to it through their normal course of business or by the means identified in **ADDRESSES** section.

Costs of Compliance

The FAA estimates that this AD affects 1 airplane of U.S. registry. The FAA estimates the following costs to comply with this AD:

The FAA has determined that revising the existing maintenance or inspection program takes an average of 90 work-hours per operator, although the FAA recognizes that this number may vary from operator to operator. In the past, the FAA has estimated that this action takes 1 work-hour per airplane. Since operators incorporate maintenance or inspection program changes for their affected fleet(s), the FAA has determined that a per-operator estimate is more accurate than a per-airplane estimate. Therefore, the FAA estimates the total cost per operator to be $7,650 (90 work-hours × $85 per work-hour).

Authority for This Rulemaking

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

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

Regulatory Findings

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

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

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

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

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

List of Subjects in 14 CFR Part 39

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

The Amendment

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

PART 39—AIRWORTHINESS DIRECTIVES

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

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

§ 39.13 [Amended]

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

2023–24–07 Airbus SAS: Amendment 39–22624; Docket No. FAA–2023–1822; Project Identifier MCAI–2023–00653–T.

(a) Effective Date

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

(b) Affected ADs

This AD affects AD 2019–20–06, Amendment 39–19759 (84 FR 55859, October 18, 2019) (AD 2019–20–06).

(c) Applicability

This AD applies to all Airbus SAS Model A310–203, –204, –221, –222, –304, –322, –324, and –325 airplanes, certificated in any category.

(d) Subject

Air Transport Association (ATA) of America Code: 05, Time Limits/Maintenance Checks.

(e) Unsafe Condition

This AD was prompted by a determination that new or more restrictive airworthiness limitations are necessary. The FAA is issuing this AD to address fatigue cracking, damage, or corrosion in principal structural elements. The unsafe condition, if not addressed, could result in reduced structural integrity of the airplane.

(f) Compliance

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

(g) Requirements

Except as specified in paragraph (h) of this AD: Comply with all required actions and compliance times specified in, and in accordance with, European Union Aviation Safety Agency (EASA) AD 2023–0092, dated May 5, 2023 (EASA AD 2023–0092).

(h) Exceptions to EASA AD 2023–0092

(1) This AD does not adopt the requirements specified in paragraphs (1) and (2) of EASA AD 2023–0092.

(2) Paragraph (3) of EASA AD 2023–0092 specifies revising ''the AMP'' within 12 months after its effective date, but this AD requires revising the existing maintenance or inspection program, as applicable, within 90 days after the effective date of this AD.

(3) The initial compliance time for doing the tasks specified in paragraph (3) of EASA 2023–0092 is at the applicable ''associated thresholds'' as incorporated by the requirements of paragraph (3) of EASA AD 2023–0092, or within 90 days after the effective date of this AD, whichever occurs later.

(4) This AD does not adopt the provisions specified in the ''Recording AD compliance'' section of EASA AD 2023–0092.

(5) This AD does not adopt the ''Remarks'' section of EASA AD 2023–0092.

(i) Provisions for Alternative Actions and Intervals

After the existing maintenance or inspection program has been revised as required by paragraph (g) of this AD, no alternative actions (*e.g.,* inspections) and intervals are allowed unless they are approved as specified in the provisions of the ''Ref. Publications'' section of EASA AD 2023–0092.

(j) Terminating Action for Certain Tasks Required by AD 2019–20–06

Accomplishing the actions required by this AD terminates the corresponding requirements of AD 2019–20–06 for the tasks identified in the service information referenced in EASA AD 2023–0092 only.

(k) Additional AD Provisions

The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, International Validation Branch, FAA, has the authority to

approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. In accordance with 14 CFR 39.19, send your request to your principal inspector or responsible Flight Standards Office, as appropriate. If sending information directly to the manager of the International Validation Branch, mail it to the address identified in paragraph (l) of this AD or email to: *9-AVS-AIR-730-AMOC@faa.gov.* If mailing information, also submit information by email. Before using any approved AMOC, notify your appropriate principal inspector, or lacking a principal inspector, the manager of the local flight standards district office.

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

(l) Additional Information

For more information about this AD, contact Dan Rodina, Aviation Safety Engineer, FAA, 2200 South 216th Street, Des Moines, WA 98198; telephone 206–231–3225; email *dan.rodina@faa.gov.*

(m) Material Incorporated by Reference

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

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

(i) European Union Aviation Safety Agency (EASA) AD 2023–0092, dated May 5, 2023.

(ii) [Reserved]

(3) For EASA AD 2023–0092, contact EASA, Konrad-Adenauer-Ufer 3, 50668 Cologne, Germany; telephone +49 221 8999 000; email *ADs@easa.europa.eu;* website *easa.europa.eu.* You may find this EASA AD on the EASA website *ad.easa.europa.eu.*

(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-locations* or email *fr.inspection@nara.gov.*

Victor Wicklund,

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

[FR Doc. 2023–28799 Filed 12–29–23; 8:45 am]

BILLING CODE 4910–13–P

FEDERAL MARITIME COMMISSION

46 CFR Part 520

[Docket No. FMC–2022–0067]

RIN 3072–AC86

Carrier Automated Tariffs

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission (Commission) amends its regulations governing Carrier Automated Tariffs. The final rule removes the option for common carriers to charge a fee to access their tariff; allow non-vessel-operating common carriers (NVOCCs) to cross-reference certain aspects of other carriers' terms in their tariffs; clarify the ability for NVOCCs to reflect increases in certain charges passed-through by other entities without notice; revise regulations to specify permissible relationships between NVOCCs for the co-loading of cargo, and makes other miscellaneous updates and clarifications to the regulation, including removing outdated citations.

DATES: This final rule is effective on February 1, 2024.

ADDRESSES: You may use the Federal eRulemaking Portal at *www.regulations.gov* to view background documents or comments received in Docket No. FMC–2022–0067.

FOR FURTHER INFORMATION CONTACT: Amy Strauss, Acting Secretary; Phone: (202) 523–5725; Email: *secretary@fmc.gov.*

SUPPLEMENTARY INFORMATION:

I. Discussion

On May 10, 2022, the Commission issued a Notice of Proposed Rulemaking (NPRM) seeking comment on proposed changes to Commission regulations in 46 CFR part 520.[1] In response to the NPRM, the Commission received ten sets of comments from interested parties: The National Customs Brokers and Forwarders Association of America, Inc (NCBFAA); New York New Jersey Foreign Freight Forwarders & Brokers Association, Inc. (NYNJFFF&BA); Charles E. Schmidt; Kintetsu World Express (U.S.A.), Inc., an NVOCC; Yang Ming Marine Transport Corp., a vessel-operating common carrier (VOCC); Mohawk Global, an NVOCC; UWL, an NVOCC; C.H. Powell, an NVOCC; APL Logistics, Ltd., an NVOCC; and Ascent Global Logistics, an NVOCC. These comments are addressed in the discussion that follows.

A. Tariff Access Fees

With one exception, commenters that addressed the proposed rule requiring common carriers to provide free access to their tariff systems supported the rule. Kintetsu World Express favored continuing to allow a fee to be assessed, asserting that tariff publishers that currently charge an access fee to the public will likely attempt to recover lost revenue from their common carrier customer if they can no longer charge a third party for tariff access. Kintetsu at 2. *See also* NYNJFF&BA at 2 (noting that carriers who use third party providers will most likely assess a fee to cover cost of access to their service). The Commission considered Kintetsu's concern that the proposed rule may lead to higher fees from its tariff publisher because the tariff publisher can no longer charge a third party for access. However, the Commission is not persuaded by Kintetsu's concern. Carriers have been required to publish tariffs for decades. *See* 46 U.S.C. 40501. Some carriers choose to publish these tariffs on their own website, and some choose to use a tariff publisher—and in Kintetsu's case, it decided that the best way to comply with the Commission's requirements was to pay a tariff publisher.[2] Kintetsu did not provide information about what it would cost to publish the tariffs on Kintetsu's own website [3] or a comparison of how much more Kintetsu would pay a tariff publisher if the tariff publisher could not charge a fee for access. Further, Kintetsu's concerns were not supported by similar concerns from NCBFAA or NYNJFFF&BA, entities that represent many similar NVOCCs. Based on this record, the Commission is not persuaded by Kintetsu's concern and maintains its position that it is reasonable to not charge a fee for tariff

[1] Notice of Proposed Rulemaking—Carrier Automated Tariffs, 87 FR 27971 (May 10, 2022). Prior to the publication of the May 2022 proposal, the Commission published an Advance Notice of Proposed Rulemaking seeking input on how to revise its tariff regulations to help address the inconsistent manner in which carriers were interpreting and applying these regulations. *See* Advance Notice of Proposed Rulemaking (ANPRM)—Carrier Automated Tariffs, 86 FR 18240 (April 8, 2021).

[2] It appears that the benefits of using a tariff publisher go beyond simply providing a website for publication as tariff publishers advertise expert help in complying with Commission regulations and cost efficiency from outsourcing for that expertise. Thus, the decision to use a tariff publisher may include more considerations than simply the cheapest way to post tariffs publicly.

[3] Kintetsu does have a public website that appears to be maintained and up to date, as there are articles from August 2023. *See https://www.kwe.com/* (last accessed August 16, 2023).

access. The Commission continues to believe that cost barriers to public tariff access are contrary to the goal of ensuring the availability of shipping information, and advances in technology since the regulation was implemented over two decades ago mean that free tariff access is now reasonable. Accordingly, the Commission amends its regulations to remove the option to charge a fee for tariff access currently found at 46 CFR 520.9(e)(3).

B. Cross-Referencing Tariffs

With respect to its proposal regarding the cross-referencing of tariffs that would be part of 46 CFR 520.7(a)(3)(iv), commenters NYNJFF&BA; NCBFAA; C.H. Powell; Ascent Global Logistics; and Mohawk Global expressed concern with allowing an NVOCC to cross-reference an ocean common carrier tariff in its own tariff for the purpose of charging its shipper the ocean common carrier's surcharges and assessorial charges. These concerns centered on two main issues. First, the asserted burden placed on the NVOCC to list in its tariff all named VOCC surcharges and provide links to those VOCC tariffs would be too great. Second, NVOCC commenters expressed an unwillingness to disclose to their shippers the identities of the VOCCs they use. *See* NYNJFF&BA at 2–3; NCBFAA at 2–3; C.H. Powell at 2; Ascent Global Logistics at 1; and Mohawk Global at 4–5.

The Commission addresses these comments by clarifying that under the new § 520.7(a)(3)(iv), when an NVOCC cross-references a VOCC tariff, the requirement to list the charges which may be passed through is satisfied by publishing in the NVOCC tariff a list of names which may encompass a category of charges—for example, a ''Bunker Surcharge'' may include Low Sulphur Fuel Charges and Fuel Recovery Surcharges. In addition, the NVOCC tariff need only reference that these charges may be assessed at cost per the underlying VOCC's governing tariff, rather than cite a specific VOCC name and/or tariff. To ensure the clarity of the filing requirement, the Commission has revised the wording of the new rule to state that categories of charges may be listed in the NVOCC's tariff.

The Commission also notes the comment by NYNJFF&BA that shipper transparency would be served by including a statement on a Negotiated Rate Arrangement (NRA) quotation, or in the NVOCC Rules tariff that verification of pass-through charges can be provided upon request. NYNJFF&BA at 3. While not in the scope of this rulemaking, the Commission nonetheless encourages NVOCCs to implement this practice as a means of providing confirmation of the type and amount of charge(s) passed through for payment by the shipper.

C. Charges Passed Through to NVOCCs by VOCCs

A comment received by NYNJFF&BA with respect to charges passed through by NVOCCs to their shipper after being imposed on a VOCC by an outside entity reflects the same concern in reference to the name and type of VOCC-originated charges passed through to NVOCCs discussed in Section B. NYNJFF&BA at 3–4. The Commission therefore is making the same revision to the new rule at § 520.7(h) to state that categories of charges may be listed.

1. General Rate Increases

As discussed in the NPRM, the Commission has historically classified General Rate Increases (GRIs) as a component of the base ocean freight assessed by the common carrier, not a charge or surcharge, and therefore would not be subject to an exemption under § 520.7(a)(3)(iv) as proposed in the NPRM. In its comments, the NYNJFF&BA opposed the exclusion of GRIs as a charge that may be passed through by an NVOCC. NYNJFF&BA at 4–5. The NYNJFF&BA asserted that VOCC GRIs should be allowed to be passed through in the same way as other ''rapidly changing and proliferating VOCC charges.'' NYNJFF&BA also notes that current regulations governing NRAs allow an NVOCC to apply GRIs in the same way as surcharges and accessorial charges. NYNJFF&BA at 4. Comments from the NYNJFF&BA and NCBFAA added that VOCC GRIs are often announced with the required 30-day notice but are reduced or delayed just prior to the effective date. NYNJFF&BA at 4–5; NCBFAA ANPRM Comment at 6. These comments also indicated that, should the NVOCC publish an increase in line with the VOCC's published GRI, the underlying shipper may be subject to the increase, regardless of a last-minute reduction or delay in effective date by the VOCC, if the NVOCC does not file a coinciding reduction or delay in its own tariff. Based on comments received and the current regulation at § 532.5(d)(2), which allows VOCC GRIs to apply to an NRA, the Commission is revising its regulation at § 520.7(a)(3)(iv) to specify that an NVOCC has the option to pass through a VOCC GRI to its shipper.

2. Fees Connected to Pass-Through Charges

In its NPRM, the Commission stated that regulations that would allow an NVOCC to pass through increases in certain charges without advance notice under specified conditions are not intended to allow a markup of charges above what the third party has billed. Several commenters asserted that NVOCCs should be allowed to charge a ''nominal'' fee to recover the cost of the outlay of charges assessed by an outside entity. *See* NCBFAA at 4; UWL at 2; C.H. Powell at 2; Ascent Global Logistics at 1; Mohawk Global at 6; and NYNJFF&BA at 6. The Commission agrees that NVOCCs are entitled to receive compensation for services provided, including a fee for the advance payment of charges on behalf of its customer. However, the Commission's intent in this regard is to ensure it is clear what service charges are being charged to the shipper, rather than allowing the NVOCC to simply mark up the charges assessed by the VOCC. Therefore, the regulation at § 520.7(a)(3)(iv) has been revised to specify that fees from the NVOCC should be separate and distinguished from charges that are passed through from the VOCC without markup, and named for the service provided (*e.g.,* an ''advance payment charge'').

D. Co-Loaded Cargo

The Commission received comments on its proposal to revise the definition of ''co-loading'' to limit this term to the act of combining of less-than-container-loads (LCL) of cargo. *See generally* APL Logistics at 1–2; Ascent Global at 2; C.H. Powell at 3; Kintetsu at 1; Mohawk Global at 6–8; NCBFAA at 6; NYNJFF&BA at 7–12; and UWL at 3. While some commenters suggested that limiting the definition of co-loading to LCL would prevent full container load (FCL) co-loading, (*see, e.g.,* APL Logistics at 1 and C.H. Powell at 3), this was not the Commission's intent. Most commenters largely favored adding a definition for FCL co-loading, including those supporting the laying out of a ''set of expectations'' for both LCL and FCL co-loading situations. *See generally* APL Logistics at 1–2; Ascent Global at 2; C.H. Powell at 3; Kintetsu at 1; Mohawk Global at 6–8; NCBFAA NPRM Comment at 6; and UWL at 3.

The Commission recognizes that the term co-loading has come to encompass both (1) the combining of LCL cargo by two or more NVOCCs in a container, and (2) the re-selling of space for FCL cargo by one NVOCC to another NVOCC. In proposing to limit the

regulatory definition of co-loading to LCL, the Commission did not intend to prevent arrangements between NVOCCs involving FCL. Instead, the purpose was to accurately describe co-loading in its traditional meaning as the physical combining of cargo in a single shipping container. The Commission could then differentiate regulations that apply to NVOCC co-loading arrangements that involve LCL cargo from those that involve FCL cargo. The Commission has ultimately decided that the definition of co-loading will remain unchanged, and the differentiations between FCL and LCL co-loaded cargo will instead be made through the revision of the current co-loading regulations at section 520.11(c), which limit the co-loading of FCL to shipper-to-carrier relationships only. The Commission also proposed to require that an NVOCC that tenders cargo to another NVOCC must annotate each applicable bill of lading with the identity of any other NVOCC to which the shipment was tendered. This proposal received unanimous opposition that fell into two categories. First, tendering NVOCCs opposed disclosing to their shipper clients the names of the other NVOCCs with whom they work out of concern for the impact on their competitive commercial interests. *See* Yang Ming at 1; Mohawk at 9–10; Ascent at 2; NYNJFF&BA at 9; NCBFAA at 7; APL Logistics at 2–3; and Kintetsu at 1. Second, NVOCCs do not necessarily know the names of all NVOCCs to which the shipment has been passed before it reaches a final master NVOCC that contracts with the VOCC for ocean transport. *See* Mohawk at 10; Ascent at 2; and NYNJFF&BA at 9. Commenters added that annotation will result in a delay of documentation release as annotation would need to be input manually. *See* Yang Ming at 1 and NCBFAA at 7. APL Logistics and Mohawk Global also commented that they were unaware of any circumstance where annotation would have provided a benefit to a beneficiary cargo owner (BCO). *See* APL Logistics at 3 and Mohawk Global at 12. Overall, the commenters asserted that any benefit to the BCO gained from annotation is outweighed by the burden it places on the NVOCC. *See generally* APL Logistics at 3 and Mohawk Global at 12. *See also* NYNJFFF&BA at 9; NCBFAA at 6; and C.H. Powell at 4.

The Commission notes that the requirement to annotate already applies to co-loaded cargo pursuant to § 520.11(c)(2). The final rule does not change Commission regulations in this regard. However, regulations that govern the co-loading of cargo will be augmented to clarify the types of relationships that are allowable for the co-loading of cargo among NVOCCs. Specifically, current regulations make reference to carrier-to-carrier relationships and shipper-to-carrier relationships between NVOCCs in a co-loading situation. These relationships establish the responsibility of each NVOCC as they relate to each other and to the beneficial cargo owner. In a shipper-to-carrier relationship, a master NVOCC receives cargo from a tendering NVOCC and acts as carrier to the tendering NVOCC in issuing its house bill of lading and assuming legal responsibility as carrier for the cargo. The revisions to new paragraph 520.11(c)(2) clarify that this arrangement may be used for the shipment of either LCL or FCL cargo. In a carrier-to-carrier relationship, the NVOCCs enter into an agreement which establishes the terms under which the NVOCCs will share container space for consolidated cargo. Each NVOCC will issue its house bill of lading for its portion of the cargo and act as carrier to its own customer. The revisions to new paragraph 520.11(c)(2) clarify that carrier-to-carrier arrangements will limit this type of arrangement to LCL cargo only.

E. Other Proposed Changes to Part 520

In addition to these changes, the Commission also made a number of other changes to 46 CFR 520.2–520.14 as detailed below.

1. The Commission Is Updating Citations Throughout Part 520

The Commission is removing legacy parallel citations that provided the public with useful information after the codification of the Commission's authorities in Title 46 of the United States Code. The Commission is also deleting the definition of ''Act'' from the definition section. These citations and definition are no longer necessary or accurate, and the Commission is removing them.

2. Clarifying Revisions

The Commission revises several provisions within part 520 to clarify when the regulations are expressing a requirement or obligation. Among these changes include replacing the term ''shall'' with the term ''must'' to clearly indicate that certain acts are required and to identify regulatory obligations. Similarly, the Commission also replaces certain usages of the term ''may'' with the term ''must'' to identify requirements or obligations. In addition, the Commission made other clarifying edits.

3. § 520.2 Definitions

To clarify the definitions in § 520.2, the Commission: adds clarifying language to the definition of ''bulk cargo'' to explain that bulk ''containerized cargo tendered by the shipper'' is subject to mark and count and is, therefore, subject to the requirements of this part; amends the definition of combination rate to spell out the abbreviation for Tariff Rate Item; amends the definition of commodity description to require the description to be identified by a specific number; amends the definition of ''harmonized system'' to remove an outdated reference to the U.S. Customs Service; amends the definition of ''publisher'' to mean a person rather than an organization, and specify that a publisher is authorized to act by a common carrier; amends the definition of ''retrieval'' to remove outdated references to dial-up telecommunications and a network link; amends the definition of ''rules'' to clarify that a common carrier or a conference of common carriers set the tariff terms and conditions; amends the definition of ''shipper'' to specify that ocean transportation refers to the transportation of cargo, to specify that the person to whom delivery is to be made may be a consignee, and to include the meaning of shippers' association; and amends the definition of ''through transportation'' to make it consistent with the Shipping Act's revised definition. The Commission also adds definitions for ''destination scope'' and ''inland division'' to its regulations. Finally, the Commission removes as unnecessary the definitions of ''joint rates,'' ''commodity description number,'' ''local rates,'' ''point of rest,'' and ''shippers' association.''

4. § 520.3 Publication Responsibilities

Pursuant to § 520.3(d), the Commission requires that all common carriers publish a tariff in an automated tariff system and provide the location of that tariff to the Commission prior to the commencement of common carrier service. However, some NVOCCs will publish a tariff upon initially being licensed, but later allow the tariff to lapse and fall out of compliance. The Commission stated its belief that adding notice in § 520.3 of the consequences which already exist pursuant to 46 CFR 515.1 and 515.14 for failure to maintain a tariff could improve tariff compliance. 87 FR 27971, 27974 (May 10, 2021). To this end, the Commission adds a provision to § 520.3 to specify that failing to maintain a tariff will result in the revocation of an NVOCC's license or

suspension of a foreign-based unlicensed NVOCC's registration. In addition, the Commission: changes the term used for the person a common carrier may use to meet their publication requirements from ''agent'' to ''publisher''; includes the common carrier's email address in the list of items provided to the Commission prior to commencement of common carrier service pursuant to a published tariff; and defines the time period allowed for the common carrier to provide changes to its Form FMC–1 to the Commission as within 30 calendar days.

The Commission received one comment regarding this proposal. That comment stated that the proposed rule seemed excessively harsh, since tariffs are quite complex and to subject a carrier to the penalty of a loss of operating authority for an inadvertent updating error would be excessive. *See* NYNJFF&BA at 13. Further, the commenter asserted that the industry would be better served if the Commission issued a warning to those NVOCCs whose tariffs are found to be non-compliant and provide an opportunity to remediate any failing, and that the goal is to bring the industry into compliance. *See* NYNJFF&BA at 13. The Commission does not accept the commenter's premise and notes that while a carrier may be afforded the opportunity to remedy a particular situation depending on the circumstances at hand, the inclusion of this provision is intended to convey the seriousness of the consequences that may follow should the common carrier fail to take action in response to the Commission's efforts to induce compliance. Accordingly, the Commission is not persuaded to revise the language in the proposed rule.

The Commission also received general comments regarding the requirement to publish and maintain a tariff. These comments argued that tariffs are no longer relevant in light of the prevalence of privately negotiated agreements, and that tariffs are complex and difficult to navigate and do not provide transparency of rates and surcharges. *See* Mohawk Global at 1–2; NYNJFF&BA at 1–2. The Commission notes that the Shipping Act requires the publication of tariffs, and tariff publication is still necessary to protect the shipping public and ensure compliance with the Shipping Act.

5. § 520.4 Tariff Contents

The Commission revises § 520.4(a)(3) to clarify that the ocean transportation intermediary that may receive compensation paid by a common carrier or conference is an ocean freight forwarder as defined by 46 U.S.C. 40102(19). In addition, the Commission uses plain language to reword the regulation at § 520.4(a)(4) requiring that a tariff state each charge separately; revises § 520.4(a)(5) to state that sample copies of bills of lading must be legible; and revises § 520.4(a)(8) to state that commodity tariffs must contain a retrievable commodity index.

The Commission also deletes § 520.4(e)(1), which describes voluntary coding for commodity descriptions. To streamline the rule and remove a non-mandatory regulation, the Commission deletes paragraph (e)(1). The Commission notes that, even with the adoption of this change to section 520.4, tariff publishers are still not required to use any numeric code to identify commodities and the Commission still encourages the use of the Harmonized Tariff Schedule of the United States for both the commodity coding and associated terminology (definitions). In addition, the regulations still address the use of numeric codes to identify commodities.

The Commission also makes a variety of other changes to sections 520.5 through 520.14. These changes are listed below:

—*Section 520.5 (standard tariff terminology):* updates the source for geographic names listed in tariffs.
—*Section 520.6 (retrieval of information):* revises the search capability requirement for the retrieval of tariff information to specify that a search for a commodity description must result in a commodity or retrievable commodity index list.
—*Section 520.7 (tariff limitations):* clarifies the date on which a new conference member's participation in the conference tariff becomes effective; specifies that the minimum time allowed to file an overage claim with a common carrier applies to claims filed by a shipper; removes a provision stipulating the methods to be used to compute the weight of green salted hides, in light of requirements mandated by the International Maritime Organization; adds a new paragraph (h) to § 520.7 to specify that NVOCCs may pass through certain charges received from ocean common carriers that are not under the control of the ocean common carrier or conferences; and clarifies that the charges must be clearly listed in the NVOCC's tariffs and not marked up above cost.
—*Section 520.8 (effective dates):* replaces the term ''destination grouping'' with ''destination scope'' in § 520.8(b)(3) to be consistent with other references to ''destination scope'' used in 46 CFR part 520.
—*Section 520.9 (access to tariffs):* updates this section to remove references to obsolete technologies.
—*Section 520.10 (integrity of tariffs):* revises the requirement to maintain historical tariff data in § 520.10(a) by defining the time period that data must be made available to the Commission as generally being within 45 days of a request and making certain grammatical corrections to the requirement that common carriers provide tariff access to the Commission.
—*Section 520.11 (non-vessel-operating common carriers):* removes as unnecessary the requirement that an NVOCC must note in its tariff that it does not tender cargo for co-loading; removes as unnecessary the requirement in 520.11(c) that an NVOCC may not offer special co-loading rates for the exclusive use of other NVOCCs, since published tariff rates are available to all shippers.
—*Section 520.12 (time/volume rates):* clarifies the time/volume rate requirements and that common carriers or conferences may cancel time/volume rates when no shipper accepts these rates within 30 days after the rates are published.
—*Section 520.13 (exemptions and exceptions):* updates the governing rules of this part and the requirements for Department of Defense cargo, updating references to a military component.
—*Section 520.14 (special permission):* specifies the documents required when requesting confidential treatment of an application for special permission and updates the process for submission and payment of applications for special permission.

Except for those comments already noted in the preceding paragraphs in this section (Section E), the Commission received no comments opposing these proposed changes, and one comment supporting the proposed changes. *See* Mohawk Global at 12. The Commission therefore adopts these changes in this final rule.

II. Rulemaking Analyses and Notices

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, provides that whenever an agency is required to publish a notice of proposed rulemaking under the Administrative Procedure Act, 5 U.S.C. 553, the agency must prepare and make available for public comment an initial regulatory flexibility analysis (IRFA)

describing the impact of the proposed rule on small entities. When an agency promulgates a final rule after being required to publish a notice of proposed rulemaking, the agency must prepare and make available to the public the final regulatory flexibility analysis (FRFA) or its summary. The IRFA and FRFA requirements, however, do not apply if the head of the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. To avoid duplicative or unnecessary analyses, the agency must publish such certification either at the time of publication of a notice of proposed rulemaking or at the time of publication of the final rule. 5 U.S.C. 605. The Commission published such certification at the time of the publication of the notice of proposed rulemaking, along with a statement providing the factual basis for the certification. 87 FR at 27975–27976.

Congressional Review Act

The rule is not a ''major rule'' as defined by the Congressional Review Act, codified at 5 U.S.C. 801 *et seq*. The rule will not result in: (1) an annual effect on the economy of $100,000,000 or more; (2) a major increase in costs or prices; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign based companies. 5 U.S.C. 804(2).

National Environmental Policy Act

The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) requires Federal agencies to consider the environmental impacts of proposed major Federal actions significantly affecting the quality of the human environment, as well as the impacts of alternatives to the proposed action. When a Federal agency prepares an environmental assessment, the NEPA implementing regulation requires it to ''include brief discussions of the need for the proposal, of alternatives [. . .], of the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted.'' 40 CFR 1508.9(b). After an environmental assessment, the Commission issued a Finding of No Significant Impact (FONSI) which became final 10 days after publication of the NPRM as the Commission received no petition for review. The FONSI and environmental assessment are available for inspection on the docket at *www.regulations.gov.*

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) (PRA) requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before collecting information from the public. 44 U.S.C. 3507. The agency must submit collections of information in proposed rules to OMB in conjunction with the publication of the notice of proposed rulemaking. 5 CFR 1320.11.

The information collection requirements in part 520 are currently authorized under OMB Control Number 3072–0064. In compliance with the PRA, the Commission submitted the proposed revised information collection to the OMB. Notice of the revised information collections was published in the **Federal Register** and public comments were invited. *See* 87 FR 27971 (May 10, 2021). No comments specifically addressed the revised information collection in part 520. The burden calculations were updated as part of the evaluation of the final rule. While the estimated burden to the public for each component remained the same, the total burden hours increased. The burden hour increase is due to an increase in the number of entities, particularly NVOCCs, entering the industry. In the NPRM the Commission estimated the total person-hour burden at 2,509 person-hours. In this Final Rule, the total person-hour burden is estimated at 2,931 person-hours.

Executive Order 12988 (Civil Justice Reform)

This rule meets the applicable standards in E.O. 12988 titled, ''Civil Justice Reform,'' to minimize litigation, eliminate ambiguity, and reduce burden. Section 3(b) of E.O. 12988 requires agencies to make every reasonable effort to ensure that each new regulation: (1) clearly specifies the preemptive effect; (2) clearly specifies the effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct, while promoting simplification and burden reduction; (4) clearly specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. This document is consistent with that requirement.

Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, available at *http://www.reginfo.gov/public/do/eAgendaMain.*

List of Subjects in 46 CFR Part 520

Freight, Intermodal transportation, Maritime carriers, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Federal Maritime Commission amends 46 CFR part 520 as follows:

PART 520—CARRIER AUTOMATED TARIFFS

■ 1. The authority citation for part 520 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. 40101–40102, 40501–40503, 40701–40706, 41101–41109, 46105.

■ 2. Amend § 520.1 by revising the last sentence of paragraph (a) and paragraphs (b)(2) through (4) to read as follows:

§ 520.1 Scope and purpose.

(a) * * * They implement the tariff publication requirements of 46 U.S.C. 40501–40503.

(b) * * *

(2) Carriers and conferences to meet their publication requirements pursuant to 46 U.S.C. 40501–40503;

(3) The Commission to ensure that carrier tariff publications are accurate and accessible and to protect the public from violations by carriers of 46 U.S.C. 41101–41106; and

(4) The Commission to review and monitor the activities of controlled carriers pursuant to 46 U.S.C. 40701–40706.

■ 3. Amend § 520.2 by:
■ a. Removing the word ''shall'' from the introductory text;
■ b. Removing the definition of ''Act'';
■ c. Revising the definitions of ''Bulk cargo'', ''Combination rate'', and ''Commodity description'';
■ d. Removing the definition of ''Commodity description number'';
■ e. Revising introductory text of the definition of ''Controlled carrier'';
■ f. Adding in alphabetical order a definition for ''Destination scope'';
■ g. Revising the definitions of ''Foreign commerce'' and ''Harmonized System'';
■ h. Adding in alphabetical order a definition for ''Inland division'';
■ i. Removing the definitions of ''Joint rates'' and ''Local rates'';

■ j. Revising the definition of ''Location group,''
■ k. Removing the definition of ''Point of rest'';
■ l. Revising the definitions of ''Publisher,'' ''Retrieval'', ''Rules'', and ''Shipper'';
■ m. Removing definition of ''Shippers' association'';
■ n. Revising the definitions of ''Tariff number'' and ''Tariff rate item'';
■ o. Adding in alphabetical order a definition for ''Through date'';
■ p. Revising the definition of ''Through transportation''; and
■ q. Removing the definition of ''Thru date''.

The revisions and additions read as follows.:

§ 520.2 Definitions.

* * * * *

Bulk cargo means cargo that is loaded and carried in bulk without mark or count in a loose unpackaged form, having homogeneous characteristics. Bulk containerized cargo tendered by the shipper is subject to mark and count and is, therefore, subject to the requirements of this part.

* * * * *

Combination rate means a rate for a shipment moving under intermodal transportation which is computed by the addition of a tariff rate item (''TRI'') and an inland rate applicable from/to inland points not covered by the TRI.

* * * * *

Commodity description means a comprehensive description of a commodity listed in a tariff, including a brief definition of the commodity, that may be identified by a specific number.

* * * * *

Controlled carrier means an ocean common carrier that is, or whose operating assets are, directly or indirectly owned or controlled by a government; ownership or control by a government will be deemed to exist with respect to any common carrier if:

* * * * *

Destination scope means a location group defining the geographic range of cargo destinations covered by a tariff.

* * * * *

Foreign commerce means that commerce under the jurisdiction of title 46 of the United States Code.

* * * * *

Harmonized System means the Harmonized Tariff Schedule of the United States, published by the U.S. International Trade Commission, and Schedule B, administered by the U.S. Census Bureau.

Inland division means the amount paid by a common carrier to an inland carrier for the inland portion of through transportation offered to the public by the common carrier.

* * * * *

Location group means a logical collection of geographic points, ports, states/provinces, countries, or combinations thereof, which is primarily used to identify, by location group name, a group that represents tariff origin and/or destination scope and TRI origin and/or destination.

* * * * *

Publisher means a person authorized by a common carrier to publish or amend tariff information.

* * * * *

Retrieval means the process by which a person accesses a tariff and interacts with the carrier's or publisher's system on a transaction-by-transaction basis to retrieve published tariff matter.

Rules means the stated terms and conditions set by a common carrier or a conference of common carriers which govern the application of tariff rates, charges, and other matters.

* * * * *

Shipper means:

(1) A cargo owner;

(2) The person for whose account the ocean transportation of cargo is provided;

(3) The person to whom delivery is to be made (*e.g.,* consignee);

(4) A shippers' association, meaning a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group to obtain carload, truckload, or other volume rates or service contracts; or

(5) An NVOCC that accepts responsibility for payment of all charges applicable under the tariff or service contract.

* * * * *

Tariff number means a unique three-digit number assigned by the publisher to distinguish it from other tariffs. Tariffs must be identified by the six-digit organization number plus the user-assigned tariff number (*e.g.,* 999999–001) or a Standard Carrier Alpha Code (''SCAC'') plus the user-assigned tariff number.

Tariff rate item (''TRI'') means a single freight rate, in effect on and after a specific date or for a specific time period, for the transportation of a stated cargo quantity, which moves from origin to destination under a single specified set of transportation conditions, such as container size or temperature.

* * * * *

Through date means the date after which an amendment to a tariff element is designated by the publisher to be unavailable for use and the previously effective tariff element automatically goes back into effect.

* * * * *

Through transportation means continuous transportation between origin and destination, for which a through rate is assessed and which is offered or performed by one or more carriers, at least one of which is a common carrier, between a United States port or point and a foreign port or point.

* * * * *

■ 4. Revise § 520.3 to read as follows:

§ 520.3 Publication responsibilities.

(a) *General.* Unless otherwise exempted or excepted by § 520.13, all common carriers and conferences must keep open for public inspection in automated tariff systems tariffs showing all rates, charges, classifications, rules, and practices between all points or ports on their own routes and on any through transportation route that has been established.

(b) *Conferences.* Conferences must publish in their automated tariff systems rates offered pursuant to independent action by their members and may publish any open rates offered by their members. Alternatively, open rates may be published in individual tariffs of conference members.

(c) *Publishers.* Common carriers or conferences can use publishers to meet their publication requirements under this part.

(d) *Notification.* (1) Prior to the commencement of common carrier service pursuant to a published tariff, each common carrier and conference must electronically submit to BTA Form FMC–1 via the Commission's website *www.fmc.gov.*

(2) The common carrier and conference must include on Form FMC–1 its organization name, organization number, home office address, name and email address and telephone number of the firm's representative, the location of its tariffs, and the publisher, if any, used to maintain its tariffs.

(3) Any changes to the above information must be transmitted to BTA within 30 calendar days.

(4) The Commission will provide a unique organization number to new entities operating as common carriers or conferences in the U.S. foreign commerce.

(e) *Location of tariffs.* The Commission will publish on its website, *www.fmc.gov,* a list of the locations of all common carrier and conference tariffs.

(f) *NVOCC failure to maintain tariff.* Failure to maintain a tariff will result in

revocation of an NVOCC's license or suspension of a foreign-based unlicensed NVOCC's registration.

■ 5. Amend § 520.4 by:
■ a. Removing the word ''shall'' wherever it appears and adding in its place the word ''must'';
■ b. Revising paragraphs (a)(3) through (5) and (8);
■ c. Removing paragraph (e)(1);
■ d. Redesignating paragraphs (e)(2) and (3) as paragraphs (e)(1) and (2); and
■ e. Revising newly redesignated paragraph (e)(2)(i) and paragraphs (f)(5), (g), and (i).

The revisions read as follows:

§ 520.4 Tariff contents.

(a) * * *

(3) State the level of compensation, if any, to be paid by a carrier or conference to an ocean freight forwarder, as defined by 46 U.S.C. 40102(19);

(4) State separately each terminal or other charge, privilege, or facility under the control of the carrier or conference and any rules that in any way change, affect, or determine any part or the total of the rates or charges;

(5) Include sample copies of any bill of lading showing legible terms and conditions, contract of affreightment, and/or other document evidencing the transportation agreement;

* * * * *

(8) For commodity tariffs, also contain a retrievable commodity index, commodity descriptions, and tariff rate items.

* * * * *

(e) * * *

(2) * * *

(i) Common carriers or their publishers must have at least one similar index entry which will logically represent the commodity within the alphabetical index for each commodity description it creates under this section. Common carriers or their publishers must create multiple entries in the index for articles with equally valid common use names, such as ''Sodium Chloride,'' ''Salt, common,'' etc.

* * * * *

(f) * * *

(5) Origin and destination scopes or location groups;

* * * * *

(g) *Location groups.* In the primary tariff or in a governing tariff, a publisher may define and create groups of cities, states, provinces, and countries (*e.g.,* location groups) or groups of ports (*e.g.,* port groups), which can be used in the construction of TRIs and other tariff objects, in lieu of specifying particular place names in each tariff item or creating multiple tariff items which are identical in all ways except for place names.

* * * * *

(i) *Shipper requests.* Conference tariffs must contain clear and complete instructions, in accordance with the agreement's provisions, stating where and by what method shippers can file requests and complaints and how they can engage in consultation pursuant to 46 U.S.C. 40303(b)(6)–(7), together with a sample rate request form or a description of the information necessary for processing the request or complaint.

* * * * *

■ 6. Revise § 520.5 to read as follows:

§ 520.5 Standard tariff terminology.

(a) *Approved codes.* The Standard Terminology Appendix contains codes for rate bases, container sizes, service, etc., and units for weight, measure and distance. They are intended to provide a standard terminology baseline for tariffs to facilitate retriever efficiency. Tariff publishers can use additional codes, if they are clearly defined in their tariffs.

(b) *Geographic names.* Tariffs should employ locations (points) that are provided by the National Geospatial-Intelligence Agency or the Geographic Names Information System developed by the U.S. Geological Survey. Ports published or approved for publication in the World Port Index (Pub. 150) should also be used in tariffs. Tariff publishers can use geographic names that are currently in use and have not yet been included in these publications.

■ 7. Amend § 520.6 by
■ a. In paragraphs (a) introductory text, (c), and (d), removing the word ''shall'' and adding in its place the word ''must''; and
■ b. Revising paragraphs (b), (e), and (f).

The revisions read as follows:

§ 520.6 Retrieval of information.

* * * * *

(b) *Search capability.* Publisher must provide the capability to search for tariff matter by non-case sensitive text search. Text search matches for commodity descriptions must result in a commodity or retrievable commodity index list.

* * * * *

(e) *Basic ocean freight.* The minimum rate display for tariffs must consist of the basic ocean freight rate and a list of all assessorial charges and surcharges that apply for the retriever-entered shipment parameters. The tariff must indicate when other rules or charges apply to a shipment under certain circumstances.

(f) *Displays.* All displays of individual tariff matter must include the publication date, effective date, amendment code (use codes in appendix A to this part), and object name or number. When applicable, a through date or expiration date must also be displayed. Use of ''S'' as an amendment code must be accompanied by a Commission issued special permission number.

■ 8. Amend § 520.7 by:
■ a. In paragraphs (a) introductory text, (b), and (c), removing the word ''shall'' and adding in its place the word ''must'';
■ b. In paragraph (a)(3)(i), removing the comma at the end of the paragraph and adding a semicolon in its place;
■ c. In paragraph (a)(3)(ii):
■ i. Removing the word ''may'' and adding in its place the word ''can''; and
■ ii. Removing '', and'' at the end of the paragraph and adding a semicolon in its place;
■ d. In paragraph (a)(3)(iii), removing the word ''may'' and adding in its place the word ''can'';
■ e. Adding paragraph (a)(3)(iv);
■ d. Removing paragraph (e).
■ e. Redesignating paragraphs (f) through (h) as paragraphs (e) through (g);
■ f. Revising newly redesignated paragraphs (e) and (f); and
■ g. Adding a new paragraph (h).

The revisions read as follows:

§ 520.7 Tariff limitations.

(a) * * *

(3) * * *

(iv) An NVOCC may cross-reference an ocean common carrier tariff for the purpose of charging its shipper the ocean common carrier's published and effective surcharges, assessorial charges, and general rate increases, but the NVOCC must clearly list the named charges or categories of charges in the NVOCC's tariff, and must not mark them up above cost. Any fee associated with services provided by the NVOCC to its shipper should be separate and distinguished from the vessel-operating common carrier's surcharges, assessorial charges, and general rate increases, and specify the service for which the shipper is being charged.

* * * * *

(e) *Conference situations.* (1) New members of a conference must cancel any independent tariffs applicable to the trades served by the conference within 90 days of membership in the conference. Individual conference members can publish their own separate open rate tariffs. A new member's participation in the conference tariff is effective on the date notice of membership is published in the

conference tariff, unless a later effective date is specified.

(2) New conference agreements have ninety (90) days within which to publish a new tariff.

(f) *Overcharge claims.* (1) A tariff must not limit the filing of overcharge claims by a shipper with a common carrier to a period of less than 3 years from the accrual of the cause of action.

(2) The acceptance of any overcharge claim cannot be conditioned upon the payment of a fee or charge.

(3) A tariff must not require that overcharge claims based on alleged errors in weight, measurement, or description of cargo be filed before the cargo has left the custody of the common carrier.

* * * * *

(h) *Charges assessed by ocean common carriers to non-vessel-operating common carriers.* NVOCCs may pass through charges received from ocean common carriers for terminal services, canal tolls, additional charges, or other provisions which are not under the control of the ocean common carrier or conferences and for which the NVOCC merely acts as a collection agent. The charges or categories of charges must be clearly listed in the NVOCC's tariffs and not marked up above cost.

■ 9. Amend § 520.8 by:

■ a. Revising paragraphs (b)(3) and (4); and

■ b. In paragraph (c), removing the words ''shall be'' and adding in their place the word ''are''.

The revisions read as follows:

§ 520.8 Effective dates.

* * * * *

(b) * * *

(3) The addition of a port or point to a previously existing origin or destination scope; or

(4) Changes in charges which are not under the control of the common carrier or conference (including terminal services, canal tolls, additional charges, or other provisions) for which the carrier or conference merely acts as a collection agent for such charges and the agency making such changes does so without notifying the common carrier or conference. Ocean common carriers and NVOCCs must not mark up these charges above cost.

* * * * *

■ 10. Revise § 520.9 to read as follows:

§ 520.9 Access to tariffs.

(a) *Methods to access.* Carriers and conferences must provide access to their published tariffs via the internet.

(b) *Internet connection.* (1) The internet connection requires that systems provide a uniform resource locator (''URL'') internet address.

(2) Carriers or conferences must ensure that their internet service providers provide static internet addresses.

(c) *Tariff availability.* (1) Tariffs must be made available to any person without time, quantity, or other limitations.

(2) Carriers and conferences must provide free access to their tariff publication system.

(3) Tariff publication systems must provide user instructions for access to tariff information.

(d) *Federal agencies.* Carriers and conferences must not assess any access charges against the Commission or any other Federal agency.

(e) *User identifications.* Carriers and conferences must provide the Commission with the requisite documentation and the number of user identifications and passwords required to facilitate the Commission's access to their systems, if those systems require such identifications and passwords.

■ 11. Amend § 520.10 by revising paragraphs (a), (b), and (d) to read as follows:

§ 520.10 Integrity of tariffs.

(a) *Historical data.* Carriers and conferences must keep the data that appeared in their tariff publication systems for a period of 5 years from the date such information is superseded, canceled, or withdrawn, and must provide online access to such data for 2 years. After 2 years, such data must be retained online or in other electronic form and must be made available to any person or the Commission upon request within 45 days, unless otherwise agreed. Carriers and conferences may charge a reasonable fee for the provision of historical data, not to exceed the fees for obtaining such data online. Carriers and conferences must not charge a fee to the Commission or any other Federal agency.

(b) *Access date capability.* Each tariff must provide the capability for a retriever to enter an access date, *i.e.,* a specific date for the retrieval of tariff data, so that only data in effect on that date would be directly retrievable. This capability would also align any rate adjustments and assessorial charges that were effective on the access date for rate calculations and designation of applicable surcharges. The access date also applies to the alignment of tariff objects for any governing tariffs.

* * * * *

(d) *Access to systems.* Carriers and conferences must provide the Commission reasonable access to their automated systems and records for the Commission's review.

■ 12. Revise § 520.11 to read as follows:

§ 520.11 Non-vessel-operating common carriers.

(a) *Financial responsibility.* An ocean transportation intermediary that operates as a non-vessel-operating common carrier must state in its tariff publication:

(1) That it has furnished the Commission proof of its financial responsibility in the manner and amount required by part 515 of this chapter;

(2) The manner of its financial responsibility;

(3) Whether it is relying on coverage provided by a group or association to which it is a member;

(4) The name and address of the surety company, insurance company, or guarantor issuing the bond, insurance policy, or guaranty;

(5) The number of its bond, insurance policy, or guaranty; and

(6) Where applicable, the name and address of the group or association providing coverage.

(b) *Agent for service.* Every NVOCC not in the United States must state the name and address of the person in the United States designated under part 515 of this chapter as its legal agent for service of process, including subpoenas. The NVOCC must also state that in any instance in which the designated legal agent cannot be served because of death, disability, or unavailability, the Commission's Secretary will be deemed to be its legal agent for service of process.

(c) *Co-loading.* NVOCCs must address the following situations in their tariffs:

(1) If two or more NVOCCs enter into an agreement which establishes a carrier-to-carrier relationship for the co-loading of cargo, then the existence of such agreement must be noted in the tariff. Carrier-to-carrier relationships apply to the co-loading of less than container loads of cargo only.

(2) If two NVOCCs enter into a co-loading arrangement which results in a shipper-to-carrier relationship, the tendering NVOCC must describe its co-loading practices and specify its responsibility to pay any charges for the transportation of the cargo. A shipper-to-carrier relationship is presumed to exist where the receiving NVOCC issues a bill of lading to the tendering NVOCC for carriage of the co-loaded cargo. Shipper-to-carrier relationships may apply to the co-loading of full container loads or less than container loads of cargo.

(3) An NVOCC which tenders cargo to another NVOCC for co-loading, whether under a shipper-to-carrier or carrier-to-carrier relationship, shall annotate each applicable bill of lading with the identity of any other NVOCC to which the shipment has been tendered for co-loading. Such annotation shall be shown on the face of the bill of lading in a clear and legible manner.

■ 13. Amend § 520.12 by
■ a. Revising paragraph (a);
■ b. In paragraphs (b)(2) introductory text and (d), removing the word ''shall'' and adding in its place the word ''must''; and
■ c. Revising paragraphs (c) and (e).
The revisions read as follows:

§ 520.12 Time/Volume rates.

(a) *General.* Common carriers or conferences must publish in their tariffs rates that are conditioned upon the receipt of a specified aggregate volume of cargo or aggregate freight revenue over a specified period of time.

* * * * *

(c) *Accepted rates.* Once a time/volume rate is accepted by one shipper, it will remain in effect for the time specified, without amendment. If no shipper gives notice within 30 days of publication, a common carrier or conference may cancel the time/volume rate.

* * * * *

(e) *Liquidated damages.* Time/volume rates must not impose or attempt to impose liquidated damages on any shipper that moves cargo under the rate. Carriers and agreements must rerate cargo moved at the applicable tariff rate if a shipper fails to meet the requirements of the time/volume offer.

■ 14. Amend § 520.13 by:
■ a. Revising paragraphs (a), (b)(2) introductory text, (b)(3) introductory text, (c)(4), (d)(2) introductory text, (d)(2)(ii)(A) introductory text, and (d)(2)(ii)(B)(*1*) and (*2*); and
■ b. Removing paragraph (d)(2)(iii).
The revisions read as follows:

§ 520.13 Exemptions and exceptions.

(a) *General.* Exemptions from the requirements of this part are governed by 46 U.S.C. 40103 and § 502.92 of this chapter.

(b) * * *

(2) *Controlled carriers in foreign commerce.* A controlled common carrier is exempt from the provisions of this part exclusively applicable to controlled carriers when:

* * * * *

(3) *Terminal barge operators in Pacific Slope states.* Transportation provided by terminal barge operators in Pacific Slope states barging containers and containerized cargo by barge between points in the United States are exempt from the tariff publication requirements of subtitle IV of title 46 of the United States Code and the rules of this part, where:

* * * * *

(c) * * *

(4) *Department of Defense cargo.* Transportation of U.S. Department of Defense cargo moving in foreign commerce under terms and conditions negotiated and approved by the Military Surface Deployment and Distribution Command and published in a universal service contract. An exact copy of the universal service contract, including any amendments thereto, must be provided to the Commission in electronic format upon request.

* * * * *

(d) * * *

(2) *Between Canada and U.S.* The following services are exempt from the filing requirements of subtitle IV of title 46 of the United States Code and the rules of this part:

* * * * *

(ii) * * *

(A) *Through rates.* Transportation by water of cargo moving in rail cars between British Columbia, Canada, and United States ports on Puget Sound, and between British Columbia, Canada, and ports or points in Alaska, if the cargo does not originate in or is not destined to foreign countries other than Canada, and if:

* * * * *

(B) * * *

(*1*) This exemption does not apply to cargo originating in or destined to foreign countries other than Canada; and

(*2*) The carrier will remain subject to all other provisions of the subtitle IV of title 46 of the United States Code.

* * * * *

■ 15. Amend § 520.14 by:
■ a. Revising paragraphs (a), (b), (c)(1) and (2), and (c)(3) introductory text;
■ b. Removing the word ''and'' at the end of paragraph (c)(3)(ii);
■ c. Removing the period at the end of paragraph (c)(3)(iii) and adding ''; and'' in its place;
■ d. Adding paragraph (c)(3)(iv); and
■ e. Revising paragraph (d).
The revisions and addition read as follows:

§ 520.14 Special permission.

(a) *General.* The statute at 46 U.S.C. 40501(e) authorizes the Commission, in its discretion and for good cause shown, to permit increases or decreases in rates, or the issuance of new or initial rates, on less than the statutory notice. The statutes at 46 U.S.C. 40703 and 40704(a) authorize the Commission to permit a controlled carrier's rates, charges, classifications, rules or regulations to become effective on less than 30 days' notice. The Commission may also in its discretion and for good cause shown, permit departures from the requirements of this part.

(b) *Clerical errors.* Typographical and/or clerical errors constitute good cause for the exercise of special permission authority. Every special permission application must plainly specify the error and present clear evidence of its existence. The special permission application must also include a full statement of the attending circumstances. The special permission application must be submitted with reasonable promptness after publishing the defective tariff material.

(c) * * *

(1) Applications for special permission to establish rate increases or decreases on less than statutory notice or for waiver of the provisions of this part must be made by the common carrier, conference, or agent for publishing. Every such application must be submitted to the Bureau of Trade Analysis and be accompanied by a filing fee of $313.

(2) Applications for special permission must be made by letter, submitted via mail or email, followed promptly by electronic payment of the filing fee.

(3) Applications for special permission must contain the following information:

* * * * *

(iv) A statement that identifies any part(s) of the application for which confidential treatment is sought and a justification for such confidential treatment. In such cases, the applicant must provide both a confidential version and a public version of the application.

(d) *Implementation.* The authority granted by the Commission must be used in its entirety, including the prompt publishing of the material for which permission was requested. Applicants must use the special case number assigned by the Commission with the symbol ''S.''

By the Commission.

Mary Thien Hoang,

Acting Secretary.

[FR Doc. 2023–27783 Filed 12–29–23; 8:45 am]

BILLING CODE 6730–02–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 221223–0282; RTID 0648–XD616]

Fisheries of the Northeastern United States; Summer Flounder Fishery; Quota Transfer From NC to NY

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

ACTION: Temporary rule; quota transfer.

SUMMARY: NMFS announces that the State of North Carolina is transferring a portion of its 2023 commercial summer flounder quota to the State of New York. This adjustment to the 2023 fishing year quota is necessary to comply with the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan (FMP) quota transfer provisions. This announcement informs the public of the revised 2023 commercial quotas for North Carolina and New York.

DATES: Effective December 28, 2023, through December 31, 2023.

FOR FURTHER INFORMATION CONTACT: Laura Deighan, Fishery Management Specialist, (978) 281–9184.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found in 50 CFR 648.100 through 648.111. These regulations require annual specification of a commercial quota that is apportioned among the coastal states from Maine through North Carolina. The process to set the annual commercial quota and the percent allocated to each state is described in § 648.102 and final 2023 allocations were published on January 3, 2023 (88 FR 11).

The final rule implementing Amendment 5 to the Summer Flounder FMP, as published in the **Federal Register** on December 17, 1993 (58 FR 65936), provided a mechanism for transferring summer flounder commercial quota from one state to another. Two or more states, under mutual agreement and with the concurrence of the NMFS Greater Atlantic Regional Administrator, can transfer or combine summer flounder commercial quota under § 648.102(c)(2). The Regional Administrator is required to consider three criteria in the evaluation of requests for quota transfers or combinations: (1) the transfer or combinations would not preclude the overall annual quota from being fully harvested; (2) the transfer addresses an unforeseen variation or contingency in the fishery; and (3) the transfer is consistent with the objectives of the FMP and the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Regional Administrator has determined these three criteria have been met for the transfer approved in this notification.

North Carolina is transferring 100,000 pounds (lb; 43,359 kilograms (kg)) to New York through a mutual agreement between the states. This transfer was requested to ensure New York would not exceed its 2023 quota. The revised summer flounder quotas for 2023 are North Carolina, 3,031,074 lb (1,374,872 kg), and New York, 1,537,768 lb (697,520 kg).

Classification

NMFS issues this action pursuant to section 305(d) of the Magnuson-Stevens Act. This action is required by 50 CFR 648.102(c)(2)(i) through (iv), which was issued pursuant to section 304(b), and is exempted from review under Executive Order 12866.

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

Dated: December 28, 2023.

Jon William Bell,

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

[FR Doc. 2023–28892 Filed 12–28–23; 4:15 pm]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 231221–0314; RTID 0648–XD357]

Fisheries of the Northeastern United States; Atlantic Bluefish Fishery; 2024 and Projected 2025 Bluefish Specifications

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

ACTION: Final action.

SUMMARY: NMFS issues final Atlantic bluefish specifications for the 2024 fishing year and projects specifications for fishing year 2025, as recommended by the Mid-Atlantic Fishery Management Council. This action is necessary to establish allowable harvest levels for the stock to prevent overfishing and promote rebuilding, using the best scientific information available. This action also informs the public of the expected specifications for fishing year 2025.

DATES: Effective January 1 2024.

ADDRESSES: The Mid-Atlantic Fishery Management Council prepared an environmental assessment (EA) for these specifications that describes the action, other considered alternatives, and analyses of the impacts of all alternatives. Copies of the specifications document, including the EA, are available on request from Dr. Christopher M. Moore, Executive Director, Mid-Atlantic Fishery Management Council, Suite 201, 800 North State Street, Dover, DE 19901. These documents are also accessible via the internet at *https://www.mafmc.org/supporting-documents.*

FOR FURTHER INFORMATION CONTACT: Laura Hansen, Fishery Management Specialist, (978) 281–9225.

SUPPLEMENTARY INFORMATION:

Background

The Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission (Commission) jointly manage the Atlantic Bluefish Fishery Management Plan (FMP). The FMP requires the specification of annual regulatory limits for up to 3 years at a time, including: acceptable biological catch (ABC), commercial and recreational annual catch limits (ACL), commercial and recreational annual catch targets (ACT), a commercial quota, a recreational harvest limit (RHL), and other management measures. This action implements bluefish specifications for the 2024 fishing year, and projects specifications for 2025, based on Council and Commission recommendations.

Recent research track (December 2022) and management track (June 2023) assessments for bluefish have determined that the stock is no longer overfished and overfishing is not occurring. However, the spawning stock biomass has not yet reached its target (*i.e.,* the stock has not fully rebuilt), so the fishery remains under its rebuilding plan. These specifications decrease the 2024 ABC by 43 percent from 2023, based on recommendations from the Council's Scientific and Statistical Committee (SSC), results from these assessments, and the rebuilding plan for the stock. No uncertainty buffers were recommended for either the commercial or recreational sector in 2024 or 2025, but commercial discards are now included in the specifications process and are no longer considered negligible. Although the stock is no longer overfished, and therefore transferring

quota between the recreational and commercial sectors is no longer prohibited by governing regulations, no sector quota transfer is included in the 2024 specifications because the fishery is still under a rebuilding plan. The resulting 2024 specifications decrease the commercial quota by 43 percent from 2023 and the RHL by 15 percent from the 2023 specifications. No changes were recommended to recreational management measures (*i.e.,* bag limits), as the average recreational harvest under these limits (11.54 million pounds (lb); 5,234 metric tons (mt)) remains just below the RHL for 2024 (11.96 million lb; 5,425 mt). Status quo recreational measures are also intended to promote continued stability and consistency in the fishery while minimizing the risk of overfishing in the recreational sector.

The proposed rule for this action was published in the **Federal Register** on November 16, 2023 (88 FR 78715), and comments were accepted through December 1, 2023. NMFS received two comments from the public, and no changes are made in this final action because of those comments (see Comments and Responses for additional detail). Additional background information regarding the development of these specifications was provided in the proposed rule and is not repeated here.

Final Specifications

This action implements the Council and Commission's recommended 2024 and projected 2025 bluefish catch specifications, as outlined in the proposed rule (table 1). These final specifications decrease all catch limits in 2024 based on best available information from the recent assessments and the rebuilding plan, but project increases to all limits in 2025. As previously mentioned, this action makes no changes to recreational management measures (such as bag limits), as the expected recreational landings under the existing measures are likely to achieve the 2024 RHL without exceeding it.

TABLE 1—COMPARISON OF 2023, FINAL 2024, AND PROJECTED 2025 BLUEFISH SPECIFICATIONS *

	2023		2024		2025 (projected)	
	Million lb	Metric tons	Million lb	Metric tons	Million lb	Metric tons
Overfishing Limit	45.17	20,490	25.87	11,734	27.49	12,467
ABC = Fishery ACL	30.62	13,890	17.48	7,929	21.83	9,903
Commercial ACL = Commercial ACT	4.29	1,945	2.45	1,110	3.06	1,386
Recreational ACL = Recreational ACT	26.34	11,945	15.03	6,819	18.78	8,517
Commercial Discards	0	0	0.02	11	0.02	11
Recreational Accountability Measures	5.59	2,536	0	0	0	0
Recreational Discards	6.64	3,012	3.08	1,396	3.08	1,396
Commercial Total Allowable Landings (TAL)	4.29	1,945	2.42	1,099	3.03	1,375
Recreational TAL	14.11	6,400	11.96	5,423	15.70	7,121
Sector Transfer	0	0	0	0	0	0
Commercial Quota	4.29	1,945	2.42	1,099	3.03	1,375
RHL	14.11	6,400	11.96	5,423	15.70	7,121

* Specifications are derived from the ABC in metric tons (mt). When values are converted to millions of pounds the numbers may shift due to rounding. The conversion factor used is 1 mt = 2204.6226 lb.

The final coastwide commercial quota is allocated among the coastal states from Maine to Florida based on percent shares specified in the FMP, and the phased-in changes to these share allocations specified in Amendment 7 to the FMP (86 FR 66977, November 24, 2021). The final 2024 and projected 2025 state-allocated commercial quotas are shown below in table 2. No states exceeded their allocated quota in 2022 or are projected to do so in 2023; therefore, no accountability measures for the commercial fishery are required for the 2024 fishing year based on the data available at this time.

TABLE 2—2024 AND PROJECTED 2025 BLUEFISH STATE COMMERCIAL QUOTA ALLOCATIONS

State	2024			2025 (projected)		
	Percent share	Quota (lb)	Quota (kg)	Percent share	Quota (lb)	Quota (kg)
Maine	0.43	10,388	4,712	0.35	10,575	4,797
New Hampshire	0.33	7,975	3,618	0.30	9,116	4,135
Massachusetts	8.17	198,025	89,823	8.66	262,473	119,056
Rhode Island	8.01	194,025	88,008	8.41	254,876	115,610
Connecticut	1.19	28,821	13,073	1.16	35,284	16,004
New York	14.40	348,947	158,280	15.74	477,171	216,441
New Jersey	14.40	348,898	158,258	14.26	432,316	196,095
Delaware	1.29	31,139	14,124	1.09	32,966	14,953
Maryland	2.54	61,471	27,883	2.38	72,213	32,755
Virginia	9.30	225,380	102,231	8.44	255,939	116,092
North Carolina	32.05	776,452	352,193	32.04	971,305	440,577
South Carolina	0.06	1,561	708	0.07	2,248	1,020
Georgia	0.05	1,194	541	0.06	1,895	860
Florida	7.80	188,899	85,683	7.04	213,469	96,828
Total	100	2,422,880	1,099,000	100	3,031,356	1,375,000

Although catch limits are decreasing, neither the recreational nor the commercial sector of the fishery is expected to be substantially impacted by this action. Harvest in both sectors has been decreasing in recent years. Coastwide commercial landings have not exceeded 2.2 million lb (998 mt) in the last 3 years, and recreational harvest

averaged 11.54 million lb (5,234 mt), both lower than the new 2024 limits. The 2025 specifications are projected based on the new assessment data and the fourth year of the rebuilding plan model. The Council will review the projected 2025 specifications in light of any new information to determine if changes are needed prior to their implementation. NMFS will publish a notice prior to the 2025 fishing year to confirm these limits as projected or announce any necessary changes.

Comments and Responses

The public comment period for the proposed rule ended on December 1, 2023, and NMFS received two comments from the public. No changes were made to this final action as a result of these comments. The first comment asked that NMFS raise the recreational bag limit for for-hire vessels from five fish per person to six or seven fish per person. The commenter explained that the perception of a possible higher catch is important to attract and maintain business, but that most customers are unlikely to take home more than four or five fish anyway, so the requested increase would have little impact on the bluefish population. Based on recent recreational data, the expected recreational landings under the current bag limit for for-hire vessels of five fish per person are likely to come very close to the 2024 RHL. Any liberalization in the bag limit would substantially increase the risk of a recreational overage, and the Council did not find a compelling reason to make changes to existing measures at this time.

The next commenter supported the catch limit reductions in 2024, as they and their colleagues have personally seen fewer bluefish available for recreational fishing recently. They also questioned the projected increases in 2025, but trust the expert opinions of the scientists involved. NMFS agrees that the proposed reductions are necessary to prevent overfishing and promote continued rebuilding based on the 2023 assessment and best available science. The 2025 specifications will also be reviewed before their publication to ensure the fishery can support the projected future increases.

Changes From the Proposed Rule

There are no substantive changes from the proposed rule.

Classification

Pursuant to section 304(b)(3) of the Magnuson Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), the Assistant Administrator for Fisheries, NOAA, has determined that these final specifications are necessary for the conservation and management of the Atlantic bluefish fishery, and that they are consistent with the Atlantic Bluefish FMP, the Magnuson-Stevens Act, and other applicable law.

The Assistant Administrator for Fisheries, NOAA, finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date for this action to ensure that the final specifications are in place as close as practicable to the start of the bluefish fishing year on January 1, 2024. This action establishes the final specifications (*i.e.,* catch limits) for the 2024 bluefish fishery. The need to implement these measures in a timely manner to ensure that these final specifications are in place for the start of the 2024 bluefish fishing year constitutes good cause to waive the 30-day delay in effective date of this action.

This action is being issued at the earliest possible date. To ensure that the action is based on the best available science and in compliance with the National Environmental Policy Act, the rulemaking process is dependent on the EA which is prepared by the Council. The proposed rule was prepared in October 2023 upon receipt of the EA from the Council, and published in November 2023 once proper reviews could be completed. The public comment period ended on December 1, 2023, and this final action was written and reviewed as quickly as possible with the intent to publish in time to be effective for the January 1 start of the fishing year.

Furthermore, regulated parties do not require any additional time to come into compliance with this action, and thus, a 30-day delay before it becomes effective does not provide any benefit. Unlike actions that require an adjustment period, vessels fishing for bluefish will not have to purchase new equipment or otherwise expend time or money to comply with these management measures. Rather, complying with this final action simply means adhering to the new catch limits set for the 2024 fishing year. Fishery stakeholders have also been involved in the development of this action and are anticipating this action.

Finally, a 30-day delay in effectiveness would postpone implementation of these catch limits well beyond the start of this fishing year, which is contrary to the public interest as it could create confusion in the bluefish industry around current state quotas. The longer these specifications are delayed, the longer it will take for some state agencies to implement respective regulations and annual management measures, which causes further industry confusion, and tension with state partners. A delay in effectiveness could also compromise the efficacy of the new, lower limits to promote the growth and rebuilding of the stock, by limiting the time they are in place during fishing year 2024.

For these reasons, NMFS finds that a 30-day delay in effectiveness would be contrary to the public interest, and, therefore, waives the requirement consistent with 5 U.S.C. 553(d)(3). As a result, there is good cause to implement this action upon filing in the **Federal Register**.

This final action is exempt from review under Executive Order 12866.

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 and is not repeated here. No comments were received regarding this certification and the initial certification remains unchanged. As a result, a final regulatory flexibility analysis is not required and none was prepared.

This action would not establish any new reporting or record-keeping requirements.

This final action does not duplicate, conflict, or overlap with any existing Federal rules.

This action contains no information collection requirements under the Paperwork Reduction Act of 1995.

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

Dated: December 26, 2023.

Samuel D. Rauch, III,

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

[FR Doc. 2023–28792 Filed 12–29–23; 8:45 am]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 89, No. 1
Tuesday, January 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.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 21

[Docket No. FAA–2022–1135]

Airworthiness Criteria: Special Class Airworthiness Criteria for the Blackshape S.p.A., Model BK160–200 Very Light Airplane

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

ACTION: Notice of proposed airworthiness criteria.

SUMMARY: The FAA announces the availability of, and requests comments on, the proposed airworthiness criteria for the Blackshape S.p.A., Model BK160–200 Very Light Airplane (VLA). This document proposes the airworthiness criteria that the FAA finds to be appropriate and applicable for the VLA design.

DATES: Send comments on or before February 1, 2024.

ADDRESSES: Send comments identified by Docket No. FAA–2022–1135 using any of the following methods:

- *Federal eRegulations Portal:* Go to *https://www.regulations.gov/* and follow the online instructions for sending your comments electronically.
- *Mail:* Send comments to Docket Operations, M–30, U.S. Department of Transportation (DOT), 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington DC, 20590–0001.
- *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.
- *Fax:* Fax comments to Docket Operations at 202–493–2251.

Privacy: The FAA will post all comments it receives, without change, to *https://www.regulations.gov/,* including any personal information the commenter provides. Using the search function of the docket website, anyone can find and read the electronic form of all comments received into any FAA docket, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). DOT's complete Privacy Act Statement can be found in the **Federal Register** published on April 11, 2000 (65 FR 19477–19478), as well as at *https://www.dot.gov/privacy.*

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

FOR FURTHER INFORMATION CONTACT: Tara Fitzgerald, Certification Coordination Section, AIR–613, Certification Engagement Branch, Policy and Standards Division, Aircraft Certification Service, Federal Aviation Administration; telephone 781–238–7130; email *tara.fitzgerald@faa.gov.*

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested people to take part in the development of these airworthiness criteria by sending written comments, data, or views. The most helpful comments reference a specific portion of the airworthiness criteria, explain the reason for any recommended change, and include supporting data. Comments on operational, pilot certification, and maintenance requirements would address issues that are beyond the scope of this document.

Except for Confidential Business Information as described in the following paragraph, and other information as described in title 14, Code of Federal Regulations (14 CFR) 11.35, the FAA will file in the docket all comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed airworthiness criteria. Before acting on this proposal, the FAA will consider all comments received on or before the closing date for comments. The FAA may consider comments filed late if it is possible to do so without incurring delay. The FAA may change these proposed airworthiness criteria based on received comments.

Confidential Business Information

Confidential Business Information (CBI) is commercial or financial information that is both customarily and actually treated as private by its owner. Under the Freedom of Information Act (FOIA) (5 U.S.C. 552), CBI is exempt from public disclosure. If your comments responsive to these proposed airworthiness criteria contain commercial or financial information that is customarily treated as private, that you actually treat as private, and that is relevant or responsive to these proposed airworthiness criteria, 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 the indicated comments will not be placed in the public docket of these proposed airworthiness criteria. Send submissions containing CBI to the individual listed under For Further Information Contact. Comments that the FAA receives, which are not specifically designated as CBI, will be placed in the public docket for these proposed airworthiness criteria.

Background

The European Union Aviation Safety Agency (EASA) submitted an application to the FAA, on behalf of Blackshape S.p.A., on February 10, 2020, for a special class type certificate under 14 CFR 21.17(b) for the Model BK160–200 VLA.

The BK160–200 is a single reciprocating engine airplane (Lycoming IO–320–D1B with constant speed Hartzell propeller), full carbon composite low wing design, with a retractable tri-cycle landing gear. It has conventional control systems (elevator, aileron, rudder, flaps, and longitudinal trim) and provides seats for two persons in a tandem seat configuration with a maximum takeoff gross weight (MTGW) of 850 kilograms (kg) (1,874 pounds). It also has advanced avionic displays, a stall speed of 50 knots, a rechargeable lithium-ion battery, and will perform night visual flight rules (VFR) operations.

Discussion

The FAA establishes airworthiness criteria to ensure the safe operation of aircraft in accordance with 49 U.S.C. 44701(a) and 44704. VLA are eligible for type certification under 14 CFR part 23 or can be type certificated by the FAA as special class aircraft under 14 CFR 21.17(b). Under the provisions of 14 CFR 21.17(b), the airworthiness standards for special class aircraft are those the FAA finds to be appropriate and applicable to the specific type design.

In 1992, the FAA published advisory circular (AC) 21.17–3,[1] ''Type Certification of Very Light Airplanes Under [14 CFR] 21.17(b)'' to provide guidance on an acceptable means of compliance for type, production, and airworthiness certification for VLA. That AC designates the former Joint Aviation Authorities (JAA) of Europe publication, ''Joint Aviation Requirements for Very Light Aeroplanes'' (JAR–VLA) dated April 26, 1990, as acceptable airworthiness criteria that provides an equivalent level of safety under 14 CFR 21.17(b) for FAA type certification of VLA as a special class of aircraft. After EASA was formed, EASA developed its VLA certification standards (CS–VLA) from JAR–VLA, with CS–VLA becoming effective on November 14, 2003.

The FAA issued its ''Policy for Type Certification of Very Light Airplanes as a Special Class of Aircraft'' on October 11, 2023 (88 FR 70344). This policy states that the FAA will continue to allow the type certification of VLA as a special class of aircraft under 14 CFR 21.17(b) using CS–VLA or JAR–VLA requirements, while also allowing eligibility for certification as a normal category airplane in accordance with part 23 using accepted means of compliance. The FAA accepts CS–VLA and JAR–VLA airworthiness criteria as providing an equivalent level of safety under § 21.17(b) for special class type certification of VLA airplanes. The policy explains the FAA will consider proposals for airplane designs that differ from the VLA limits defined in AC 21.17–3 for type certification as a special class of aircraft under § 21.17(b), provided the VLA would be certified to the JAR–VLA or CS–VLA requirements plus additional airworthiness criteria the FAA finds appropriate and applicable for the proposed design. The policy includes additional acceptable airworthiness criteria for certain design features that differ from those defined in AC 21.17–3 and that provide an equivalent level of safety under § 21.17(b) for special class type certification of VLA airplanes.

The FAA is proposing to certify the Blackshape S.p.A. Model BK160–200 VLA to CS–VLA, Amendment 1, dated March 5, 2009, with additional requirements for advanced avionic displays, VFR night operations, MTGW of 850 kg (1,874 pounds), a stall speed of 50 knots, and a rechargeable lithium-ion battery.

Applicability

These proposed airworthiness criteria, established under the provisions of § 21.17(b), are applicable to the Blackshape S.p.A. Model BK160–200 VLA. Should Blackshape S.p.A. apply at a later date for a change to the type certificate to include another model, these airworthiness criteria would apply to that model as well, provided the FAA finds them appropriate in accordance with the requirements of subpart D to part 21.

Conclusion

This action affects only the airworthiness criteria for one model VLA. It is not a rule of general applicability.

Authority Citation

The authority citation for these airworthiness criteria is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Airworthiness Criteria

The FAA proposes to establish the airworthiness criteria for type certification of the Blackshape S.p.A. Model BK160–200 as EASA Certification Specifications (CS) for Very Light Aeroplanes CS–VLA, Amendment 1, dated March 5, 2009, with additional requirements identified in ''Policy for Type Certification of Very Light Airplanes as a Special Class of Aircraft'' (88 FR 70344, October 11, 2023) for Advanced Avionic Displays, Night-VFR Operations, Increased Maximum Certificated Takeoff Weight and Increased Stall Speed, and Rechargeable Lithium Ion Battery.

Issued in Washington, DC, on December 22, 2023.

James Wilborn,

Acting Manager, Certification Coordination Section, Policy and Standards Division, Aircraft Certification Service.

[FR Doc. 2023–28718 Filed 12–29–23; 8:45 am]

BILLING CODE 4910–13–P

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

FEDERAL TRADE COMMISSION

16 CFR Part 464

Trade Regulation Rule on Unfair or Deceptive Fees

AGENCY: Federal Trade Commission

ACTION: Notice of proposed rulemaking; extension of comment period.

SUMMARY: The Federal Trade Commission (''FTC'' or ''Commission'') is extending the deadline for filing comments on its notice of proposed rulemaking (''NPRM'') concerning its trade regulation rule entitled the ''Rule on Unfair or Deceptive Fees.''

DATES: For the NPRM published November 9, 2023 (88 FR 77420), the comment deadline is extended from January 8, 2024, to February 7, 2024.

ADDRESSES: Interested parties may file a comment online or on paper by following the instructions in the **SUPPLEMENTARY INFORMATION** section of the NPRM published at 88 FR 77420. Write ''Unfair or Deceptive Fees NPRM, R207011'' on your comment and file your comment online at *https://www.regulations.gov*. If you prefer to file your comment on paper, please mail your comment to: Federal Trade Commission, Office of the Secretary, 600 Pennsylvania Avenue NW, Mail Stop H–144 (Annex J), Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Janice Kopec or Stacy Cammarano, Division of Advertising Practices, Bureau of Consumer Protection, Federal Trade Commission, 202–326–2550 (Kopec), 202–326–3308 (Cammarano), *jkopec@ftc.gov, scammarano@ftc.gov*.

SUPPLEMENTARY INFORMATION:

I. Comment Period Extension

On November 9, 2023 (88 FR 77420), the Commission published in the **Federal Register** an NPRM with a January 8, 2024, deadline for filing comments. The Commission published the NPRM to solicit comments about the proposed Rule on Unfair or Deceptive Fees and, specifically, on the questions set forth in Section X of the NPRM.

Interested parties have subsequently requested an extension of the public comment period to give them additional time to respond to the NPRM's request for comment. While the original comment period affords the public a meaningful opportunity to provide the Commission with comments regarding its rulemaking proposal, the Commission will extend the period for public comment on its NPRM an additional 30 days to February 7, 2024.

II. Request for Comment

The Federal Trade Commission (''FTC'' or ''Commission'') invites interested parties to submit data, views, and arguments on the proposed Rule on Unfair or Deceptive Fees and, specifically, on the questions set forth in Section X of the NPRM. The comment period will remain open until February 7, 2024.[1] To the extent practicable, all comments will be available on the public record and posted at the docket for this rulemaking at *https://www.regulations.gov/docket/FTC-2023-0064*. For additional detail regarding comment submission, see the information in the NPRM published at 88 FR 77420.

By direction of the Commission.

Joel Christie,

Acting Secretary.

[FR Doc. 2023–28669 Filed 12–29–23; 8:45 am]

BILLING CODE 6750–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–112916–23]

RIN 1545–BQ90

Statutory Disallowance of Deductions for Certain Qualified Conservation Contributions Made by Partnerships and S Corporations; Hearing Cancellation

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Cancellation of a notice of public hearing on a proposed rulemaking.

SUMMARY: This document cancels a public hearing on proposed regulations concerning the statutory disallowance rule enacted by the SECURE 2.0 Act of 2022 to disallow a Federal income tax deduction for a qualified conservation contribution made by a partnership or an S corporation after December 29, 2022, if the amount of the contribution exceeds 2.5 times the sum of each partner's or S corporation shareholder's relevant basis.

DATES: The public hearing scheduled for January 3, 2024, at 10 a.m. ET is cancelled.

FOR FURTHER INFORMATION CONTACT: Vivian Hayes of the Publications and Regulations Section, Associate Chief Counsel (Procedure and Administration) at (202) 317–6901 (not a toll-free number).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and a notice of public hearing that appeared in the **Federal Register** on November 20, 2023 (88 FR 80910) announced that a public hearing being held in person and by teleconference was scheduled for January 3, 2024, at 10 a.m. ET. The subject of the public hearing is under 26 CFR part 1.

The public comment period for these regulations expired on December 20, 2023. The notice of proposed rulemaking and notice of public hearing instructed those interested in testifying at the public hearing to submit a request to testify and an outline of the topics to be addressed by December 20, 2023. We did not receive a request to testify at the Public Hearing. Therefore, the public hearing scheduled for January 3, 2024, at 10 a.m. ET is cancelled.

Oluwafunmilayo A. Taylor,

Section Chief, Publications and Regulations Section, Associate Chief Counsel, (Procedure & Administration).

[FR Doc. 2023–28793 Filed 12–29–23; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R09–OAR–2023–0620; FRL–11601–01–R9]

Air Plan Revisions; Arizona; Arizona Department of Environmental Quality; Stationary Source Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve two revisions to the Arizona Department of Environmental Quality (ADEQ) portion of the Arizona State Implementation Plan (SIP). In this action, we are proposing to approve revisions submitted by the ADEQ governing the issuance of permits for stationary sources in accordance with changes that the EPA has made to its New Source Review (NSR) program regulations under the Clean Air Act (CAA or ''the Act''). We are also proposing to determine that with these revisions, the ADEQ's NSR program satisfies the requirements for the preconstruction review and permitting of major sources and major modifications under part D of title I of the Act for areas designated nonattainment with the 2015 ozone National Ambient Air Quality Standards (NAAQS) with a Marginal classification, for areas and sources within the ADEQ's permitting jurisdiction. We are taking comments on this proposal and plan to follow with a final action.

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

ADDRESSES: Submit your comments, identified by Docket ID No EPA–R09–OAR–2023–0620 at *https://www.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 the disclosure of which 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: Camille Cassar, EPA Region IX, 75 Hawthorne St., San Francisco, CA 94105; by phone: (415) 947–4164; or by email to *cassar.camille@epa.gov.*

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

Table of Contents

[1] The Commission elects not to provide a separate, second comment period for rebuttal comments. *See* 16 CFR 1.11(e) (''The Commission may in its discretion provide for a separate rebuttal period following the comment period.'').

I. The State's Submittal

A. What rules did the State submit?

The rules that are the subject of the EPA's current proposed action were adopted by the ADEQ and submitted to the EPA on December 6, 2022 (''December 2022 NSR submittal''). The ADEQ is the governor's designee for submitting official revisions of the Arizona SIP to the EPA. Table 1 below identifies the rules reviewed in this action for approval into the Arizona SIP.

TABLE 1—SIP SUBMITTAL

Rule citation	Title	State effective date of rule to be added
R18–2–101 (except 20)	Definitions	05/04/2022
R18–2–404	Offset Standards	05/04/2022

The ADEQ's December 2022 NSR submittal was determined to be complete by operation of law, according to Appendix V of 40 CFR part 51, on June 6, 2023.

B. Are there other versions of these rules?

The SIP-approved versions of the submitted rules are identified below in Table 2. The ADEQ's December 2022 NSR submittal also requests that, as part of this action, we remove from the ADEQ portion of the Arizona SIP the previous SIP-approved versions of the same rules. The rules requested for removal from the SIP are listed in Table 2 below.

TABLE 2—CURRENT SIP APPROVED RULES

Rule addressed in this TSD and rulemaking	Title	Existing SIP rule(s) requested to be removed from SIP (state effective date)
R18–2–101 (except 20)	Definitions	R18–2–101 (except 20) (02/01/2020).
R18–2–404	Offset Standards	R18–2–404 (03/21/2017).

C. What is the purpose of the submitted rules?

The purpose of these submitted revisions for the ADEQ's NSR program is to update its rules to ensure consistency with certain changes that the EPA has made to its NSR program rules, and to address the CAA's statutory and regulatory requirements for Nonattainment New Source Review (NNSR) permit programs in areas designated nonattainment with the 2015 ozone NAAQS with a Marginal classification, for areas and sources within the ADEQ's permitting jurisdiction.

II. The EPA's Evaluation

A. What is the background for this action?

This action focuses on the preconstruction permitting requirements for stationary sources, also called New Source Review, in title I of the CAA and the EPA's implementing regulations addressing the SIP requirements for state NSR programs at 40 CFR part 51, subpart I.

The action focuses on two necessary revisions to the ADEQ's SIP-approved NSR program rules in accordance with changes that the EPA has made to its NSR program rules and provides the EPA's findings on whether these SIP revisions submitted by the ADEQ meet federal NSR requirements.

Submitted Rule Arizona Administrative Code (A.A.C.) R18–2–101 (except 20) contains a change to the definition of categorical sources for ''municipal incinerators'' as compared with the prior version of the rule that is currently included in the Arizona SIP. The ADEQ amended its definition of ''categorical sources'' to include municipal incinerators capable of charging more than 50 tons of refuse per day, as compared with the previous version of the definition, which applied only to those capable of charging more than 250 tons per day. This change was made to ensure consistency with CAA section 169(a) and federal regulatory requirements related to major NSR applicability for municipal incinerators in the EPA's regulations governing state Major NSR programs at 40 CFR 51.165–51.166, as updated by the EPA's 2021 Error Corrections Rule.[1]

Submitted Rule A.A.C. R18–2–404 eliminates the ozone interprecursor trading provision that was included in the prior version of the rule that is currently included in the Arizona SIP. This change was made to ensure consistency with the federal rules governing NNSR programs regulating ozone precursors in 40 CFR 51.165, which were also updated as part of the EPA's Error Corrections Rule.[2]

The ADEQ requested that the EPA replace the current SIP-approved versions of R18–2–101 and R18–2–404 with the submitted revised versions.

The December 2022 NSR submittal also addresses state NNSR program requirements for the 2015 ozone NAAQS. On October 26, 2015, the EPA issued a final rule revising the NAAQS for ozone, reducing the standards to a level of 0.070 ppm.[3] On June 4, 2018, certain portions of Arizona (Yuma and Phoenix-Mesa) were designated and classified as Marginal nonattainment for the 2015 ozone NAAQS.[4] This designation of certain portions of Arizona as federal ozone nonattainment areas for the 2015 ozone NAAQS triggered the requirement for the ADEQ to provide a SIP submittal addressing the NNSR program requirements for this NAAQS and classification for sources and areas within its permitting

[1] See 86 FR 37918, 37922 (July 19, 2021).

[2] See 86 FR 37918, 37924.

[3] 40 CFR 50.19; see 80 FR 65292, 65452–53.

[4] 83 FR 25776. We note that on October 7, 2022, the EPA issued a final rule determining that while the Yuma nonattainment area attained the 2015 ozone NAAQS, the Phoenix-Mesa nonattainment area failed to attain by the applicable attainment date and therefore would be reclassified as a Moderate nonattainment area for the 2015 ozone NAAQS. 87 FR 60897.

jurisdiction.[5] Therefore, this action also addresses whether the ADEQ's NNSR program, as revised by the rules in this SIP submittal, satisfies the applicable CAA NNSR program requirements for the 2015 ozone NAAQS for the Marginal classification for sources and areas within its permitting jurisdiction.

B. How is the EPA evaluating these rules?

The EPA reviewed the December 2022 NSR submittal for compliance with CAA requirements for SIPs in general as set forth in CAA section 110(a)(2), the requirements for state stationary source preconstruction permitting programs in 40 CFR part 51, subpart I, including certain changes made to those rules in the Error Corrections Rule, and the requirements related to SIP revisions in CAA sections 110(l)[6] and 193.[7] Our review also evaluated the ADEQ's NNSR program, as revised by the submitted revised rules, for compliance with the state NNSR program requirements applicable to ozone nonattainment areas with a Marginal classification.

C. Do the rules meet the evaluation criteria?

With respect to procedural requirements, CAA sections 110(a)(2) and 110(l) require that revisions to a SIP be adopted by the state after reasonable notice and public hearing. Based on our review of the public process documentation included in the December 2022 NSR submittal, we find that the ADEQ has provided sufficient evidence of public notice, opportunity for comment and a public hearing prior to adoption and submittal of the rules to the EPA.

We have evaluated the rule revisions in the December 2022 NSR submittal with respect to the CAA requirements for SIPs in general as set forth in CAA section 110(a)(2), the requirements for state stationary source preconstruction permitting programs in 40 CFR part 51, subpart I, including recent changes to the requirements for State stationary source preconstruction permitting programs in 40 CFR part 51, subpart I, made in the EPA's Error Corrections Rule, as described above, and we find that the submittal satisfies these requirements. In addition, we have evaluated the ADEQ's NNSR program, as revised by the submitted revised rules, for compliance with the NNSR requirements applicable to ozone nonattainment areas with a Marginal classification, and have determined that this program satisfies the applicable CAA and regulatory requirements for NNSR permit programs under part D of title I of the Act for all relevant ozone NAAQS, specifically including the requirements applicable to areas designated nonattainment for the 2015 ozone NAAQS with a Marginal classification, for the areas and sources within the ADEQ's permitting jurisdiction.

Regarding the additional substantive requirements of CAA sections 110(l) and 193, our action will result in a more stringent SIP, while not relaxing any existing provision contained in the SIP. We have concluded that our action would comply with section 110(l) because our approval of these rules will not interfere with any applicable requirement concerning attainment and reasonable further progress, or any other CAA applicable requirement. In addition, our approval of these rules will not relax any pre-November 15, 1990 requirement in the SIP, and therefore changes to the SIP resulting from this action ensure greater or equivalent emission reductions of the nonattainment pollutants and their precursors in the District; accordingly, we have concluded that our action is consistent with the requirements of CAA section 193.

Our TSD contains a more detailed discussion of our analysis of the December 2022 NSR submittal.

III. Proposed Action and Public Comment

As authorized in section 110(k)(3) of the Act, the EPA is proposing to fully approve the submitted rules into the Arizona SIP because they fulfill all relevant CAA requirements, and to remove the prior version of these rules from the SIP. We have concluded that our approval of the submitted rules would comply with the relevant provisions of CAA sections 110(a)(2), 110(l), 165, 172(c)(5), 173, and 193, and 40 CFR 51.160–51.166. We are also proposing to find that with the submitted rule revisions, the ADEQ's NSR program satisfies the requirements for the preconstruction review and permitting of major sources and major modifications under part D of title I of the Act for areas designated nonattainment with the 2015 ozone NAAQS with a Marginal classification, for the areas and sources within the ADEQ's permitting jurisdiction. If we finalize this action as proposed, our action will be codified through revisions to 40 CFR 52.220a (Identification of plan-in part).

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

IV. Incorporation by Reference

In this rule, the EPA is proposing to include in a final EPA rule regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, the EPA is proposing to incorporate by reference the following the ADEQ rules: A.A.C. R18–2–101 (except 20) and R18–2–404, as described in Table 1 of this proposal. These rules are intended to address the CAA's statutory and regulatory requirements for New Source Review permit programs for major sources emitting nonattainment air pollutants and their precursors under parts C and D of title I of the CAA. 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).

V. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air 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 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);

[5] CAA section 182(a); 40 CFR 51.1314.

[6] CAA section 110(l) requires SIP revisions to be subject to reasonable notice and public hearing prior to adoption and submittal by states to the EPA and prohibits the EPA from approving any SIP revision that would interfere with any applicable requirement concerning attainment and reasonable further progress, or any other applicable requirement of the CAA.

[7] CAA section 193 prohibits the modification of any SIP-approved control requirement in effect before November 15, 1990 in a nonattainment area, unless the modification ensures equivalent or greater emission reductions of the relevant pollutants.

- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001); and
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act.

Executive Order 12898 (Federal Actions To Address Environmental Justice in Minority Populations and Low-Income Populations, 59 FR 7629, Feb. 16, 1994) (E.O. 12898) 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 ADEQ did not evaluate environmental justice considerations as part of its SIP submittal; the CAA and applicable implementing regulations neither prohibit nor require such an evaluation. The EPA did not perform an EJ analysis and did not consider EJ in this action. Due to the nature of the action being taken here, this action is expected to have a neutral to positive impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.

In addition, 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).

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, Volatile organic compounds.

Dated: December 20, 2023.

Martha Guzman Aceves,

Regional Administrator, Region IX.

[FR Doc. 2023–28528 Filed 12–29–23; 8:45 am]

BILLING CODE 6560–50–P

Notices

Federal Register
Vol. 89, No. 1
Tuesday, January 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

Forest Service

Region 5 and Region 6; California, Oregon, and Washington; Forest Plan Amendment for Planning and Management of Northwest Forests Within the Range of the Northern Spotted Owl

Correction

In notice document 2023–27742 beginning on page 87393 in the issue of Monday, December 18, 2023, make the following correction:

On page 87393, in the second column, in the third and fourth lines from the bottom, ''January 29, 2024'' should read ''February 1, 2024''.

[FR Doc. C1–2023–27742 Filed 12–29–23; 8:45 am]
BILLING CODE 0099–10–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

[DOCKET #: RBS–23–BUSINESS–0024]

Notice of Solicitation of Applications for the Rural Innovation Stronger Economy (RISE) Grant Program for Fiscal Year 2024

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBCS, Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), invites applications under the Rural Innovation Stronger Economy (RISE) program for fiscal year (FY) 2024, subject to the availability of funding. The Agency estimates $2,000,000 will be available for the RISE Program for FY 2024. Selected applicants will use Agency grant funds to provide financial assistance in support of innovation centers and job accelerator programs that improve the ability of distressed rural communities to create high wage jobs, accelerate the formation of new businesses, and help rural communities identify and maximize local assets. All applicants are responsible for any expenses incurred in developing their applications.

DATES: Completed applications must be submitted electronically no later than 11:59 p.m. Eastern Time April 1, 2024, through *www.grants.gov* to be eligible for grant funding. Please review the *Grants.gov* website for instructions on the process of registering your organization as soon as possible to ensure that you are able to meet the electronic application deadline. The Agency will not consider any application(s) received after the deadline and that are not submitted through *www.grants.gov.* Potential applicants may submit a concept proposal for review by the Agency to *www.grants.gov* by 4:30 p.m. local time on February 1, 2024 in compliance with 7 CFR 4284.1115(a). The application and Concept Proposal deadline dates and times are firm.

ADDRESSES: Entities wishing to apply for a RISE grant, or to submit a Concept Proposal for their project, may download the application documents and requirements delineated in this Notice from the RD RISE website: *https://www.rd.usda.gov/programs-services/business-programs/rural-innovation-stronger-economy-rise-grants.* Information for the submission of an electronic application may be found at: *www.grants.gov.* Concept Proposals containing elements outlined in Section D.2 of this Notice must be submitted to *www.grants.gov.*

FOR FURTHER INFORMATION CONTACT: Rachel Reister, Program Management Division, RBCS, USDA, 1400 Independence Avenue SW, Mail Stop-3226, Washington, DC 20250–3226, (202) 720–1400 or email: *rachel.reister@usda.gov*.

SUPPLEMENTARY INFORMATION:

Overview

Federal Awarding Agency Name: Rural Business-Cooperative Service.

Funding Opportunity Title: Rural Innovation Stronger Economy Grant Program.

Announcement Type: Notice of Solicitation of Applications.

Funding Opportunity Number: RD–RBS–24–01–RISE.

Assistance Listing: 10.755.

Dates: Electronic applications must be received and accepted by no later than 11:59 Eastern Time, April 1, 2024, or they will not be considered for funding.

Potential applicants may submit a concept proposal for review by the Agency to *https://www.grants.gov*: February 1, 2024 in compliance with 7 CFR 4284.1115(a). Submission of a concept proposal is not an application for program funds.

Rural Development Key Priorities: The Agency encourages applicants to consider projects that will advance the following key priorities (more details available at *https://www.rd.usda.gov/priority-points*):

- Assisting rural communities to recover economically through more and better market opportunities and through improved infrastructure;
- Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects; and
- Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities.

A. Program Description

1. Purpose of the Program. The RISE program is a grant program to help struggling communities by funding job accelerators in low-income rural communities. The primary objective of the RISE program is to support jobs accelerator partnerships to improve the ability of distressed rural communities to create high wage jobs, accelerate the formation of new businesses through innovation centers, and help rural communities identify and maximize local assets.

2. Statutory Authority. The RISE program is a grant program authorized under section 379I of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008w). The regulations governing this program are published at 7 CFR part 4284, subpart L.

3. Definitions. The definitions applicable to this Notice are published at 7 CFR 4284.1103. In addition, the terms ''rural'' and ''rural area'' are defined at section 379I of the Consolidated Farm and Rural Development Act (7 U.S.C. 1991(a)(13)) and will be used for this program.

4. Application of Awards. The Agency will review, evaluate, and score

applications received in response to this Notice based on the provisions found in 7 CFR 4284.1117, Scoring RISE grant applications, and as indicated in this Notice. Awards under the RISE program will be made on a competitive basis using specific selection criteria contained in 7 CFR 4284.1118, Selecting RISE grant applications for award. The Agency will award RISE grants in accordance with 7 CFR 4284.1119, Awarding and Administering RISE Grants.

B. Federal Award Information

Type of Award: Grants.

Fiscal Year Funds: FY 2024.

Available Funds: Funding is anticipated to be $2,000,000. RBCS may, at its discretion, increase the total level of funding available in this funding round or in any category in this funding round from any available source provided the awards meet the requirements of the statute which made the funding available to the agency.

Award Amounts: The minimum award amount per grant is $500,000 and the maximum award amount per grant is $2,000,000, as authorized by Section 379I of the Consolidated Farm and Rural Development Act (7 U.S.C. 2008w).

Anticipated Award Date: September 15, 2024.

Anticipated Performance Period: September 15, 2024 through December 31, 2028.

Renewal or Supplemental Awards: None.

Type of Assistance Instrument: Grant Agreement.

C. Eligibility Information

1. Eligible Applicants. An eligible applicant must be a rural jobs accelerator partnership formed after December 20, 2018, and meet the eligibility criteria found in 7 CFR 4284.1112 and this Notice to apply for this program. Eligibility exclusions are as follows:

(a) Individuals and individual entities such as businesses are not eligible applicants for the RISE program.

(b) An applicant is not eligible if they have been debarred or suspended or otherwise excluded from or ineligible for participation in Federal assistance programs under Executive Order 12549, ''Debarment and Suspension.'' The Agency will check the System for Award Management (SAM) at the time of application, prior to funding any grant award, and disbursement of funds to determine if the applicant has been debarred or suspended. In addition, an applicant will be considered ineligible for a grant due to an outstanding judgment obtained by the U.S. in a Federal Court (other than U.S. Tax Court), is delinquent on the payment of Federal income taxes, or is delinquent on Federal debt. See 7 CFR 4284.1109. The applicant must certify as part of the application that they do not have an outstanding judgment against them. The Agency will check the Do Not Pay System at the time of application, prior to funding any grant award and each disbursement of funds to verify this information.

(c) Any corporation that has been convicted of a felony criminal violation under any Federal law within the past 24 months or that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability, is not eligible for financial assistance unless a Federal agency has considered suspension or debarment of the corporation and has made a determination that this further action is not necessary to protect the interests of the Government.

Applications that fail to meet any of these requirements by the application deadline will be deemed ineligible and will not be evaluated further.

2. Cost Sharing or Matching. The matching funds requirement is 20 percent of the eligible project costs of any activity carried out using RISE grant funds. Matching funds must be available throughout the grant term and applied individually to each RISE activity. Grant funds may only be used for up to 80 percent of an eligible RISE activity. Additional information on matching funds is found at 7 CFR 4284.1114. When calculating the matching funds requirement, round to whole dollars as appropriate. The matching funds requirement is calculated by multiplying the total eligible project costs of each eligible RISE activity by 0.20. The amount of matching funds required for the RISE activities is then added together to obtain the total amount of non-Federal matching funds required for the project. Applications that only provide matching funds equal to 20 percent of the grant amount will be deemed ineligible due to an insufficient matching funds amount.

A written commitment of matching funds must be provided to verify that all matching funds are available during the grant period and this documentation should be included in the application in accordance with requirements identified in Section D.2 of this Notice. If an applicant is awarded a grant, additional verification documentation may be required to confirm the availability of matching funds for the duration of the grant term.

Matching funds must meet all of the following criteria:

(a) They must be spent on eligible expenses during the grant period.

(b) They must be from eligible sources.

(c) They must be spent in advance or as a pro-rata portion of grant funds being spent.

(d) They must be provided by either the applicant or a third party in the form of cash or an in-kind contribution.

(e) They cannot include other Federal grants unless provided by authorizing legislation.

(f) They cannot include cash or in-kind contributions donated outside of the grant period.

(g) They cannot include over-valued, in-kind contributions.

(h) They cannot include any project costs that are ineligible under the RISE program.

(i) They cannot be used for ineligible grant purposes as stated in 7 CFR 4284.1114, 2 CFR part 200, subpart E, ''Cost Principles,'' and the most current Federal Acquisition Regulation (for-profits) or successor regulations.

(j) They can include reasonable and customary travel expenses for staff delivering the RISE program if written policies explaining how these costs are normally reimbursed, including rates, have been established. An explanation of this policy must be included in the application, or the contributions will not be considered as eligible matching funds.

(k) Applicants must be able to document and verify the number of hours worked and the value associated with any in-kind contribution being used to meet a matching funds requirement.

(l) In-kind contributions provided by individuals, businesses, or cooperatives which are being assisted by the Applicant cannot provide any direct benefit to their own projects as the Agency considers this to be a conflict of interest or the appearance of a conflict of interest.

3. Other Eligibility Requirements.

(a) *Purpose Eligibility.* Applications must propose the establishment of an innovation center and/or costs directly related to operations of an innovation center and/or costs directly associated with support of programs to be carried out at or in direct partnership with job accelerators as outlined in 7 CFR 4284.1113. The Applicant project outcome must accelerate the formation of new businesses with high-growth potential, improve the ability of rural

businesses and distressed rural communities to create high-wage jobs, and strengthen rural regional economies. Project funds, including grant and matching funds, must be for eligible purposes only as outlined in 7 CFR 4284.1114.

(b) *Project Eligibility.* All project activities must be for the benefit of communities, industries and residents located in a rural area, as defined. The Applicant is cautioned against taking any actions or incurring any obligations prior to the Agency completing the environmental review that would either limit the range of alternatives to be considered or that would have an adverse effect on the environment, such as the initiation of construction. If the Applicant takes any such actions or incurs any such obligations, it could result in project ineligibility. Projects involving the construction of an innovation center as an eligible purpose are subject to the environmental requirements of 7 CFR part 1970, as well as the applicable design and construction requirements of RD and the adopted codes of the jurisdiction.

(c) *Additional Eligibility Requirements.*

(i) The rural jobs accelerator partnership must have a lead applicant who is responsible for the administration of the grant proceeds and activities. A lead applicant will be the named applicant on Agency documents and must be one of the following entities listed in 7 CFR 4284.1112(b), which is as follows:

(1) A district organization;

(2) An Indian Tribe or a political subdivision of a Tribe, including a special purpose unit of a tribal government engaged in economic development activities, or a consortium of Indian Tribes;

(3) A State or a political subdivision of a State, including a special purpose unit of a State or local government engaged in economic development activities, or a consortium of political subdivisions;

(4) An institution of higher education (as defined in section 101 of the Higher Education Act of 1965 (20 U.S.C. 1001)) or a consortium of institutions of higher education; or

(5) A public or private nonprofit organization.

(ii) The Lead Applicant must be registered in the System for Award Management (SAM) prior to submitting an application. The Lead Applicant must also maintain an active SAM registration with current information at all times during which it has an active Federal award or an application under consideration by the Agency. All other restrictions in this Notice will apply.

(iii) Applications will be deemed ineligible if the application includes any funding restrictions identified under Section D.6 of this Notice. Inclusion of funding restrictions outlined in Section D.6 of this Notice precludes the Agency from making a federal award.

(d) *Completeness.* An application will not be considered for funding if it fails to meet an eligibility criterion by the time of application deadline or does not provide sufficient information to determine eligibility and scoring. Applicants must include all the forms and proposal elements as discussed in the regulation and as clarified further in this Notice in one package. Incomplete applications will not be reviewed by the Agency.

D. Application and Submission Information

1. Address to Request Application Package. For further information and program materials, including an Application Template, contact the RD National Office and/or review the program website at *https://www.rd.usda.gov/programs-services/business-programs/rural-innovation-stronger-economy-rise-grants.* Application information is also available at *www.grants.gov.*

2. Content and Form of Application Submission. An application must contain all the required elements outlined in 7 CFR 4284.1115. Each application must address the applicable scoring criteria presented in 7 CFR 4284.1117 for the type of funding being requested.

The Application Template provides specific, detailed instructions for each item of a complete application. The Agency strongly encourages the Applicant to use the examples and illustrations in the Application Template to assist in developing a complete application package.

Potential applicants may submit a concept proposal for review by the Agency to *www.grants.gov* by 4:30 p.m. local time on February 1, 2024 in compliance with 7 CFR 4284.1115(a). The concept proposal should be in a narrative format up to 10 pages in length using a minimum of 11-point font and submitted electronically through *www.grants.gov.* The concept proposal must include all items stated in 7 CFR 4284.1115(a). The concept proposal will be evaluated by the Agency and an encouragement or discouragement letter will be issued to the potential applicant. If a discouragement letter is issued, it will detail any weaknesses evaluated in the Agency's review, though a complete application may still be submitted prior to the application deadline. Applicants who submit a concept proposal to the Agency will not need to resubmit the same information with their application. However, submission of a concept proposal is not an application for program funds. Applicants that do not submit a concept proposal may still submit a complete application for Agency review.

Only one application can be submitted per applicant, who is defined as a lead applicant as found in 7 CFR 4284.1112(b). If two applications are submitted by the same lead applicant, both applications will be deemed ineligible for funding. Applications must be submitted electronically through *www.grants.gov.* Applications submitted to the Agency in any format outside of *Grants.gov* will not be considered for funding.

3. System for Award Management and Unique Entity Identifier.

(a) At the time of application, each applicant must have an active registration in the System for Award Management (SAM) before submitting its application in accordance with 2 CFR part 25. In order to register in SAM, entities will be required to obtain a Unique Entity Identifier (UEI). Instructions for obtaining the UEI are available at *https://sam.gov/content/entity-registration.*

(b) Applicant must maintain an active SAM registration, with current, accurate and complete information, at all times during which it has an active Federal award or an application under consideration by a Federal awarding agency.

(c) Applicant must ensure they complete the Financial Assistance General Certifications and Representations in SAM.

(d) Applicant must provide a valid UEI in its application, unless determined exempt under 2 CFR 25.110.

(e) The Agency will not make an award until the applicant has complied with all SAM requirements including providing the UEI. If an applicant has not fully complied with the requirements by the time the Agency is ready to make an award, the Agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

4. Submission Date and Time.

(a) *Concept Proposal Submittals.* Potential applicants may electronically submit a concept proposal for review by the Agency to *www.grants.gov* by 4:30 p.m. local time on February 1, 2024, in compliance with 7 CFR 4284.1115(a)

and as stated in Section D.2 of this Notice. Submission of a concept proposal is not an application for program funds.

(b) *Application Deadline Date.* Completed applications must be submitted electronically through *www.grants.gov* no later than 11:59 p.m. Eastern Time, April 1, 2024, to be eligible for grant funding.

Late or incomplete applications will not be eligible for funding under this grant opportunity. The Agency will not solicit or consider new scoring or eligibility information that is submitted after the application deadline. The Agency also reserves the right to ask applicants for clarifying information and additional verification of assertions in the application.

5. Intergovernmental Review of Applications. Executive Order (E.O.) 12372, ''Intergovernmental Review of Federal Programs,'' applies to this program. This E.O. requires that Federal agencies provide opportunities for consultation on proposed assistance with State and local governments. Many states have established a Single Point of Contact (SPOC) to facilitate this consultation. For a list of States that maintain an SPOC, please see the White House website: *https://www.whitehouse.gov/omb/management/office-federal-financial-management/*. If your State has a SPOC, you may submit a copy of the application directly for review. Any comments obtained through the SPOC must be provided to your State Office for consideration as part of your application. If your State has not established a SPOC, or if you do not want to submit a copy of the application, our State Offices will submit your application to the SPOC or other appropriate agency or agencies. Applications from Federally recognized Tribes are not subject to this requirement.

6. Funding Restrictions.

(a) Please note that no assistance or funding from this grant can be provided to a hemp producer unless they have a valid license issued from an approved State, Tribal or Federal plan as defined by the Agriculture Improvement Act of 2018, Public Law 115–334. Verification of valid hemp licenses will occur at the time of award.

(b) Grant funds may be used to pay for up to 80 percent of eligible project activity costs. Grant funds may be used to pay for costs directly related to the purchase or construction of an innovation center located in a low-income rural area; costs directly related to operations of an innovation center including purchase of equipment, office supplies, and administrative costs including salaries directly related to the project; costs directly associated with support programs to be carried out at or in direct partnership with job accelerators; reasonable and customary travel expenses directly related to job accelerators and at rates in compliance with 2 CFR 200.474; utilities, operating expenses of the innovation center and job accelerator programs and associated programs; and administrative costs of the grantee not exceeding 10% of the grant amount for the duration of the project.

(c) Applications must include a cost and performance plan for no more than a four-year grant period, or it will not be considered for funding. The grant period should begin no earlier than September 15, 2024, and no later than January 1, 2025. Applications that request funds for a project with a performance period ending after December 31, 2028, will not be considered for funding. Projects must be completed within a four-year timeframe. Prior approval is needed from the Agency if applicants are awarded a grant and desire the grant period to begin earlier or later than previously discussed or approved.

The Agency may approve requests to extend the grant period for up to an additional two-year period at its discretion. Further guidance on grant period extensions will be provided in the award document.

(d) Project funds, including grant and matching funds, cannot be used for ineligible grant purposes as stated in 7 CFR 4284.1114, 2 CFR part 200, subpart E, ''Cost Principles,'' and the most current Federal Acquisition Regulation (for-profits) or successor regulations.

(e) In addition, an application will not be considered for funding if it does any of the following:

(i) Focuses assistance on only one business;

(ii) Requests less than the minimum grant amount or more than the maximum grant amount;

(iii) Includes administrative costs in excess of 10 percent of the grant amount for the project budget; or

(iv) Funds that pass through to a member of the partnership in the form of lease payments or other activities with a conflict of interest or appearance thereof.

7. Other Submission Requirements.

(a) Applications should not be submitted in more than one format or in more than one submission. Applications should be submitted electronically through *www.grants.gov* only. Applications will not be accepted through mail or courier delivery, in-person delivery, email, or fax.

(b) To submit an application electronically, applicants must follow instructions provided at *www.grants.gov.* The *Grants.gov* website provides information about applying electronically as well as the hours of operation. A password is not required to access the website. Applicants are advised to not wait until the application deadline date to begin the application process through *Grants.gov.* The *Grants.gov* downloadable application package for this program may be located by using a keyword, the program name, or the assistance listing number for this program. Instructions for registering an organization can be found at *https://sam.gov/content/entity-registration* and should be completed as soon as possible to ensure that the electronic application deadline can be met. *Grants.gov* will not accept applications submitted after the deadline.

(c) There are no specific limitations on the number of pages or other formatting requirements of an application, but a complete application should be in a narrative form using a minimum of 11-point font. The narrative must clearly describe the jobs accelerator partnership, characteristics of the targeted region and targeted industry cluster(s), and how the project meets the RISE program initiatives.

(d) The Agency also reserves the right to ask applicants for clarifying information and additional verification of assertions made in the application.

E. Application Review Information

1. Criteria. All eligible and complete applications will be evaluated and scored based on the selection criteria and weights contained in 7 CFR 4284.1117. Failure to address any of the application criteria by the application deadline will result in the application being determined ineligible, and the application will not be considered for funding.

Priority will be given to projects that will leverage next generation gigabit broadband service to promote entrepreneurship and entities based in geographical areas with established agriculture and technology sectors which are focused on the development of precision and autonomous agriculture technologies as a way to strengthen rural economies and create jobs.

To focus investments in areas resulting in the greatest opportunity for growth in prosperity, the Agency encourages applications that serve the smallest communities with the lowest incomes, with an emphasis on areas where at least 20 percent of the

population is living in poverty, according to the American Community Survey data or other comparable data by census tracts or Indian Reservations.

The Agency encourages energy communities to utilize the RISE program to support workforce development; identify and maximize local assets; spur job creation; and connect to regional opportunities, networks, and industry clusters.

2. Review and Selection Process. Applications will be selected for award in accordance with the selection criteria in 7 CFR 4284.1118. Applications that cannot be fully funded may be offered partial funding at the Agency's discretion. If an application is evaluated as an eligible project, but not funded, it will not be carried forward into the next competition.

F. Federal Award Administration Information

1. Federal Award Notices.

The Agency will award RISE grants in accordance with 7 CFR 4284.1119. Applicants awarded funding will receive a signed notice of Federal award by postal or electronic mail from the USDA RD State Office located where the application was submitted, containing instructions and requirements necessary to proceed with execution and performance of the award. Applicants must comply with all applicable statutes, regulations, and Notice requirements before the grant award will be funded.

If an application is not selected for funding, the Applicant will be notified in writing via postal or electronic mail and informed of any review and appeal rights. See 7 CFR part 11 for USDA National Appeals Division procedures. We anticipate that there will be no available funds for successful appellants once all FY 2024 funds, if available, are awarded and obligated.

2. Administrative and National Policy Requirements. Additional requirements that apply to grantees selected for this program can be found in 7 CFR part 4284, subpart L; the Grants and Agreements regulations of the Department of Agriculture codified in 2 CFR parts 180, 184, 400, 415, 417, 418, 421; 2 CFR parts 25, 200, and 170; and 48 CFR 31.2, and successor regulations to these parts.

In addition, all recipients of Federal financial assistance are required to report information about first-tier subawards and executive compensation (see 2 CFR part 170). Applicants will be required to have the necessary processes and systems in place to comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282) reporting requirements (see 2 CFR 170.200(b), unless exempt under 2 CFR 170.110(b)).

The following additional requirements apply to grantees selected for awards within this program:

(a) Execution of an Agency-approved financial assistance agreement;

(b) Acceptance of a written letter of conditions; and submission of the following Agency forms:

(1) Form RD 1940–1, ''Request for Obligation of Funds.''

(2) Form RD 1942–46, ''Letter of Intent to Meet Conditions.''

(3) Form RD 400–1 for construction projects.

3. Reporting. After grant approval and through grant completion, applicants will be required to provide an SF–425, ''Federal Financial Report,'' and a performance report on a semiannual basis (due 30 working days after end of the semiannual period) for the first two years, and then annually thereafter, with the first report submitted no later than six months after receiving a grant under this section. The project performance reports shall include all items listed in 7 CFR 4284.1120(h)(2).

G. Federal Awarding Agency Contact(s)

If you have questions about this Notice, please see the contact provided in the **FOR FURTHER INFORMATION CONTACT** section of this Notice. Applicants wanting to apply for a RISE grant please see the **ADDRESSES** section of this Notice.

H. Build America Buy America Act

Funding to Non-Federal Entities. Awardees that are Non-Federal Entities, defined pursuant to 2 CFR 200.1 as any State, local government, Indian tribe, Institution of Higher Education, or nonprofit organization, shall be governed by the requirements of Section 70914 of the Build America, Buy America Act (BABAA) within the Infrastructure Investment and Jobs Act (Pub. L. 117–58), and its implementing regulations at 2 CFR part 184. Any requests for waiver of these requirements must be submitted pursuant to USDA's guidance available online at *https://www.usda.gov/ocfo/federal-financial-assistance-policy/USDABuyAmericaWaiver.*

I. Other Information

1. Paperwork Reduction Act. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection requirements associated with this program, as covered in this Notice, have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0570–0075.

2. National Environmental Policy Act. All recipients under this Notice are subject to the requirements of 7 CFR part 1970.

3. Federal Funding Accountability and Transparency Act. All applicants, in accordance with 2 CFR part 25, must be registered in SAM and have a UEI number as stated in Section D.3 of this notice. All recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive total compensation in accordance with 2 CFR part 170.

4. Civil Rights Act. All grants made under this Notice are subject to title VI of the Civil Rights Act of 1964 as required by the USDA (7 CFR part 15, subpart A, 7 CFR part 15 subpart A—Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture—Effectuation of title VI of the Civil Rights Act of 1964) and section 504 of the Rehabilitation Act of 1973, title VIII of the Civil Rights Act of 1968, title IX, Executive Order 13166 (Limited English Proficiency), Executive Order 11246, and the Equal Credit Opportunity Act of 1974.

5. Nondiscrimination Statement. In accordance with Federal civil rights laws and USDA civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; or the 711 Relay Service.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, *USDA Program Discrimination Complaint Form,* which can be obtained online at *https://www.usda.gov/sites/default/files/documents/ad-3027.pdf* from any

USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

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

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

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

USDA is an equal opportunity provider, employer, and lender.

Karama Neal,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2023–26792 Filed 12–29–23; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Business-Cooperative Service

[DOCKET #: RBS–23–BUSINESS–0023]

Notice of Funding Opportunity for the Rural Business Development Grant Program To Provide Technical Assistance for Rural Transportation Systems for Fiscal Year 2024

AGENCY: Rural Business-Cooperative Service, USDA.

ACTION: Notice.

SUMMARY: The Rural Business-Cooperative Service (RBCS or Agency), a Rural Development (RD) agency of the United States Department of Agriculture (USDA), is issuing this notice to invite applications for grants to provide technical assistance for passenger Rural Transportation (RT) systems under the Rural Business Development Grant (RBDG) program and the terms for such funding. Grant funds will provide technical assistance for RT systems including designated funds to provide technical assistance to RT systems operating within Tribal lands of Federally Recognized Native American Tribes (FRNAT) (collectively ''Programs''). This notice is being issued in order to allow applicants sufficient time to leverage financing, prepare and submit their applications and give the Agency time to process applications within fiscal year (FY) 2024. Based on FY 2023 appropriated funding, the Agency estimates that approximately $750,000 will be made available for FY 2024. Successful applications will be selected by the Agency for funding and subsequently awarded to the extent that funding may ultimately be made available through appropriations. All applicants are responsible for any expenses incurred in developing their applications.

DATES: Completed applications may be submitted in paper or electronic format and must be received in the USDA RD State Office no later than 4:30 p.m. (local time) on April 1, 2024, to be eligible for FY 2024 grant funding. Applications received after the deadline will be ineligible for funding.

ADDRESSES: This funding announcement will also be announced on *www.Grants.gov.* Applications must be submitted to the USDA RD State Office where the Project is located. A list of the USDA RD State Office contacts can be found at: *http://www.rd.usda.gov/contact-us/state-offices.*

FOR FURTHER INFORMATION CONTACT: Cindy Mason at *cindy.mason@usda.gov,* Business Loan and Grant Analyst, Program Management Division, Rural Business-Cooperative Service (RBCS), USDA, 1400 Independence Avenue SW, Mail Stop 3226, Room 5160—South, Washington, DC 20250–3226, or call 202–720–1400.

For further information on submitting program applications under this notice, please contact the USDA RD office for the State in which the applicant is located. A list of USDA RD Office contacts is provided at the following link: *http://www.rd.usda.gov/contact-us/state-offices.*

SUPPLEMENTARY INFORMATION:

Overview

Federal Awarding Agency Name: Rural Business-Cooperative Service.

Funding Opportunity Title: Rural Business Development Grants—Technical Assistance for Rural Transportation Systems.

Announcement Type: Notice of Funding Opportunity.

Funding Opportunity Number: RDBCP–RBDG–2024.

Assistance Listing: 10.351.

Dates: The deadline for completed applications to be received in the USDA RD State Office is no later than 4:30 p.m. (local time) on April 1, 2024, to be eligible for FY 2024 grant funding. Applications received after the deadline will be ineligible for funding.

Rural Development Key Priorities: The Agency encourages applicants to consider projects that will advance the following key priorities (more details available at *https://www.rd.usda.gov/priority-points*):

- Creating More and Better Markets: Assist rural communities to recover economically through more and better market opportunities and through improved infrastructure;
- Addressing Climate Change and Environmental Justice: Reduce climate pollution and increase resilience to the impacts of climate change through economic support for rural communities; and
- Advancing Racial Justice, Place-Based Equity, and Opportunity: Ensure all rural residents have equitable access to RD programs and benefits from RD funded projects.

A. Program Description

1. *Purpose of the Program.* The purpose of this program is to improve the economic conditions of rural areas by providing technical assistance that will enhance the operation of rural transportation systems.

2. *Statutory Authority.* This program is authorized under section 310B(c) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932(c)) and implemented by 7 CFR part 4280, subpart E. The program is administered on behalf of RBCS by the USDA RD State Offices. Assistance provided to rural areas under the program has historically included the provision of on-site technical assistance to Tribal, local and regional governments, public transit agencies, and related nonprofit and for-profit organizations in rural areas; the development of training materials; and the provision of necessary training assistance to local officials and agencies in rural areas.

Section 736 of Title VII of Division A of the Consolidated Appropriations Act, 2023, designated funding for projects in Persistent Poverty counties. Persistent Poverty counties is defined in Section 736 as ''any county that has had 20 percent or more of its population living in poverty over the past 30 years, as measured by the 1990 and 2000 decennial censuses, and 2007–2011 American Community Survey 5-year average, or any territory or possession of the United States''. Another provision in Section 736 expands the eligible population in Persistent Poverty counties to include any county seat of such a persistent poverty county that has a population that does not exceed the authorized population limit by more than 10 percent. This provision expands the current 50,000 population limit to 55,000 for only county seats located in Persistent Poverty counties. Therefore, beneficiaries of technical assistance services located in Persistent Poverty

County seats with populations up to 55,000 are eligible. Therefore, assuming the Appropriations Act for 2024 has similar language, applicants and/or beneficiaries located in persistent poverty county seats with populations up to 55,000 (per the 2020 Census) are eligible.

3. *Definitions.* The definitions applicable to this notice are published at 7 CFR 4280.403.

4. *Application of Awards.* The Agency will review, evaluate, and score applications received in response to this notice based on the provisions in 7 CFR part 4280 subpart E, and as indicated in this notice. Awards under the RBDG Technical Assistance for RT Systems program will be made on a competitive basis using specific selection criteria contained in 7 CFR part 4280, subpart E, and in accordance with section 310B(c) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932(c)). The Agency advises all interested parties that the applicant bears the burden in preparing and submitting an application in response to this notice whether or not funding is appropriated for this program in FY 2024.

B. Federal Award Information

Type of Award: Grants.

Fiscal Year Funds: FY 2024.

Available Funds: $750,000. RBCS may at its discretion, increase the total level of funding available in this funding round, or in any category in this funding round, from any available source provided the awards meet the requirements of the statute which made the funding available to the Agency.

Award Amounts: The Agency will award a maximum of $500,000 for RT systems and $250,000 for FRNAT RT projects. The amounts are determined by the specific funding provided for the program in the FY 2024 Appropriations Act.

Anticipated Award Date: Prior to September 30, 2024.

Performance Period: October 1, 2024, through September 30, 2025.

Renewal or Supplemental Awards: None.

Type of Assistance Instrument: Financial Assistance Agreement.

C. Eligibility Information

1. *Eligible Applicants.* Eligible applicants must meet the eligibility requirements of 7 CFR 4280.416, Applicant Eligibility. The Agency requires the information provided in 7 CFR 4280.427 to make an eligibility determination that an applicant is a national organization.

For the funding for Technical Assistance for RT systems, applicants must be qualified national organizations with experience in providing technical assistance and training to rural communities nationwide for the purpose of improving passenger transportation services or facilities. To be considered ''national,'' RBCS requires a qualified organization to provide evidence that it can operate RT assistance programming nationwide. An entity can qualify if they can work in partnership with other entities to fulfill the national requirement as long as the applicant will have ultimate control of the grant administration. For the funding for RT systems to FRNATs, an entity can qualify if they can work in partnership with other entities to support all federally recognized Tribes, as long as the applicant will have ultimate control of the grant administration. There is not a requirement to use the grant funds in a multi-State area. Grants will be made to qualified national organizations for the provision of technical assistance and training to rural communities for the purpose of improving passenger transportation services or facilities.

For the FRNAT grant, which must benefit FRNATs, at least 75 percent of the benefits of the Project must be received by members of FRNATs.

2. *Cost Sharing or Matching.* There are no cost sharing or matching requirements associated with this grant.

3. *Other.* Applications will only be accepted from qualified national organizations to provide Technical Assistance for RT. Applicants proposing projects with Tribes must submit documentation in support of the application from the Tribes they propose to serve. This support is best documented through a resolution from the appropriate Tribal council/government. Alternative documentation of support may be considered on a case-by-case basis.

D. Application and Submission Information

1. *Address to Request Application Package.* Entities wishing to apply for assistance should contact the USDA RD State Office provided in the **ADDRESSES** section of this notice to obtain copies of the application package.

2. *Content and Form of Application Submission.* An application must contain all of the required elements listed in 7 CFR 4280.427 and the following:

- Environmental documentation in accordance with 7 CFR part 1970, ''Environmental Policies and Procedures;''
- SF LLL, ''Disclosure of Lobbying Activities;''
- RD 400–1, ''Equal Opportunity Agreement;''
- RD 400–4, ''Assurance Agreement;'' and
- Letter providing Board authorization to obtain assistance.

Each application received in a USDA RD State Office will be reviewed to determine if it is consistent with the eligible purposes contained in section 310B(c) of the Consolidated Farm and Rural Development Act (7 U.S.C. 1932(c)). Each selection scoring criterion outlined in 7 CFR 4280.435 must be addressed in the application. Failure to address any of the criteria will result in a zero-point score for that criterion and will impact the overall evaluation of the application. The regulation governing this program, 7 CFR part 4280, subpart E, is available at *https://www.ecfr.gov/current/title-7/subtitle-B/chapter-XLII/part-4280/subpart-E,* or will be provided to any interested applicant making a request to a USDA RD State Office.

All projects to receive technical assistance through these passenger transportation grant funds are to be identified when the applications are submitted to the USDA RD State Office. Multiple project applications must identify each individual project, indicate the amount of funding requested for each individual project, and address the criteria as stated above for each individual project.

3. *System for Award Management and Unique Entity Identifier.*

(a) At the time of application, each applicant must have an active registration in the System for Award Management (SAM) before submitting its application in accordance with 2 CFR part 25 (*https://www.ecfr.gov/current/title-2/subtitle-A/chapter-I/part-25*). To register in SAM, entities will be required to obtain a Unique Entity Identifier (UEI). Instructions for obtaining the UEI are available at *https://sam.gov/content/entity-registration.*

(b) Applicant must maintain an active SAM registration, with current, accurate and complete information, while it has an active Federal award or an application under consideration by a Federal awarding agency.

(c) Applicant must ensure they complete the Financial Assistance General Certifications and Representations in SAM.

(d) Applicants must provide a valid UEI in its application, unless determined exempt under 2 CFR 25.110 (*https://www.ecfr.gov/current/title-2/*

subtitle-A/chapter-I/part-25/subpart-A/section-25.110).

(e) The Agency will not make an award until the applicant has complied with all SAM requirements including providing the UEI. If an applicant has not fully complied with the requirements by the time the Agency is ready to make an award, the Agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

4. *Submission Dates and Times.*

(a) *Application Technical Assistance Deadline Date.* Prior to official submission of grant applications, applicants may request technical assistance or other application guidance from the Agency. All requests for technical assistance or application guidance must be made prior to February 1, 2024. Technical assistance is not meant to be an analysis or assessment of the quality of the materials submitted, a substitute for Agency review of completed applications, or a determination of eligibility, if such determination requires in-depth analysis.

(b) *Application Deadline Date.* Applications (paper or electronic format) must be submitted to the appropriate RD State Office no later than 4:30 p.m. (local time) on April 1, 2024. If completed applications are not received by the deadline date, the application will neither be reviewed nor considered for funding under any circumstances.

The Agency will not solicit or consider scoring or eligibility information that is submitted after the application deadline. The Agency reserves the right to contact applicants to seek clarification information on materials contained in the submitted application. The deadline date means that the completed application package must be received in the USDA RD State Office by the deadline date established above. If the due date falls on a Saturday, Sunday, or Federal holiday, the application is due the next business day. All application documents identified in this notice and in 7 CFR part 4280, subpart E, are required to be considered a complete application.

(c) *Applications Received After Deadline Date.* If complete applications are not received by the deadline established above, the application will neither be reviewed nor considered under any circumstances. The Agency will not solicit or consider scoring or eligibility information that is submitted after the application deadline. The Agency reserves the right to contact applicants to seek clarification information on materials contained in the submitted application.

5. *Intergovernmental Review*—Executive Order (E.O.) 12372, ''Intergovernmental Review of Federal Programs,'' applies to this program. This E.O. requires that Federal agencies provide opportunities for consultation on proposed assistance with State and local governments. Many states have established a Single Point of Contact (SPOC) to facilitate this consultation. For a list of States that maintain a SPOC, please see the White House website: *https://www.whitehouse.gov/omb/management/office-federal-financial-management/.* If your State has a SPOC, you may submit a copy of the application directly for review. Any comments obtained through the SPOC must be provided to your State Office for consideration as part of your application. If your State has not established a SPOC, or if you do not want to submit a copy of the application, our State Offices will submit your application to the SPOC or other appropriate agency or agencies.''

6. *Funding Restrictions.* These grants are for RT Technical Assistance grants only and no construction or equipment purchases are permitted. If the grantee has a previously approved indirect cost rate, it is permissible, otherwise, the applicant may elect to charge the 10 percent indirect cost permitted under 2 CFR 200.414(f) or request a determination of its Indirect Cost Rate. Due to the time required to evaluate Indirect Cost Rates, it is likely that all funds will be awarded by the time the Indirect Cost Rate is determined. No foreign travel is permitted. Pre-Federal award costs will only be permitted with prior written approval by the Agency.

None of the funds made available may be used to enter into a contract, memorandum of understanding, or cooperative agreement with, make a grant to, or provide a loan or loan guarantee to:

(a) Any corporation that has any unpaid Federal tax liability that has been assessed, for which all judicial and administrative remedies have been exhausted or have lapsed, and that is not being paid in a timely manner pursuant to an agreement with the authority responsible for collecting the tax liability.

(b) Any corporation that was convicted of a felony criminal violation under any Federal law within the preceding 24 months where the awarding agency is aware of the unpaid tax liability and/or conviction, unless a Federal agency has considered suspension or debarment of the corporation and has determined that further action is not necessary to protect the interests of the Government.

7. *Other Submission Requirements.*

General Submission Requirements. The organization submitting the application will be considered the lead entity. The program manager must be associated with the lead entity submitting the application. Applications will not be considered for funding if they do not provide sufficient information to determine eligibility or are missing required elements.

There is no limit on the number of applications an applicant may submit under this announcement. There are no specific formats, specific limitations on number of pages, font size and type face, margins, paper size, number of copies, sequence, or assembly requirements. The component pieces of this application should contain original signatures on the original application.

Electronic Submittals. Applicants submitting an electronic application, should contact the State Office serving the State where the Project will primarily take place. A list of State Offices may be found at *https://www.rd.usda.gov/about-rd/state-offices.*

Paper Submittals. Applicants submitting a paper application should send it to the USDA RD State Office located in the state where the Project will primarily take place. You can find State Office contact information at: *http://www.rd.usda.gov/contact-us/state-offices.*

All forms requiring signatures must include an original signature. If the applicant wishes to hand deliver its application, the addresses for these deliveries are in the **ADDRESSES** section of this notice.

E. Application Review Information

1. *Criteria.* All eligible and complete applications will be evaluated and scored based on the scoring criteria contained in 7 CFR 4280.435. The Agency will select grantees subject to the grantees' satisfactory submission of the items required by 7 CFR 4280.427, and the USDA RD Letter of Conditions. Failure to address any criteria in 7 CFR 4280.427 by the application deadline will result in the application being determined ineligible, and the application will not be considered for funding. The amount of an RT grant may be adjusted, at the Agency's discretion, to enable the Agency to award RT grants to the applications with the highest priority scores in each category.

2. *Review and Selection Process.* USDA RD State Offices will review applications to determine if they are

eligible for assistance based on the application and project eligibility requirements contained in 7 CFR 4280.416 and 4280.417, respectively, and as stated in this notice. If determined eligible, the applicable State Office will submit your application to the National Office. Funding of the projects is subject to the applicant's satisfactory submission of the additional items required by subpart E and the USDA RD Letter of Conditions. The Agency reserves the right to offer the applicant a grant award in an amount less than the amount the applicant requested.

The Agency reserves the right to award additional discretionary points under 7 CFR 4280.435(k). Discretionary points may only be assigned to initial grants. Assignment of discretionary points must include a written justification. Permissible justifications include projects that meet special Secretary of Agriculture initiatives such as projects:

(a) *Creating More and Better Markets:* Assisting rural communities recover economically through more and better market opportunities and through improved infrastructure. Applicants receive priority points if the project is located in or serving a rural community whose economic well-being ranks in the most distressed tier (distress score of 80 or higher) of the Distressed Communities Index using the Distressed Communities Look-Up Map available at *https://www.rd.usda.gov/priority-points.*

(b) *Advancing Racial Justice, Place-Based Equity, and Opportunity:* Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects. Using the Social Vulnerability Index (SVI) Look-Up Map (available at *https://www.rd.usda.gov/priority-points*), an applicant would receive priority points if the:

- Project is located in or serving a community with score 0.75 or above on the SVI;
- Applicant is a Federally recognized tribe, including Tribal instrumentalities and entities that are wholly owned by Tribes; or
- Applicant has a project where at least 50 percent of the project beneficiaries are members of Federally Recognized Tribes and non-Tribal applicants include a Tribal Resolution of Consent from the Tribe or Tribes that the applicant is proposing to serve.

(c) *Addressing Climate Change and Environmental Justice:* Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities. Using the Disadvantaged Community and Energy Community Look-up Map (available at *https://www.rd.usda.gov/priority-points*), applicants will receive priority points in three ways:

- If a project is located in or serves a *Disadvantaged Community* as defined by the Climate and Economic Justice Screening Tool (CEJST), from the White House Council on Environmental Quality (CEQ),
- If the project is located in or serves an *Energy Community* as defined by the Inflation Reduction Act (IRA), or
- Applicants demonstrate through written narrative how proposed climate-impact projects improve the livelihoods of community residents and meet pollution mitigation or clean energy goals.

F. Federal Award Administration Information

1. *Federal Award Notices.* Successful applicants will receive notification for funding from their USDA RD State Office. Applicants must comply with all applicable statutes and regulations before the grant award will be approved. Unsuccessful applications will receive notification by mail.

2. *Administrative and National Policy Requirements.*

All successful applicants will be notified by letter, which will include a Letter of Conditions, and a Letter of Intent to Meet Conditions. This letter is not an authorization to begin performance. If the applicant wishes to consider beginning performance prior to the grant being officially closed, all pre-award costs must be approved in writing and in advance by the Agency. The grant will be considered officially awarded when all conditions in the Letter of Conditions have been met and the Agency obligates the funding for the Project.

Additional requirements that apply to grantees selected for this program can be found in 7 CFR part 4280, subpart E; the Grants and Agreements regulations applicable to USDA in 2 CFR part 400, which incorporates the Office of Management and Budget (OMB) regulations at 2 CFR part 200, and successor regulations. In addition, all recipients of Federal financial assistance are required to report information about first tier subawards and executive compensation (see 2 CFR part 170). You will be required to have the necessary processes and systems in place to comply with the Federal Funding Accountability and Transparency Act of 2006 (Pub. L. 109–282) reporting requirements (see 2 CFR 170.200(b), unless you are exempt under 2 CFR 170.110(b)).

The following additional requirements apply to grantees selected for this program:

(a) Form RD 4280–2 ''Rural Business-Cooperative Service Financial Assistance Agreement.''

(b) Letter of Conditions.

(c) Form RD 1940–1, ''Request for Obligation of Funds.''

(d) Form RD 1942–46, ''Letter of Intent to Meet Conditions.''

(e) Form RD 400–4, ''Assurance Agreement.'' Each prospective recipient must sign Form RD 400–4 which assures USDA that the recipient is in compliance with Title VI of the Civil Rights Act of 1964, 7 CFR part 15, and other Agency regulations. Form RD 400–4 also provides that no person will be discriminated against based on race, color, or national origin, in regard to any program or activity for which the recipient receives Federal financial assistance. The grant recipient must include the required nondiscrimination statements in any of their advertisements and brochures.

Program participants will be required to collect and maintain data provided by recipients on race, sex, and national origin and ensure recipients collect and maintain this data. Race and ethnicity data will be collected in accordance with OMB **Federal Register** notice, ''Revisions to the Standards for the Classification of Federal Data on Race and Ethnicity,'' (62 FR 58782), October 30, 1997. Data on recipients' sex will be collected in accordance with Title IX of the Education Amendments Act of 1972. These items should not be submitted with the application but should be available upon request by the Agency.

The applicant and the ultimate recipient must comply with Title VI of the Civil Rights Act of 1964, Title IX of the Education Amendments Act of 1972, Americans with Disabilities Act (ADA), Section 504 of the Rehabilitation Act of 1973, Age Discrimination Act of 1975, Executive Order 12250, Executive Order 13166 regarding Limited English Proficiency (LEP), and 7 CFR part 1901, subpart E.

(f) SF LLL, ''Disclosure of Lobbying Activities,'' if applicable.

(g) Form SF 270, ''Request for Advance or Reimbursement.''

3. *Reporting.* A Financial Status Report and a Project Performance Activity Report will be required of all grantees on a quarterly basis until initial funds are expended and yearly thereafter, if applicable, based on the Federal fiscal year. The grantee will complete the Project within the total time available to it in accordance with the Scope of Work and any necessary modifications thereof prepared by the

grantee and approved by the Agency. A final Project Performance Report will be required with the final Financial Status Report. The final report may serve as the last quarterly report. The final report must provide complete information regarding the jobs created and supported as a result of the grant if applicable. Grantees must continuously monitor performance to ensure that time schedules are being met, projected work by time periods is being accomplished, and other performance objectives are being achieved. Grantees must submit an original of each report to the Agency no later than 30 days after the end of the quarter. The Project Performance Reports must include, but not be limited to, the following:

(a) A comparison of actual accomplishments to the objectives established for that period;

(b) Problems, delays, or adverse conditions, if any, which have affected or will affect attainment of overall Project objectives, prevent meeting time schedules or objectives, or preclude the attainment of Project work elements during established time periods. This disclosure shall be accompanied by a statement of the action taken or planned to resolve the situation;

(c) Objectives and timetable established for the next reporting period;

(d) Any special reporting requirements, such as jobs supported and created, businesses assisted, or Economic Development which results in improvements in median household incomes, and any other specific requirements, should be placed in the reporting section in the Letter of Conditions; and

(e) Within 90 days after the conclusion of the Project, the grantee will provide a final Project Evaluation Report. The last quarterly payment will be withheld until the final report is received and approved by the Agency. Even though the grantee may request reimbursement monthly, the last three months of reimbursements will be withheld until a final Project, Project Performance, and Financial Status Report are received and approved by the Agency.

G. Federal Awarding Agency Contact(s)

For general questions about this announcement, please contact your USDA RD State Office provided in the **ADDRESSES** section of this notice.

H. Other Information

1. *Paperwork Reduction Act.* In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the information collection requirements associated with this program, as covered in this notice, have been approved by the Office of Management and Budget (OMB) under OMB Control Number 0570–0070.

2. *National Environmental Policy Act.* All recipients under this notice are subject to the requirements of 7 CFR part 1970 (*https://www.ecfr.gov/current/title-7/subtitle-B/chapter-XVIII/subchapter-H/part-1970*). However, awards for technical assistance and training under this notice are classified as a Categorical Exclusion in accordance with 7 CFR 1970.53(b) (*https://www.ecfr.gov/current/title-7/section-1970.53*), and usually do not require any additional documentation. RBCS will review each grant application to determine its compliance with 7 CFR part 1970 (*https://www.ecfr.gov/current/title-7/subtitle-B/chapter-XVIII/subchapter-H/part-1970*). The applicant may be asked to provide additional information or documentation to assist RBCS with this determination.

3. *Federal Funding Accountability and Transparency Act.* All applicants, in accordance with 2 CFR part 25 (*https://www.ecfr.gov/current/title-2/part-25*), must be registered in SAM and have a UEI number as stated in Section D.3 of this notice. All recipients of Federal financial assistance are required to report information about first tier subawards and executive total compensation in accordance with 2 CFR part 170 (*https://www.ecfr.gov/current/title-2/part-170*).

4. *Civil Rights Act.* All grants made under this notice are subject to Title VI of the Civil Rights Act of 1964 as required by the USDA (7 CFR part 15, subpart A—Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964), Section 504 of the Rehabilitation Act of 1973, Title VIII of the Civil Rights Act of 1968, Title IX, Executive Order 13166 (Limited English Proficiency), Executive Order 11246, and the Equal Credit Opportunity Act of 1974.

5. *Nondiscrimination Statement.* In accordance with Federal civil rights laws and USDA civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color, national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident.

Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; or the 711 Relay Service.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, USDA Program Discrimination Complaint Form, which can be obtained online at *https://www.usda.gov/sites/default/files/documents/ad-3027.pdf,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation. The completed AD–3027 form or letter must be submitted to USDA by:

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

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

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

USDA is an equal opportunity provider, employer, and lender.

Karama Neal,

Administrator, Rural Business-Cooperative Service.

[FR Doc. 2023–28840 Filed 12–29–23; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

[DOCKET #: RUS–23–ELECTRIC–0020]

Notice of Funding Opportunity (NOFO) for Section 313A Guarantees for Bonds and Notes Issued for Utility Infrastructure Purposes for Fiscal Year (FY) 2024

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice of Funding Opportunity (NOFO).

SUMMARY: The Rural Utilities Service (RUS or the Agency), a Rural Development agency of the United

States Department of Agriculture (USDA), announces the acceptance of applications under the Guarantees for Bonds and Notes Issued for Utility Infrastructure Purposes Program (the 313A Program) for Fiscal Year (FY) 2024. This notice is being issued in order to allow applicants sufficient time to prepare and submit their applications and give the Agency time to process applications within FY 2024. In FY 2023, the Agency made $900 million available for the 313A Program. Because full-year appropriations have not been enacted as of this date, the final amount that will be made available in FY 2024 will be determined by subsequent Congressional action. The agency is accepting applications up to the amount made available in FY 2023, subject to Congressional action. The purpose of the 313A Program is to guarantee loans to selected applicants as a Guaranteed Lender. Successful applications will be selected by the Agency for funding and subsequently awarded to the extent that funding may ultimately be made available through apportionment. All applicants are responsible for all expenses incurred in developing their applications.

DATES: Completed applications must be electronically received by RUS no later than 5 p.m. eastern time (ET) on March 4, 2024. Applicants intending to submit applications must have their applications received by the closing deadline.

ADDRESSES: Completed applications must be submitted electronically to Amy McWilliams, Branch Chief, Policy and Outreach Branch, Office of Customer Service and Technical Assistance, Electric Program, RUS at *amy.mcwilliams@usda.gov.*

FOR FURTHER INFORMATION CONTACT: Amy McWilliams, Branch Chief, Policy and Outreach Branch, Office of Customer Service and Technical Assistance, Electric Program, Rural Utilities Service, USDA, 1400 Independence Avenue SW, Mail Stop 1560, Room 4121—South, Washington, DC 20250–1560, by email at *amy.mcwilliams@usda.gov,* or call (202) 205–8663.

SUPPLEMENTARY INFORMATION:

Overview

Federal Awarding Agency Name: Rural Utilities Service

Funding Opportunity Title: Notice of Funding Opportunity (NOFO) for Section 313A Guarantees for Bonds and Notes Issued for Utility Infrastructure Purposes for Fiscal Year (FY) 2024.

Announcement Type: Notice of Funding Opportunity

Assistance Listing: 10.850.

Dates: Completed applications must be received by RUS no later than 5 p.m. eastern time (ET) on March 4, 2024.

Rural Development Key Priorities: The Agency encourages applicants to consider projects that will advance the following key priorities (more details available at *https://www.rd.usda.gov/priority-points*):

- Addressing Climate Change and Environmental Justice; Reducing climate pollution and increasing resilience to the impacts of climate change through economic support to rural communities
- Advancing Racial Justice, Place-Based Equity, and Opportunity; Ensuring all rural residents have equitable access to RD programs and benefits from RD funded projects.
- Creating More and Better Market Opportunities; Assisting rural communities recover economically through more and better market opportunities and through improved infrastructure.

A. Program Description

1. Purpose of the Program. The purpose of the 313A Program is to guarantee loans to selected applicants (each referred to as the ''Guaranteed Lender'' in this NOFO). The proceeds of the guaranteed loans are to be used (a) to make utility infrastructure loans or (b) to refinance bonds or notes issued for such purposes to a borrower that has at any time received, or is eligible to receive, a loan under the Rural Electrification Act of 1936, as amended (RE Act). Each applicant must provide a statement on how it proposes to use the proceeds of the guaranteed bonds, and the financial benefit it anticipates deriving from participating in the program pursuant to 7 CFR 1720.6(a)(3), or its equivalent in any subsequent regulation. Objectives may include, but are not limited to the annual savings to be realized by the ultimate borrower(s) as a result of the applicant's use of lower cost loan funds provided by the Federal Financing Bank (FFB) and guaranteed by RUS.

The Agriculture Improvement Act of 2018 (2018 Farm Bill) modified the 313A Program by amending the RE Act to allow proceeds of guaranteed bonds awarded under this NOFO to be used to make broadband loans, or to refinance broadband loans made to a borrower that has received, or is eligible to receive, a broadband loan under title VI of the RE Act.

The 2018 Farm Bill has also modified the 313A Program to allow the proceeds of guaranteed loans made under this NOFO to be used by the Guaranteed Lender to fund projects for the generation of electricity.

2. Statutory and Regulatory Authority. The 313A Program is authorized by section 313A of the Rural Electrification Act of 1936, as amended (7 U.S.C. 940c–1), and is implemented by regulations located at 7 CFR part 1720. The Administrator of RUS (the Administrator) has been delegated responsibility for administering the 313A Program.

3. Definitions. The definitions applicable to this NOFO are currently published at 7 CFR 1720.3.

4. Application of Awards. RUS will review and evaluate applications received in response to this NOFO based on the regulations at 7 CFR 1720.7, and as provided in this NOFO.

B. Federal Award Information

Type of Awards: Guaranteed Loans

Fiscal Year Funds: FY 2024.

Anticipated available Funds: $900,000,000. Should additional funding become available this FY, RUS reserves the right to increase the total funds available under this notice.

Award Amounts: RUS anticipates making multiple guarantees under this NOFO. The number, amount, and terms of awards under this NOFO will depend in part on the number of eligible applications and the amount of funds requested and the final amount appropriated by Congress. In determining whether to make an award, RUS will take overall program policy objectives into account.

Anticipated Award Date: Awards will be made on or before Monday, September 30, 2024, but no earlier than March 4, 2024.

Performance Period: The RE Act provides that loans guaranteed under this program cannot exceed 30 years in length.

Renewal or Supplemental Awards: N/A

Type of Assistance Instrument: The type of assistance is in the form of an RUS FFB Guaranteed Loan and is supported by a perfected lien on collateral sufficient to provide for full loan security.

C. Eligibility Information

1. Eligible Applicants. To be eligible to participate in the 313A Program or receive a guarantee, a Guaranteed Lender must meet the eligibility criteria specified in 7 CFR 1720.5.

2. *Cost Sharing or Matching.* There is no requirement for cost sharing or matching; however, borrowers must provide sufficient unencumbered collateral to secure loan guarantees made under this program.

3. Other. Applications will only be accepted from lenders that serve rural areas as defined in 7 CFR 1710.2(a).

D. Application and Submission Information

1. *Address to Request Application Package.*

All applications must be prepared and submitted in accordance with this NOFO and 7 CFR part 1720 (*https://www.ecfr.gov/current/title-7/subtitle-B/chapter-XVII/part-1720*).

2. *Content and Form of Application Submission.*

In addition to the required application specified in 7 CFR 1720.6, all applicants must submit the following additional required documents and materials:

a. *Restrictions on Lobbying:*

Applicants must comply with the requirements relating to restrictions on lobbying activities (See 2 CFR part 418). This form is available at *https://www.gsa.gov/forms-library/disclosure-lobbying-activities.*

b. *Uniform Relocation Act assurance statement:*

Applicants must comply with 49 CFR part 24, which implements the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended. (See 7 CFR 1710.124.) This form (Assurances Required by 49 CFR 2.2(a)) is available at *https://www.rd.usda.gov/resources/directives/electric-sample-documents.*

c. *Federal debt delinquency requirements:*

This report indicates whether the applicants are delinquent on any Federal debt (See 7 CFR 1710.126 and 7 CFR 1710.501(a) (12)). This form (the Federal Debt Delinquency Certification) is available at *https://www.rd.usda.gov/directives/federal-debt-delinquency-certification.*

d. *Form RD 400–4, Assurance Agreement:*

Applicants must submit a non-discrimination assurance commitment to comply with certain regulations on non-discrimination in program services and benefits and on equal employment opportunity as set forth in 7 CFR part 15, 12 CFR part 202, 7 CFR part 1901, subpart E, DR 4300–003, DR 4330–0300, and DR 4330–005. This form is available at *https://www.rd.usda.gov/directives/compliance-assurance-rd-form-400-4-nov-2017.*

e. *Articles of Incorporation and Bylaws:*

See 7 CFR 1710.501(b)(1). These are required if either document has been amended since the last loan application was submitted to RUS, or if this is the applicant's first application for a loan under the RE Act.

f. *Pro forma financial statements including cash flow projections and assumptions:*

Each applicant must include five-year pro forma income statements, balance sheets and cash flow projections or business plans and clearly state the assumptions that underlie the projections, demonstrating that there is reasonable assurance that the applicant will be able to repay the guaranteed loan in accordance with its terms (See 7 CFR 1720.6(a)(4)).

g. *Pending litigation statement:*

A statement from the applicant's counsel listing any pending litigation, including levels of related insurance coverage and the potential effect on the applicant, must be submitted to RUS.

3. *System for Award Management and Unique Entity Identifier.*

a. At the time of application, each applicant must have an active registration in the System for Award Management (SAM) before submitting its application in accordance with 2 CFR part 25 (*https://www.ecfr.gov/current/title-2/subtitle-A/chapter-I/part-25*). To register in SAM, entities will be required to obtain a Unique Entity Identifier (UEI). Instructions for obtaining the UEI are available at *https://sam.gov/content/entity-registration.*

b. Applicants must maintain an active SAM registration, with current, accurate and complete information, at all times during which it has an active Federal award or an application under consideration by a Federal awarding agency.

c. Applicant must ensure it completes the Financial Assistance General Certifications and Representations in SAM.

d. Applicants must provide a valid UEI in its application, unless determined exempt under 2 CFR 25.110.

e. The Agency will not make an award until the applicant has complied with all SAM requirements including providing the UEI. If an applicant has not fully complied with the requirements by the time the Agency is ready to make an award, the Agency may determine that the applicant is not qualified to receive a Federal award and use that determination as a basis for making a Federal award to another applicant.

4. *Submission Dates and Times.* To be considered, applications must be submitted no later than 5 p.m. eastern time (ET) on March 4, 2024.

5. *Funding Restrictions.*

Funds from loans guaranteed under this program may only be used in accordance with this notice, the program regulations, and the RE Act.

6. *Other Submission Requirements.* Such other application documents and submissions deemed necessary by the Secretary for evaluation of applications.

E. Application Review Information

1. *Criteria.*

Each application will be reviewed by the Secretary to determine whether it is eligible under 7 CFR 1720.5, the information required under 7 CFR 1720.6 is complete, and the proposed guaranteed bond complies with applicable statutes and regulations. The Secretary can at any time reject an application that fails to meet these requirements.

2. *Review and Selection Process.*

Applications will be subject to a substantive review, on a competitive basis, by the Administrator based upon the evaluation factors listed in 7 CFR 1720.7(b). The Administrator may limit the number of guarantees made to a maximum of five per year, to ensure a sufficient examination is conducted of applicant requests. RUS will notify the applicant in writing of the Administrator's approval or denial of an application. Approvals for guarantees will be conditioned upon compliance with 7 CFR 1720.4 and 7 CFR 1720.6. The Administrator reserves the discretion to approve an application for an amount that was less than requested.

Before a guarantee decision is made by the Administrator, the Administrator shall request that FFB review the rating agency determination required by 7 CFR 1720.5(b)(2) as to whether the bond or note to be issued would receive an investment grade rating without regard to the guarantee.

F. Federal Award Administration Information

1. *Federal Award Notices.*

RUS will send a commitment letter to an applicant once the guaranteed loan has been approved. Applicants must accept and commit to all terms and conditions of the guaranteed loan which are requested by RUS and FFB before the loan guarantee award can be obligated.

The requirements under 7 CFR 1720.8 must be met by the applicant prior to the endorsement of a guarantee by the Administrator. Each Guaranteed Lender will be required to enter into a Guarantee Agreement with RUS that contains the provisions described in 7 CFR 1720.8 (Issuance of the Guarantee), 7 CFR 1720.9 (Guarantee Agreement), and 7 CFR 1720.12 (Reporting Requirements). The Guarantee Agreement will also obligate the Guaranteed Lender to pay, on a semi-annual basis, a guarantee fee equal to 30

basis points (0.30 percent) of the outstanding principal amount of the guaranteed loan (See 7 CFR 1720.10).

2. *Administrative and National Policy Requirements—*

Applicants must accept and commit to all terms and conditions of the guaranteed loan which are requested by RUS and FFB as follows:

a. *Compliance conditions.*

In addition to the standard conditions placed on the 313A Program or conditions requested by RUS to ensure loan security and statutory compliance, applicants must comply with the following conditions:

(1) Each Guaranteed Lender selected under the 313A Program will be required to post collateral for the benefit of RUS in an amount at least equal to the aggregate amount of loan advances made to the Guaranteed Lender under the 313A Program.

(2) The pledged collateral (the Pledged Collateral) shall consist of outstanding notes or bonds payable to the Guaranteed Lender (the Eligible Instruments) and shall be placed on deposit with a collateral agent for the benefit of RUS. To be deemed Eligible Instruments that can be pledged as collateral, the notes or bonds to be pledged (i) cannot be classified as non-performing, impaired, or restructured under generally accepted accounting principles; special mention loans as defined by the Office of the Comptroller of the Currency; or any other elevated risk categories used by the Guaranteed Lender, (ii) must be free and clear of all liens other than the lien created for the benefit of RUS, (iii) cannot be comprised of more than 30 percent of bonds or notes from generation and transmission borrowers, (iv) cannot have more than 5 percent of bonds and notes be from any one particular borrower and (v) cannot be unsecured notes.

(3) The Guaranteed Lender will be required to place a lien on the Pledged Collateral in favor of RUS (as secured party) at the time that the Pledged Collateral is deposited with the collateral agent. RUS will have the right, in its sole discretion, within 14 business days of the Guaranteed Lender's written request to pledge Pledged Collateral, to reject any of the Pledged Instruments and require the Guaranteed Lender to substitute other Pledged Instruments as collateral with the collateral agent. Prior to receiving any advances under the 313A Program, the Guaranteed Lender will be required to enter into a pledge agreement, satisfactory to RUS, with a banking institution serving as collateral agent.

(4) The Guaranteed Lender will be required to agree not to take any action that would have the effect of reducing the value of the pledged collateral below the level described above.

(5) Applicants must certify to the RUS, the portion of their loan portfolio that is:

i. Refinanced RUS debt;

ii. Debt of borrowers for whom both RUS and the applicants have outstanding loans;

and

iii. Debt of borrowers for whom both RUS and the applicant have outstanding concurrent loans pursuant to Section 307 of the RE Act, and the amount of Eligible Loans.

b. *Schedule of Loan Repayment:*

The amortization method for the repayment of the guaranteed loan shall be repaid by the Guaranteed Lender: (i) in periodic installments of principal and interest, (ii) in periodic installments of interest and, at the end of the term of the bond or note, as applicable, by the repayment of the outstanding principal, or (iii) through a combination of the methods described in (i) and (ii) above. The amortization method will be agreed to by RUS and the Guaranteed Lender.

3. *Compliance with Federal Laws.*

Applicants must comply with all applicable Federal laws and regulations.

a. This loan guarantee will be subject to the provisions contained in the appropriations act for FY 2024, once enacted by Congress. Prior appropriations acts have included prohibitions against RUS making awards to applicants having corporate felony convictions within the past 24 months or to applicants having corporate Federal tax delinquencies. It is possible that such provisions will be included in the appropriations act for FY 2024.

b. An authorized official within your organization must execute, date, and return the loan commitment letter to RUS within, no later than 14 calendar days from the date of the letter, otherwise the commitment will be voided.

4. *Reporting*

Guaranteed Lenders are required to comply with the financial reporting requirements and Pledged Collateral review and certification requirements set forth in 7 CFR 1720.12.

G. Federal Awarding Agency Contact(s)

For general questions about this announcement, please contact your USDA Rural Development contact provided in the **ADDRESSES** section of this notice.

H. Other Information

Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), OMB must approve all ''collection of information'' as a requirement for ''answers to *** identical reporting or recordkeeping requirements imposed on ten or more persons ***'' (44 U.S.C. 3502(3)(A)). RUS has concluded that the reporting requirements contained in this funding announcement will involve fewer than 10 persons and do not require approval under the provisions of the Act.

National Environmental Policy Act

In accordance with 7 CFR 1970.53(a)(7), any proceeds to be used to refinance bonds or notes previously issued by the Guaranteed Lender for RE Act purposes are classified as categorical exclusions. However, for any new projects using 313A Program funds, applicants must consult with RUS and comply with the Agency regulations at 7 CFR part 1970.

Federal Funding Accountability and Transparency Act

All applicants, in accordance with 2 CFR part 25 (*https://www.ecfr.gov/current/title-2/part-25*), must be registered in SAM and have a UEI number as stated in Section D.3 of this notice. All recipients of Federal financial assistance are required to report information about first-tier sub-awards and executive total compensation in accordance with 2 CFR part 170 (*https://www.ecfr.gov/current/title-2/part-170*).

Civil Rights Act

All loan guarantees made under this notice are subject to title VI of the Civil Rights Act of 1964 as required by the USDA (7 CFR part 15, subpart A—Nondiscrimination in Federally-Assisted Programs of the Department of Agriculture—Effectuation of Title VI of the Civil Rights Act of 1964) and section 504 of the Rehabilitation Act of 1973, title VIII of the Civil Rights Act of 1968, title IX, Executive Order 13166 (Limited English Proficiency), Executive Order 11246, and the Equal Credit Opportunity Act of 1974.

Nondiscrimination Statement

In accordance with Federal civil rights laws and U.S. Department of Agriculture (USDA) civil rights regulations and policies, the USDA, its Mission Areas, agencies, staff offices, employees, and institutions participating in or administering USDA programs are prohibited from discriminating based on race, color,

national origin, religion, sex, gender identity (including gender expression), sexual orientation, disability, age, marital status, family/parental status, income derived from a public assistance program, political beliefs, or reprisal or retaliation for prior civil rights activity, in any program or activity conducted or funded by USDA (not all bases apply to all programs). Remedies and complaint filing deadlines vary by program or incident. Program information may be made available in languages other than English. Persons with disabilities who require alternative means of communication to obtain program information (*e.g.,* Braille, large print, audiotape, American Sign Language) should contact the responsible Mission Area, agency, or staff office; or the 711 Relay Service.

To file a program discrimination complaint, a complainant should complete a Form AD–3027, USDA Program Discrimination Complaint Form, which can be obtained online at *https://www.usda.gov/sites/default/files/documents/ad-3027.pdf,* from any USDA office, by calling (866) 632–9992, or by writing a letter addressed to USDA. The letter must contain the complainant's name, address, telephone number, and a written description of the alleged discriminatory action in sufficient detail to inform the Assistant Secretary for Civil Rights (ASCR) about the nature and date of an alleged civil rights violation.

The completed AD–3027 form or letter must be submitted to USDA by:

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

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

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

USDA is an equal opportunity provider, employer, and lender.

Andrew Berke,

Administrator, Rural Utilities Service, USDA Rural Development.

[FR Doc. 2023–27901 Filed 12–29–23; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Census Bureau

Census Scientific Advisory Committee; Request for Nominations

AGENCY: Census Bureau, Commerce.

ACTION: Notice of request for nominations.

SUMMARY: The Bureau of the Census (Census Bureau) requests nominations of individuals to the Census Scientific Advisory Committee (CSAC or Committee). The Census Bureau will consider nominations received in response to this notice, as well as from other sources. The **SUPPLEMENTARY INFORMATION** section of this notice provides Committee and membership criteria.

DATES: Please submit nominations by February 2, 2024. The Census Bureau will retain nominations received after this date for consideration should additional vacancies occur.

ADDRESSES: Please submit nominations to the *census.scientific.advisory.committee@census.gov* (subject line ''2024 CSAC Nominations'').

FOR FURTHER INFORMATION CONTACT: Shana Banks, Chief, Advisory Committee Branch, Office of Program, Performance and Stakeholder Integration (PPSI), Census Bureau, by telephone at 301–763–3815 or by email at *Shana.J.Banks@census.gov.* Individuals who use telecommunication devices for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., eastern standard time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Census Scientific Advisory Committee was established in accordance with the Federal Advisory Committee Act (FACA) title 5, United States Code (U.S.C.), app. The following provides information about the Committee, membership, and the nomination process.

Objectives and Duties

1. The Census Scientific Advisory Committee advises the Director of the U.S. Census Bureau on the full range of Census Bureau programs and activities including communications, demographic, economic, field operations, geography, information technology, and statistics.

2. The Census Scientific Advisory Committee will address census policies, research and methodology, tests, operations, communications/messaging, and other activities to ascertain needs and best practices to improve censuses, surveys, operations, and programs.

3. The Census Scientific Advisory Committee will provide formal review and feedback on internal and external working papers, reports, and other documents related to the design and implementation of census programs and surveys.

4. The Census Scientific Advisory Committee will function solely as an advisory body and shall comply fully with the provisions of the FACA.

5. The Census Scientific Advisory Committee reports to the Director of the Census Bureau.

Membership

1. The Census Scientific Advisory Committee consists of up to 21 members who are appointed by and serve at the discretion of the Director of the Census Bureau.

2. Members will serve for a three-year term. All members will be evaluated at the conclusion of their first term with the prospect of renewal, pending Committee needs. Active attendance and participation in meetings and activities will be factors considered when determining term renewal or membership continuance. Members may be appointed for a second three-year term at the discretion of the Director.

3. Members shall serve as Special Government Employees (SGEs) and will be subject to the ethics rules applicable to SGEs.

4. The Census Scientific Advisory Committee aims to have balanced representation among its members, considering such factors as geography, scientific expertise, community involvement, and knowledge of census programs and/or activities, and, where possible the Census Bureau will consider the ethnic, racial, and gender diversity and various abilities of the United States population.

5. No employee of the Federal Government can serve as a member of the Census Scientific Advisory Committee.

Miscellaneous

1. The Census Bureau will not compensate members of the Committee for their services, but shall, upon request, reimburse travel expenses as authorized by 5 U.S.C. 5703.

2. The Census Scientific Advisory Committee will convene twice per year, budget and environmental conditions permitting. The Committee will use formal advisory committee meetings, webinars, working groups, and other means of review to accomplish its goals, consistent with the requirements of FACA.

Nomination Information

1. Nominations are requested as described above.

2. Nominees must have scientific and technical expertise in such areas as communications, demographic, economic, field operations, geography, information technology, and statistics. Such knowledge and expertise are needed to provide advice and

recommendations to the Director of the Census Bureau on the trends, uses, and application of scientific innovations and developments in relation to the full range of Census Bureau programs and activities.

3. The Census Bureau is especially interested in receiving applications from persons with expertise in survey methodology, information technology, computer science and engineering, geography, psychology, business/finance, sociology, and marketing.

4. Individuals, groups, and/or organizations may submit nominations on behalf of individual candidates. A summary of the candidate's qualifications (resumé or curriculum vitae) must be included along with the nomination letter. Nominees must be able to actively participate in the tasks of the Census Scientific Advisory Committee, including, but not limited to, regular meeting attendance, Committee meeting discussant responsibilities, review of materials, as well as participation in conference calls, webinars, working groups, and/or special Committee activities.

5. The Department of Commerce is committed to equal opportunity in the workplace and seeks diverse Committee membership.

Robert L. Santos, Director, Census Bureau, approved the publication of this notice in the **Federal Register**.

Dated: December 26, 2023.

Shannon Wink,

Program Analyst, Policy Coordination Office, U.S. Census Bureau.

[FR Doc. 2023–28812 Filed 12–29–23; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[S–192–2023]

Approval of Expansion of Subzone 144C; Orgill, Inc.; Tifton, Georgia

On September 28, 2023, the Executive Secretary of the Foreign-Trade Zones (FTZ) Board docketed an application submitted by the Brunswick and Glynn County Development Authority, grantee of FTZ 144, requesting an expansion of Subzone 144C subject to the existing activation limit of FTZ 144, on behalf of Orgill, Inc., in Tifton, Georgia.

The application was processed in accordance with the FTZ Act and Regulations, including notice in the **Federal Register** inviting public comment (88 FR 69116, October 5, 2023). The FTZ staff examiner reviewed the application and determined that it meets the criteria for approval. Pursuant to the authority delegated to the FTZ Board Executive Secretary (15 CFR 400.36(f)), the application to expand Subzone 144C was approved on December 26, 2023, subject to the FTZ Act and the Board's regulations, including section 400.13, and further subject to FTZ 144's 2,000-acre activation limit.

Dated: December 26, 2023.

Camille R. Evans,

Acting Executive Secretary.

[FR Doc. 2023–28811 Filed 12–29–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–560–839]

Mattresses From Indonesia: Preliminary Negative Countervailing Duty Determination and Alignment of Final Determination With the Final Antidumping Duty Determination

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

SUMMARY: The U.S. Department of Commerce (Commerce) preliminarily determines that countervailable subsidies are not being provided to producers and exporters of mattresses from Indonesia. The period of investigation (POI) is January 1, 2022, through December 31, 2022. Interested parties are invited to comment on this preliminary determination.

DATES: Applicable January 2, 2024.

FOR FURTHER INFORMATION CONTACT: Natasia Harrison or Harrison Tanchuck, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–1240 or (202) 482–7421, respectively.

SUPPLEMENTARY INFORMATION:

Background

This preliminary determination is made in accordance with section 703(b) of the Tariff Act of 1930, as amended (the Act). Commerce published the notice of initiation of this countervailing duty (CVD) investigation on August 23, 2023.[1] On October 5, 2023, Commerce postponed the preliminary determination until December 26, 2023.[2]

For a complete description of events that followed the initiation of this investigation, *see* the Preliminary Decision Memorandum.[3] A list of topics discussed in the Preliminary Decision Memorandum is included as Appendix II 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.*

Scope of the Investigation

The products covered by this investigation are mattresses from Indonesia. For a complete description of the scope of this investigation, *see* Appendix I.

Scope Comments

In accordance with the preamble to Commerce's regulations,[4] the *Initiation Notice* set aside a period of time for parties to raise issues regarding product coverage, (*i.e.,* scope).[5] We received comments concerning the scope of the concurrent antidumping duty (AD) investigations of mattresses as it appeared in the *Initiation Notice*.[6] We are currently evaluating the scope comments filed by the interested parties and intend to issue our preliminary decision regarding the scope of the AD and CVD investigations prior to or concurrently with the AD preliminary determinations. We will incorporate the scope decisions from the AD investigations into the scope of the final CVD determination for this investigation, after considering any relevant comments submitted in scope case and rebuttal briefs.[7]

[1] *See Mattresses from Indonesia: Initiation of Countervailing Duty Investigation,* 88 FR 57412 (August 23, 2023) (*Initiation Notice*).

[2] *See Mattresses from Indonesia: Postponement of Preliminary Determination in the Countervailing Duty Investigation,* 88 FR 69132 (October 5, 2023).

[3] *See* Memorandum, ''Decision Memorandum for the Preliminary Negative Determination of the Countervailing Duty Investigation of Mattresses from Indonesia,'' dated concurrently with, and hereby adopted by, this notice (Preliminary Decision Memorandum).

[4] *See Antidumping Duties; Countervailing Duties, Final Rule,* 62 FR 27296, 27323 (May 19, 1997).

[5] *See Initiation Notice,* 88 FR at 57413.

[6] *See* Preliminary Decision Memorandum at 5–6.

[7] The deadline for interested parties to submit scope case and rebuttal briefs will be established in the preliminary scope decision memorandum.

Methodology

Commerce is conducting this investigation in accordance with section 701 of the Act. For each subsidy program found to be countervailable, Commerce preliminarily determines that there is a subsidy, *i.e.,* a financial contribution by an ''authority'' that gives rise to a benefit to the recipient, and that the subsidy is specific.[8] For a full description of the methodology underlying our preliminary determination, *see* the Preliminary Decision Memorandum.

Alignment

In accordance with section 705(a)(1) of the Act and 19 CFR 351.210(b)(4), Commerce is aligning the final CVD determination in this investigation with the final determination in the concurrent AD investigations of mattresses from Bosnia and Herzegovina, Bulgaria, Burma, India, Italy, Kosovo, Mexico, the Philippines, Poland, Slovenia, Spain, and Taiwan based on a request made by the petitioners.[9] Consequently, the final CVD determination will be issued on the same date as the final AD determination, which is currently scheduled to be issued no later than May 8, 2024, unless postponed.

Preliminary Determination

For this preliminary determination, Commerce calculated *de minimis* estimated countervailable subsidies for each individually examined producer(s)/export(s) of the subject merchandise. Consistent with section 703(b)(4)(A) of the Act, Commerce is disregarding the *de minimis* rates and we preliminarily determine that countervailable subsidies are not being provided to producers/exporters of the subject merchandise in Indonesia.

Commerce preliminarily determines that the following estimated net countervailable subsidy rates exist:

Company	Subsidy rate (percent)
PT Grantec Jaya Indonesia [10].	0.20 (*de minimis*).
PT Zinus Global Indonesia.	0.03 (*de minimis*).

Consistent with section 703(d) of the Act, Commerce has not calculated an estimated weighted-average subsidy rate for all other producers and exporters because it has not made an affirmative preliminary determination.

Disclosure

Commerce intends to disclose its calculations and analysis performed to interested parties in this preliminary determination within five days of its public announcement, or if there is no public announcement, within five days of the date of the publication of this notice, in accordance with 19 CFR 351.224(b).

Suspension of Liquidation

Because Commerce preliminarily determines that no countervailable subsidies are being provided to the production or exportation of subject merchandise, Commerce will not direct U.S. Customs and Border Protection to suspend liquidation of any such entries.

Verification

As provided in section 782(i)(1) of the Act, Commerce intends to verify the information relied upon in making its final determination.

Public Comment

All interested parties will have the opportunity to submit scope case and rebuttal briefs on the preliminary decision regarding the scope of the AD and CVD investigations. The deadlines to submit scope case and rebuttal briefs will be provided in the preliminary scope decision memorandum. For all scope case and rebuttal briefs, parties must file identical documents simultaneously on the records of the ongoing AD and CVD investigations. No new factual information or business proprietary information may be included in either scope case or rebuttal briefs.

Case briefs or other written comments on non-scope issues may be submitted to the Assistant Secretary for Enforcement and Compliance. Interested parties will be notified of the timeline for the submission of case briefs and written comments at a later date. Rebuttal briefs, limited to issues raised in the case briefs, may be filed not later than five days after the date for filing case briefs.[11] Interested parties who submit case briefs or rebuttal briefs in this proceeding must submit: (1) a table of contents listing each issue; and (2) a table of authorities.[12]

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 investigation, we instead request that interested parties provide at the beginning of their briefs a public, executive summary for each issue raised in their briefs.[13] 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 in this investigation. 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).[14]

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. Requests should contain the party's name, address, and telephone number, the number of participants, and a list of the issues to be discussed. 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.[15]

U.S. International Trade Commission Notification

In accordance with section 703(f) of the Act, Commerce will notify the U.S.

[8] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[9] The petitioners are: Brooklyn Bedding LLC; Carpenter Co.; Corsicana Mattress Company; Future Foam, Inc.; FXI, Inc.; Kolcraft Enterprises, Inc.; Leggett & Platt, Incorporated; Serta Simmons Bedding, LLC; Southerland, Inc.; Tempur Sealy International; the International Brotherhood of Teamsters; and the United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service Workers International Union, AFL–CIO. *See* Petitioners' Letter, ''Mattress Petitioners' Request for Alignment of the Countervailing Duty Investigation with Concurrent Antidumping Duty Investigations,'' dated November 13, 2023.

[10] As discussed in the Preliminary Decision Memorandum, Commerce preliminarily determines PT Grantec Jaya Indonesia is cross-owned with PT Ecos Jaya Indonesia.

[11] *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 Service Final Rule*).

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

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

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

[15] *See* 19 CFR 351.310(d).

International Trade Commission (ITC) of its determination. If the final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the final determination whether imports of mattresses from Indonesia are materially injuring, or threaten material injury to, the U.S. industry.

Notification to Interested Parties

This determination is issued and published pursuant to sections 703(f) and 777(i) of the Act, and 19 CFR 351.205(c).

Dated: December 26, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix I

Scope of the Investigation

The products covered by this investigation are all types of youth and adult mattresses. The term ''mattress'' denotes an assembly of materials that at a minimum includes a ''core,'' which provides the main support system of the mattress, and may consist of innersprings, foam, other resilient filling, or a combination of these materials. Mattresses also may contain: (1) ''upholstery,'' the material between the core and the top panel of the ticking on a single-sided mattress, or between the core and the top and bottom panel of the ticking on a double-sided mattress; and/or (2) ''ticking,'' the outermost layer of fabric or other material (*e.g.,* vinyl) that encloses the core and any upholstery, also known as a cover.

The scope of this investigation is restricted to only ''adult mattresses'' and ''youth mattresses.'' ''Adult mattresses'' are frequently described as ''twin,'' ''extra-long twin,'' ''full,'' ''queen,'' ''king,'' or ''California king'' mattresses. ''Youth mattresses'' are typically described as ''crib,'' ''toddler,'' or ''youth'' mattresses. All adult and youth mattresses are included regardless of size and size description or how they are described (*e.g.,* frameless futon mattress and tri-fold mattress).

The scope encompasses all types of ''innerspring mattresses,'' ''non-innerspring mattresses,'' and ''hybrid mattresses.'' ''Innerspring mattresses'' contain innersprings, a series of metal springs joined together in sizes that correspond to the dimensions of mattresses. Mattresses that contain innersprings are referred to as ''innerspring mattresses'' or ''hybrid mattresses.'' ''Hybrid mattresses'' contain two or more support systems as the core, such as layers of both memory foam and innerspring units.

''Non-innerspring mattresses'' are those that do not contain any innerspring units. They are generally produced from foams (*e.g.,* polyurethane, memory (viscoelastic), latex foam, gel infused viscoelastic (gel foam), thermobonded polyester, polyethylene) or other resilient filling.

Mattresses covered by the scope of this investigation may be imported independently, as part of furniture or furniture mechanisms (*e.g.,* convertible sofa bed mattresses, sofa bed mattresses imported with sofa bed mechanisms, corner group mattresses, day-bed mattresses, roll-away bed mattresses, high risers, trundle bed mattresses, crib mattresses), or as part of a set (in combination with a ''mattress foundation''). ''Mattress foundations'' are any base or support for a mattress. Mattress foundations are commonly referred to as ''foundations,'' ''boxsprings,'' ''platforms,'' and/or ''bases.'' Bases can be static, foldable, or adjustable. Only the mattress is covered by the scope if imported as part of furniture, with furniture mechanisms, or as part of a set, in combination with a mattress foundation.

Excluded from the scope of this investigation are ''futon'' mattresses. A ''futon'' is a bi-fold frame made of wood, metal, or plastic material, or any combination thereof, that functions as both seating furniture (such as a couch, love seat, or sofa) and a bed. A ''futon mattress'' is a tufted mattress, where the top covering is secured to the bottom with thread that goes completely through the mattress from the top through to the bottom, and it does not contain innersprings or foam. A futon mattress is both the bed and seating surface for the futon.

Also excluded from the scope are airbeds (including inflatable mattresses) and waterbeds, which consist of air- or liquid-filled bladders as the core or main support system of the mattress.

Also excluded is certain multifunctional furniture that is convertible from seating to sleeping, regardless of filler material or components, where such filler material or components are upholstered, integrated into the design and construction of, and inseparable from, the furniture framing, and the outermost layer of the multifunctional furniture converts into the sleeping surface. Such furniture may, and without limitation, be commonly referred to as ''convertible sofas,'' ''sofabeds,'' ''sofa chaise sleepers,'' ''futons,'' ''ottoman sleepers,'' or a like description.

Also excluded from the scope of this investigation are any products covered by the existing antidumping duty orders on uncovered innerspring units from the People's Republic of China, South Africa, and the Socialist Republic of Vietnam. *See Uncovered Innerspring Units from the People's Republic of China, South Africa, and Socialist Republic of Vietnam: Continuation of Antidumping Duty Orders,* 84 FR 55285 (October 16, 2019).

Also excluded from the scope of this investigation are bassinet pads with a nominal length of less than 39 inches, a nominal width of less than 25 inches, and a nominal depth of less than 2 inches.

Additionally, also excluded from the scope of this investigation are ''mattress toppers.'' A ''mattress topper'' is a removable bedding accessory that supplements a mattress by providing an additional layer that is placed on top of a mattress. Excluded mattress toppers have a height of four inches or less.

The products subject to this investigation are currently classifiable under Harmonized Tariff Schedule of the United States (HTSUS) subheadings: 9404.21.0010, 9404.21.0013, 9404.21.0095, 9404.29.1005, 9404.29.1013, 9404.29.1095, 9404.29.9085, 9404.29.9087, and 9404.29.9095. Products subject to this investigation may also enter under HTSUS subheadings: 9401.41.0000, 9401.49.0000, and 9401.99.9081. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise subject to this investigation is dispositive.

Appendix II

List of Topics Discussed in the Preliminary Decision Memorandum

[FR Doc. 2023–28843 Filed 12–29–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Advance Notification of Sunset Review

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

Background

Every five years, pursuant to the Tariff Act of 1930, as amended (the Act), the U.S. Department of Commerce (Commerce) and the U.S. International Trade Commission automatically initiate and conduct reviews to determine whether revocation of a countervailing or antidumping duty order or termination of an investigation suspended under section 704 or 734 of the Act would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

Upcoming Sunset Reviews for February 2024

Pursuant to section 751(c) of the Act, the following Sunset Reviews are scheduled for initiation in February 2024 and will appear in that month's *Notice of Initiation of Five-Year Sunset Reviews* (Sunset Review).

	Department contact
Antidumping Duty Proceedings	
Crystalline Silicon Photovoltaic Cells and Modules from China, A–570–979 (2nd Review)	Thomas Martin, (202) 482–3936.
Large Diameter Welded Pipe from Canada, A–122–863 (1st Review)	Thomas Martin, (202) 482–3936.
Large Diameter Welded Pipe from China, A–570–077 (1st Review)	Thomas Martin, (202) 482–3936.
Large Diameter Welded Pipe from Greece, A–484–803 (1st Review)	Thomas Martin, (202) 482–3936.
Large Diameter Welded Pipe from India, A–533–881 (1st Review)	Thomas Martin, (202) 482–3936.
Large Diameter Welded Pipe from Korea, A–580–897 (1st Review)	Thomas Martin, (202) 482–3936.
Large Diameter Welded Pipe from Turkey, A–489–833 (1st Review)	Thomas Martin, (202) 482–3936.
Plastic Decorative Ribbons from China, A–570–075 (1st Review)	Jacky Arrowsmith, (202) 482–5255.
Sodium Hexametaphosphate from China, A–570–908 (3rd Review)	Thomas Martin, (202) 482–3936.
Countervailing Duty Proceedings	
Crystalline Silicon Photovoltaic Cells and Modules from China, C–570–980 (2nd Review)	Jacky Arrowsmith, (202) 482–5255.
Large Diameter Welded Pipe from China, C–570–078 (1st Review)	Thomas Martin, (202) 482–3936.
Large Diameter Welded Pipe from India, C–533–882 (1st Review)	Mary Kolberg, (202) 482–1785.
Large Diameter Welded Pipe from Korea, C–580–898 (1st Review)	Mary Kolberg, (202) 482–1785.
Large Diameter Welded Pipe from Turkey, C–489–834 (1st Review)	Thomas Martin, (202) 482–3936.
Plastic Decorative Ribbons from China, C–570–076 (1st Review)	Jacky Arrowsmith, (202) 482–5255.

Suspended Investigations

No Sunset Review of suspended investigations is scheduled for initiation in February 2024.

Commerce's procedures for the conduct of Sunset Review are set forth in 19 CFR 351.218. The *Notice of Initiation of Five-Year (Sunset) Review* provides further information regarding what is required of all parties to participate in Sunset Review.

Pursuant to 19 CFR 351.103(c), Commerce will maintain and make available a service list for these proceedings. To facilitate the timely preparation of the service list(s), it is requested that those seeking recognition as interested parties to a proceeding contact Commerce in writing within 10 days of the publication of the Notice of Initiation.

Please note that if Commerce receives a Notice of Intent to Participate from a member of the domestic industry within 15 days of the date of initiation, the review will continue.

Thereafter, any interested party wishing to participate in the Sunset Review must provide substantive comments in response to the notice of initiation no later than 30 days after the date of initiation. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[1]

This notice is not required by statute but is published as a service to the international trading community.

[1] *See Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule,* 88 FR 67069 (September 29, 2023).

Dated: December 15, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–28823 Filed 12–29–23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–884]

Glycine From India: Final Results of Countervailing Duty Administrative Review; 2021

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

SUMMARY: The U.S. Department of Commerce (Commerce) determines that Kumar Industries, India (Kumar), a producer/exporter of glycine from India, received countervailable subsidies during the period of review (POR), January 1, 2021, through December 31, 2021.

DATES: Applicable January 2, 2024.

FOR FURTHER INFORMATION CONTACT: Scarlet Jaldin or Harrison Tanchuck AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: (202) 482–4275 or (202) 482–7421, respectively.

SUPPLEMENTARY INFORMATION:

Background

On June 30, 2023, Commerce published the *Preliminary Results* of this administrative review in the **Federal Register** and invited interest parties to comment.[1] On September 22, 2023, Commerce extended the deadline for issuing these final results to December 15, 2023.[2] On December 15, 2023, we further extended the deadline for these final results to December 27, 2023.[3] We received timely-filed case briefs from GEO Specialty Chemicals, Inc. (the petitioner),[4] the Government of India (GOI),[5] and the mandatory respondent in this review, Kumar Industries, India (Kumar).[6] We received timely-filed rebuttal briefs from the petitioner[7] and Kumar.[8] For a complete description of the events that occurred since the publication of the *Preliminary Results, see* the Issues and Decision Memorandum.[9]

[1] *See Glycine from India: Preliminary Results of Countervailing Duty Administrative Review and Rescission, in Part; 2021,* 88 FR 42298 (June 30, 2023) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum.

[2] *See* Memorandum, ''Extension of Deadline for the Final Results of Countervailing Duty Administrative Review; 2021,'' dated September 22, 2023.

[3] *See* Memorandum, ''Second Extension of Deadline for Final Results of Countervailing Duty Administrative Review; 2021,'' dated December 15, 2023.

[4] *See* Petitioner's Letter, ''Case Brief of GEO Specialty Chemicals, Inc.,'' dated July 31, 2023.

[5] *See* GOI's Letter, ''Case Brief Submission on behalf of Government of India (GOI),'' dated July 31, 2023.

[6] *See* Kumar's Letter, ''Case Brief,'' dated July 31, 2023.

[7] *See* Petitioner's Letter, ''Rebuttal Brief of Geo Specialty Chemicals, Inc.,'' dated August 7, 2023.

[8] *See* Kumar's Letter, ''Rebuttal Brief,'' dated August 7, 2023.

[9] *See* Memorandum, ''Issues and Decision Memorandum for the Final Results of the Countervailing Duty Administrative Review of Glycine from India; 2021,'' dated concurrently with, and hereby adopted by, this notice (Issues and Decision Memorandum).

Scope of the Order [10]

The merchandise covered by the *Order* is glycine from India. For a complete description of the scope of the *Order, see* the Issues and Decision Memorandum.[11]

Analysis of Comments Received

All issues raised by interested parties in their case and rebuttal briefs are addressed in the Issues and Decision Memorandum. A list of the topics discussed in the Issues and Decision Memorandum is provided in Appendix I to this notice. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov*. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *https://access.trade.gov/public/FRNoticesListLayout.aspx*.

Changes Since the Preliminary Results

Based on our analysis of the comments received from interested parties and of the record, we made certain changes from the *Preliminary Results*. For a full description of these revisions, *see* the Issues and Decision Memorandum.

Methodology

Commerce conducted this administrative review in accordance with section 751(a)(1)(A) of the Tariff Act of 1930, as amended (the Act). For each of the subsidy programs found countervailable, we find that there is a subsidy, *i.e.,* a government-provided financial contribution that gives rise to a benefit to the recipient, and that the subsidy is specific.[12] For a full description of the methodology underlying Commerce's conclusions, including any determination that relied upon the use of adverse facts available (AFA) pursuant to sections 776(a) and (b) of the Act, *see* the Issues and Decision Memorandum.

Companies Not Selected for Individual Review

In this review, the final rate calculated for Kumar, the mandatory respondent, is not zero, *de minimis,* or based entirely on facts available. Therefore, consistent with section 705(c)(5)(A) of the Act, for the companies that were not selected as a mandatory respondent, Commerce is basing the final subsidy rate for non-examined companies on the final subsidy rate calculated for Kumar.

Final Results of Administrative Review

For the period January 1, 2021, through December 31, 2021, we determine that the following net countervailable subsidy rates exist:

Company	Subsidy rate (percent *ad valorem*)
Kumar Industries, India [13]	7.24
Rudraa International	7.24
Rexisize Rasayan Industries	7.24

Disclosure

Commerce intends to disclose to the calculations performed in connection with the final results of review within five days of a public announcement or, if there is no public announcement, within five days of the date of publication of the notice of final results in the **Federal Register**, in accordance with 19 CFR 351.224(b).

Assessment Rates

Pursuant to section 751(a)(2)(C) of the Act and 19 CFR 351.212(b)(2), Commerce has determined, and U.S. Customs and Border Protection (CBP) shall assess, countervailing duties on all appropriate entries of subject merchandise covered by this review. Commerce intends to issue assessment instructions to CBP no earlier than 35 days after the date of publication of the final results of this review in the **Federal Register**. If a timely summons is filed at the U.S. Court of International Trade, the assessment instructions will direct CBP not to liquidate relevant entries until the time for parties to file a request for a statutory injunction has expired (*i.e.,* within 90 days of publication).

Cash Deposit Requirements

In accordance with section 751(a)(2)(C) of the Act, Commerce also intends to instruct CBP to collect cash deposits of estimated countervailing duties in the amounts indicated above on shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review. For all non-reviewed firms subject to the *Order,* Commerce will instruct CBP to continue to collect cash deposits of estimated countervailing duties at the most recent company-specific or all-others rate applicable to the company, as appropriate. These cash deposit requirements, effective upon publication of these final results, shall remain in effect until further notice.

Administrative Protective Order

This notice also serves as a reminder to parties subject to an administrative protective order (APO) of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

Notification to Interested Parties

We are issuing and publishing these final results in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.221(b)(5).

Dated: December 26, 2023.

Abdelali Elouaradia,

Deputy Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Issues and Decision Memorandum

[10] *See Glycine from India and the People's Republic of China: Countervailing Duty Orders,* 84 FR 29173 (June 21, 2019) (*Order*).

[11] *See* Issues and Decision Memorandum at 2.

[12] *See* sections 771(5)(B) and (D) of the Act regarding financial contribution; section 771(5)(E) of the Act regarding benefit; and section 771(5A) of the Act regarding specificity.

[13] Commerce continues to find that Kumar is cross-owned with Advance Chemical Corporation; therefore, the same subsidy rate applies to both companies. *See* Issues and Decision Memorandum at 4.

[FR Doc. 2023–28842 Filed 12–29–23; 8:45 am]
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DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–846]

Boltless Steel Shelving Units Prepackaged for Sale From Thailand: Amended Preliminary Determination of Sales at Less-Than-Fair-Value

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

SUMMARY: The U.S. Department of Commerce (Commerce) is amending the preliminary affirmative determination of sales at less-than-fair-value on boltless steel shelving units prepackaged for sale (boltless steel shelving) from Thailand to correct a significant ministerial error.

DATES: Applicable January 2, 2024.

FOR FURTHER INFORMATION CONTACT: Fred Baker, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230; telephone: 202–482–6274.

SUPPLEMENTARY INFORMATION:

Background

On November 29, 2023, Commerce published its preliminary affirmative determination in the less-than-fair-value investigation of boltless steel shelving from Thailand.[1] On December 4, 2023, we received a timely ministerial error allegation from Siam Metal Tech Co., Ltd. (Siam Metal) that Commerce made significant ministerial errors in the *Preliminary Determination* with respect to the calculation of Siam Metal's weighted-average dumping margin.[2] We are amending our preliminary determination to find that subject merchandise is not being, or is not likely to be, sold in the United States by Siam Metal at less than fair value (LTFV).

Period of Investigation

The period of investigation (POI) is April 1, 2022, through March 31, 2023.

Scope of the Investigation

The products covered by this investigation are boltless steel shelving units prepackaged for sale from Thailand. For a complete description of the scope of this investigation, *see* appendix.

Analysis of Significant Ministerial Error Allegation

Commerce will analyze any comments received and, if appropriate, correct any significant ministerial error by amending the preliminary determination according to 19 CFR 351.224(e). A ministerial error is defined in 19 CFR 351.224(f) as ''an error in addition, subtraction, or other arithmetic function, clerical error resulting from inaccurate copying, duplication, or the like, and any other similar type of unintentional error which the Secretary considers ministerial.'' [3] A significant ministerial error is defined as a ministerial error, the correction of which, singly or in combination with other errors, would result in: (1) a change of at least five absolute percentage points in, but not less than 25 percent of, the weighted average dumping margin calculated in the original (erroneous) preliminary determination; or (2) a difference between a weighted-average dumping margin of zero (or *de minimis*) and a weighted-average dumping margin greater than *de minimis,* or vice versa.[4]

Amended Preliminary Determination

Pursuant to 19 CFR 351.224(e) and (g)(1), Commerce is amending the *Preliminary Determination* to reflect the correction of a ministerial error made in the calculation of the weighted-average dumping margin for Siam Metal.[5] Specifically, when calculating the costs, we inadvertently used the incorrect ''Affiliated COP'' and percentage of cost of manufacturing figures in applying the major input analysis. Commerce finds that this ministerial error is a significant error within the meaning of 19 CFR 351.224(g), because correction of this error decreases Siam Metal's weighted-average dumping margin from 7.58 percent to 1.40 percent, which is a change that is at least five absolute percentage points in, but not less than 25 percent of, the weighted-average dumping margin calculated in the original (erroneous) preliminary determination; furthermore, the weighted-average dumping margin in the original *Preliminary Determination* was greater than *de minimis,* while the corrected weighted-average dumping margin is *de minimis* for Siam Metal. As such, in this amended preliminary determination, we find that Siam Metal is not, or is not likely to, make sales of subject merchandise at LTFV. As Siam Metal's amended preliminary weighted-average margin is *de minimis,* we are also amending the all-others rate. Consistent with section 735(c)(5)(A) of the Act, the all-others rate will be equivalent to the rate calculated in the *Preliminary Determination* for Bangkok Sheet Metal Public Co. (Bangkok Sheet Metal), which is 2.54 percent. For a complete discussion of the alleged ministerial errors, *see* the Preliminary Ministerial Error Analysis Memo.

Amended Preliminary Determination

As a result of correcting this ministerial error, Commerce determines the following estimated weighted-average dumping margins exits:

Exporter	Producer	Weighted-average dumping margin (percent)
Siam Metal	Siam Metal	1.40 (*de minimis*).
Bangkok Sheet Metal Public Co	Bangkok Sheet Metal Public Co	2.54.
All-others rate		2.54.

[1] *See Boltless Steel Shelving Units Prepackaged for Sale from Thailand: Preliminary Affirmative Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Extension of Provisional Measures,* 88 FR 83389 (November 29, 2023) (*Preliminary Determination*), and accompanying Preliminary Decision Memorandum.

[2] *See* Siam Metal's Letter, ''Ministerial Error Comments,'' dated December 4, 2023 (Siam Metal Ministerial Comments).

[3] *See* section 735(e) of the Tariff Act of 1930, as amended (the Act).

[4] *See* 19 CFR 351.224(g).

[5] *See* Memorandum, ''Allegation of Ministerial Errors in the Preliminary Determination,'' dated concurrently with this notice (Preliminary Ministerial Error Analysis Memo).

Amended Cash Deposits and Suspension of Liquidation

The collection of cash deposits and suspension of liquidation will be revised according to the rates calculated in this amended preliminary determination, in accordance with section 773(d) of the Act. Because we are now making a negative determination of sales at LTFV for Siam Metal, we will instruct U.S. Customs and Border Protection (CBP) to discontinue the suspension of liquidation of entries of subject merchandise made by Siam Metal and to liquidate all suspended entries without regard to antidumping duties. Because the all-others rate decreased as a result of this amended preliminary determination, the all others rate will be effective retroactively to November 29, 2023, the date of publication of the *Preliminary Determination.* We will also instruct CBP to issue a refund of the difference between the amount of cash deposits paid as a result of the application of the original *Preliminary Determination* cash deposit rates and the revised amounts due as a result of the amended preliminary determination.

Disclosure

We intend to disclose the calculations performed to parties in this proceeding within five days after public announcement of the amended preliminary determination, in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 733(f) of the Act, Commerce will notify the U.S. International Trade Commission of our amended preliminary determination.

Notification to Interested Parties

This amended preliminary determination is issues and published pursuant to sections 773(d) and 777(i) of the Act and 19 CFR 351.224(e).

Dated: December 22, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

Appendix—Scope of the Investigation

The scope of this investigation covers boltless steel shelving units prepackaged for sale, with or without decks (boltless steel shelving). The term ''prepackaged for sale'' means that, at a minimum, the steel vertical supports (*i.e.,* uprights and posts) and steel horizontal supports (*i.e.,* beams, braces) necessary to assemble a completed shelving unit (with or without decks) are packaged together for ultimate purchase by the end-user. The scope also include add-on kits. Add-on kits include, but are not limited to, kits that allow the end-user to add an extension shelving unit onto an existing boltless steel shelving unit such that the extension and the original unit will share common frame elements (*e.g.,* two posts). The term ''boltless'' refers to steel shelving in which the vertical and horizontal supports forming the frame are assembled primarily without the use of nuts and bolts, or screws. The vertical and horizontal support members for boltless steel shelving are assembled by methods such as, but not limited to, fitting a rivet, punched or cut tab, or other similar connector on one support into a hole, slot or similar receptacle on another support. The supports lock together to form the frame for the shelving unit, and provide the structural integrity of the shelving unit separate from the inclusion of any decking. The incidental use of nuts and bolts, or screws to add accessories, wall anchors, tie-bars or shelf supports does not remove the product from scope. Boltless steel shelving units may also come packaged as partially assembled, such as when two upright supports are welded together with front-to-back supports, or are otherwise connected, to form an end unit for the frame. The boltless steel shelving covered by these investigations may be commonly described as rivet shelving, welded frame shelving, slot and tab shelving, and punched rivet (quasi-rivet) shelving as well as by other trade names. The term ''deck'' refers to the shelf that sits on or fits into the horizontal supports (beams or braces) to provide the horizontal storage surface of the shelving unit.

The scope includes all boltless steel shelving meeting the description above, regardless of: (1) vertical support or post type (including but not limited to open post, closed post and tubing); (2) horizontal support or beam/brace profile (including but not limited to Z-beam, C-beam, L-beam, step beam and cargo rack); (3) number of supports; (4) surface coating (including but not limited to paint, epoxy, powder coating, zinc and other metallic coating); (5) number of levels; (6) weight capacity; (7) shape (including but not limited to rectangular, square, and corner units); (8) decking material (including but not limited to wire decking, particle board, laminated board or no deck at all); or (9) the boltless method by which vertical and horizontal supports connect (including but not limited to keyhole and rivet, slot and tab, welded frame, punched rivet and clip).

Specifically excluded from the scope are:

- Wall-mounted shelving, defined as shelving that is hung on the wall and does not stand on, or transfer load to, the floor. The addition of a wall bracket or other device to attach otherwise freestanding subject merchandise to a wall does not meet the terms of this exclusion;
- Wire shelving units, which consist of shelves made from wire that incorporates both a wire deck and wire horizontal supports (taking the place of the horizontal beams and braces) into a single piece with tubular collars that slide over the posts and onto plastic sleeves snapped on the posts to create the finished shelving unit;
- Bulk-packed parts or components of boltless steel shelving units; and
- Made-to-order shelving systems.

Subject boltless steel shelving enters the United States through Harmonized Tariff Schedule of the United States (HTSUS) statistical subheading 9403.20.0075. While the HTSUS subheading is provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

[FR Doc. 2023–28824 Filed 12–29–23; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review and Join Annual Inquiry Service List

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

FOR FURTHER INFORMATION CONTACT: Brenda E. Brown, Office of AD/CVD Operations, Customs Liaison Unit, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230, telephone: (202) 482–4735.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspended investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with 19 CFR 351.213, that the U.S. Department of Commerce (Commerce) conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

All deadlines for the submission of comments or actions by Commerce discussed below refer to the number of calendar days from the applicable starting date.

Respondent Selection

In the event Commerce limits the number of respondents for individual examination for administrative reviews initiated pursuant to requests made for the orders identified below, Commerce intends to select respondents based on U.S. Customs and Border Protection (CBP) data for U.S. imports during the period of review. We intend to release the CBP data under Administrative Protective Order (APO) to all parties having an APO within five days of publication of the initiation notice and

to make our decision regarding respondent selection within 35 days of publication of the initiation **Federal Register** notice. Therefore, we encourage all parties interested in commenting on respondent selection to submit their APO applications on the date of publication of the initiation notice, or as soon thereafter as possible. Commerce invites comments regarding the CBP data and respondent selection within five days of placement of the CBP data on the record of the review.

In the event Commerce decides it is necessary to limit individual examination of respondents and conduct respondent selection under section 777A(c)(2) of the Act:

In general, Commerce finds that determinations concerning whether particular companies should be ''collapsed'' (*i.e.,* treated as a single entity for purposes of calculating antidumping duty rates) require a substantial amount of detailed information and analysis, which often require follow-up questions and analysis. Accordingly, Commerce will not conduct collapsing analyses at the respondent selection phase of a review and will not collapse companies at the respondent selection phase unless there has been a determination to collapse certain companies in a previous segment of this antidumping proceeding (*i.e.,* investigation, administrative review, new shipper review or changed circumstances review). For any company subject to a review, if Commerce determined, or continued to treat, that company as collapsed with others, Commerce will assume that such companies continue to operate in the same manner and will collapse them for respondent selection purposes. Otherwise, Commerce will not collapse companies for purposes of respondent selection. Parties are requested to: (a) identify which companies subject to review previously were collapsed; and (b) provide a citation to the proceeding in which they were collapsed. Further, if companies are requested to complete a Quantity and Value Questionnaire for purposes of respondent selection, in general each company must report volume and value data separately for itself. Parties should not include data for any other party, even if they believe they should be treated as a single entity with that other party. If a company was collapsed with another company or companies in the most recently completed segment of a proceeding where Commerce considered collapsing that entity, complete quantity and value data for that collapsed entity must be submitted.

Deadline for Withdrawal of Request for Administrative Review

Pursuant to 19 CFR 351.213(d)(1), a party that requests a review may withdraw that request within 90 days of the date of publication of the notice of initiation of the requested review. The regulation provides that Commerce may extend this time if it is reasonable to do so. Determinations by Commerce to extend the 90-day deadline will be made on a case-by-case basis.

Deadline for Particular Market Situation Allegation

Section 504 of the Trade Preferences Extension Act of 2015 amended the Act by adding the concept of particular market situation (PMS) for purposes of constructed value under section 773(e) of the Act.[1] Section 773(e) of the Act states that ''if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this subtitle or any other calculation methodology.'' When an interested party submits a PMS allegation pursuant to section 773(e) of the Act, Commerce will respond to such a submission consistent with 19 CFR 351.301(c)(2)(v). If Commerce finds that a PMS exists under section 773(e) of the Act, then it will modify its dumping calculations appropriately.

Neither section 773(e) of the Act nor 19 CFR 351.301(c)(2)(v) set a deadline for the submission of PMS allegations and supporting factual information. However, in order to administer section 773(e) of the Act, Commerce must receive PMS allegations and supporting factual information with enough time to consider the submission. Thus, should an interested party wish to submit a PMS allegation and supporting new factual information pursuant to section 773(e) of the Act, it must do so no later than 20 days after submission of initial Section D responses.

Opportunity to Request a Review: Not later than the last day of January 2024,[2] interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in January for the following periods:

Antidumping Duty Proceedings	
BELARUS: Carbon and Alloy Steel Wire Rod A–822–806	1/1/23–12/31/23
BRAZIL: Prestressed Concrete Steel Wire Stand A–351–837	1/1/23–12/31/23
CANADA: Softwood Lumber A–122–857	1/1/23–12/31/23
FRANCE: Certain Preserved Mushrooms A–427–833	1/1/23–12/31/23
GERMANY: Forged Steel Fluid End Blocks A–428–847	1/1/23–12/31/23
INDIA: Prestressed Concrete Steel Wire Strand A–533–828	1/1/23–12/31/23
INDIA: Polyester Textured Yarn A–533–885	1/1/23–12/31/23
ITALY: Forged Steel Fluid End Blocks A–475–840	1/1/23–12/31/23
MEXICO: Prestressed Concrete Steel Wire Strand A–201–831	1/1/23–12/31/23
REPUBLIC OF KOREA: Prestressed Concrete Steel Wire Strand A–580–852	1/1/23–12/31/23
RUSSIA: Carbon and Alloy Steel Wire Rod A–821–824	1/1/23–12/31/23
SOUTH AFRICA: Ferrovanadium A–791–815	1/1/23–12/31/23
THAILAND: Prestressed Concrete Steel Wire Strand A–549–820	1/1/23–12/31/23
THE PEOPLE'S REPUBLIC OF CHINA: Calcium Hypochlorite A–570–008	1/1/23–12/31/23
THE PEOPLE'S REPUBLIC OF CHINA: Carbon and Certain Alloy Steel Wire Rod A–570–012	1/1/23–12/31/23
THE PEOPLE'S REPUBLIC OF CHINA: Crepe Paper Products A–570–895	1/1/23–12/31/23
THE PEOPLE'S REPUBLIC OF CHINA: Ferrovanadium A–570–873	1/1/23–12/31/23
THE PEOPLE'S REPUBLIC OF CHINA: Folding Gift Boxes A–570–866	1/1/23–12/31/23
THE PEOPLE'S REPUBLIC OF CHINA: Hardwood Plywood Products A–570–051	1/1/23–12/31/23
THE PEOPLE'S REPUBLIC OF CHINA: Polyester Textured Yarn A–570–097	1/1/23–12/31/23
THE PEOPLE'S REPUBLIC OF CHINA: Potassium Permanganate A–570–001	1/1/23–12/31/23

[1] *See* Trade Preferences Extension Act of 2015, Public Law 114–27, 129 Stat. 362 (2015).

[2] Or the next business day, if the deadline falls on a weekend, federal holiday or any other day when Commerce is closed.

THE PEOPLE'S REPUBLIC OF CHINA: Wooden Bedroom Furniture A–570–890	1/1/23–12/31/23
UNITED ARAB EMIRATES: Carbon and Alloy Steel Wire Rod A–520–808	1/1/23–12/31/23
Countervailing Duty Proceedings	
ARGENTINA: Biodiesel C–357–821	1/1/23–12/31/23
CANADA: Softwood Lumber C–122–858	1/1/23–12/31/23
GERMANY: Forged Steel Fluid End Blocks C–428–848	1/1/23–12/31/23
INDIA: Polyester Textured Yarn C–533–886	1/1/23–12/31/23
INDIA: Forged Steel Fluid End Blocks C–533–894	1/1/23–12/31/23
INDONESIA: Biodiesel C–560–831	1/1/23–12/31/23
ITALY: Forged Steel Fluid End Blocks C–475–841	1/1/23–12/31/23
THE PEOPLE'S REPUBLIC OF CHINA: Calcium Hypochlorite C–570–009	1/1/23–12/31/23
THE PEOPLE'S REPUBLIC OF CHINA: Carbon and Certain Alloy Steel Wire Rod C–570–013	1/1/23–12/31/23
THE PEOPLE'S REPUBLIC OF CHINA: Circular Welded Carbon Quality Steel Line Pipe C–570–936	1/1/23–12/31/23
THE PEOPLE'S REPUBLIC OF CHINA: Forged Steel Fluid End Blocks C–570–116	1/1/23–12/31/23
THE PEOPLE'S REPUBLIC OF CHINA: Hardwood Plywood Products C–570–052	1/1/23–12/31/23
THE PEOPLE'S REPUBLIC OF CHINA: Oil Country Tubular Goods C–570–944	1/1/23–12/31/23
THE PEOPLE'S REPUBLIC OF CHINA: Polyester Textured Yarn C–570–098	1/1/23–12/31/23
THE PEOPLE'S REPUBLIC OF CHINA: Tool Chests and Cabinets C–570–057	1/1/23–12/31/23

Suspension Agreements

None.

In accordance with 19 CFR 351.213(b), an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review. In addition, a domestic interested party or an interested party described in section 771(9)(B) of the Act must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which was produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Note that, for any party Commerce was unable to locate in prior segments, Commerce will not accept a request for an administrative review of that party absent new information as to the party's location. Moreover, if the interested party who files a request for review is unable to locate the producer or exporter for which it requested the review, the interested party must provide an explanation of the attempts it made to locate the producer or exporter at the same time it files its request for review, in order for the Secretary to determine if the interested party's attempts were reasonable, pursuant to 19 CFR 351.303(f)(3)(ii).

As explained in *Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties,* 68 FR 23954 (May 6, 2003), and *Non-Market Economy Antidumping Proceedings: Assessment of Antidumping Duties,* 76 FR 65694 (October 24, 2011), Commerce clarified its practice with respect to the collection of final antidumping duties on imports of merchandise where intermediate firms are involved. The public should be aware of this clarification in determining whether to request an administrative review of merchandise subject to antidumping findings and orders.[3]

Commerce no longer considers the non-market economy (NME) entity as an exporter conditionally subject to an antidumping duty administrative reviews.[4] Accordingly, the NME entity will not be under review unless Commerce specifically receives a request for, or self-initiates, a review of the NME entity.[5] In administrative reviews of antidumping duty orders on merchandise from NME countries where a review of the NME entity has not been initiated, but where an individual exporter for which a review was initiated does not qualify for a separate rate, Commerce will issue a final decision indicating that the company in question is part of the NME entity. However, in that situation, because no review of the NME entity was conducted, the NME entity's entries were not subject to the review and the rate for the NME entity is not subject to change as a result of that review (although the rate for the individual exporter may change as a function of the finding that the exporter is part of the NME entity). Following initiation of an antidumping administrative review when there is no review requested of the NME entity, Commerce will instruct CBP to liquidate entries for all exporters not named in the initiation notice, including those that were suspended at the NME entity rate.

All requests must be filed electronically in Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS) on Enforcement and Compliance's ACCESS website at *https://access.trade.gov*.[6] Further, in accordance with 19 CFR 351.303(f)(l)(i), a copy of each request must be served on the petitioner and each exporter or producer specified in the request. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[7]

Commerce will publish in the **Federal Register** a notice of ''Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation'' for requests received by the last day of January 2024. If Commerce does not receive, by the last day of January 2024, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, Commerce

[3] *See* the Enforcement and Compliance website at *https://www.trade.gov/us-antidumping-and-countervailing-duties.*

[4] *See Antidumping Proceedings: Announcement of Change in Department Practice for Respondent Selection in Antidumping Duty Proceedings and Conditional Review of the Nonmarket Economy Entity in NME Antidumping Duty Proceedings,* 78 FR 65963 (November 4, 2013).

[5] In accordance with 19 CFR 351.213(b)(1), parties should specify that they are requesting a review of entries from exporters comprising the entity, and to the extent possible, include the names of such exporters in their request.

[6] *See Antidumping and Countervailing Duty Proceedings: Electronic Filing Procedures; Administrative Protective Order Procedures,* 76 FR 39263 (July 6, 2011).

[7] *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule,* 88 FR 67069 (September 29, 2023).

will instruct CBP to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

For the first administrative review of any order, there will be no assessment of antidumping or countervailing duties on entries of subject merchandise entered, or withdrawn from warehouse, for consumption during the relevant provisional-measures ''gap'' period of the order, if such a gap period is applicable to the period of review.

Establishment of and Updates to the Annual Inquiry Service List

On September 20, 2021, Commerce published the final rule titled ''*Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws*'' in the **Federal Register**.[8] On September 27, 2021, Commerce also published the notice entitled ''*Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions*'' in the **Federal Register**.[9] The *Final Rule* and *Procedural Guidance* provide that Commerce will maintain an annual inquiry service list for each order or suspended investigation, and any interested party submitting a scope ruling application or request for circumvention inquiry shall serve a copy of the application or request on the persons on the annual inquiry service list for that order, as well as any companion order covering the same merchandise from the same country of origin.[10]

In accordance with the *Procedural Guidance,* for orders published in the **Federal Register** before November 4, 2021, Commerce created an annual inquiry service list segment for each order and suspended investigation. Interested parties who wished to be added to the annual inquiry service list for an order submitted an entry of appearance to the annual inquiry service list segment for the order in ACCESS, and on November 4, 2021, Commerce finalized the initial annual inquiry service lists for each order and suspended investigation. Each annual inquiry service list has been saved as a public service list in ACCESS, under each case number, and under a specific segment type called ''AISL-Annual Inquiry Service List.'' [11]

As mentioned in the *Procedural Guidance,* beginning in January 2022, Commerce will update these annual inquiry service lists on an annual basis when the *Opportunity Notice* for the anniversary month of the order or suspended investigation is published in the **Federal Register**.[12] Accordingly, Commerce will update the annual inquiry service lists for the above-listed antidumping and countervailing duty proceedings. All interested parties wishing to appear on the updated annual inquiry service list must take one of the two following actions: (1) new interested parties who did not previously submit an entry of appearance must submit a new entry of appearance at this time; (2) interested parties who were included in the preceding annual inquiry service list must submit an amended entry of appearance to be included in the next year's annual inquiry service list. For these interested parties, Commerce will change the entry of appearance status from ''Active'' to ''Needs Amendment'' for the annual inquiry service lists corresponding to the above-listed proceedings. This will allow those interested parties to make any necessary amendments and resubmit their entries of appearance. If no amendments need to be made, the interested party should indicate in the area on the ACCESS form requesting an explanation for the amendment that it is resubmitting its entry of appearance for inclusion in the annual inquiry service list for the following year. As mentioned in the *Final Rule,*[13] once the petitioners and foreign governments have submitted an entry of appearance for the first time, they will automatically be added to the updated annual inquiry service list each year.

Interested parties have 30 days after the date of this notice to submit new or amended entries of appearance. Commerce will then finalize the annual inquiry service lists five business days thereafter. For ease of administration, please note that Commerce requests that law firms with more than one attorney representing interested parties in a proceeding designate a lead attorney to be included on the annual inquiry service list.

Commerce may update an annual inquiry service list at any time as needed based on interested parties' amendments to their entries of appearance to remove or otherwise modify their list of members and representatives, or to update contact information. Any changes or announcements pertaining to these procedures will be posted to the ACCESS website at *https://access.trade.gov.*

Special Instructions for Petitioners and Foreign Governments

In the *Final Rule,* Commerce stated that, ''after an initial request and placement on the annual inquiry service list, both petitioners and foreign governments will automatically be placed on the annual inquiry service list in the years that follow.'' [14] Accordingly, as stated above and pursuant to 19 CFR 351.225(n)(3), the petitioners and foreign governments will not need to resubmit their entries of appearance each year to continue to be included on the annual inquiry service list. However, the petitioners and foreign governments are responsible for making amendments to their entries of appearance during the annual update to the annual inquiry service list in accordance with the procedures described above.

This notice is not required by statute but is published as a service to the international trading community.

Dated: December 15, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–28810 Filed 12–29–23; 8:45 am]

BILLING CODE 3510–DS–P

[8] *See Regulations to Improve Administration and Enforcement of Antidumping and Countervailing Duty Laws,* 86 FR 52300 (September 20, 2021) (*Final Rule*).

[9] *See Scope Ruling Application; Annual Inquiry Service List; and Informational Sessions,* 86 FR 53205 (September 27, 2021) (*Procedural Guidance*).

[10] *Id.*

[11] This segment has been combined with the ACCESS Segment Specific Information (SSI) field which will display the month in which the notice of the order or suspended investigation was published in the **Federal Register**, also known as the anniversary month. For example, for an order under case number A–000–000 that was published in the **Federal Register** in January, the relevant segment and SSI combination will appear in ACCESS as ''AISL-January Anniversary.'' Note that there will be only one annual inquiry service list segment per case number, and the anniversary month will be pre-populated in ACCESS.

[12] *See Procedural Guidance,* 86 FR at 53206.

[13] *See Final Rule,* 86 FR at 52335.

[14] *Id.*

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Five-Year (Sunset) Reviews

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

SUMMARY: In accordance with the Tariff Act of 1930, as amended (the Act), the U.S. Department of Commerce (Commerce) is automatically initiating

the five-year reviews (Sunset Reviews) of the antidumping duty and countervailing duty (AD/CVD) order(s) and suspended investigation(s) listed below. The U.S. International Trade Commission (ITC) is publishing concurrently with this notice its notice of *Institution of Five-Year Reviews* which covers the same order(s) and suspended investigation(s).

DATES: Applicable January 2, 2023.

FOR FURTHER INFORMATION CONTACT: Commerce official identified in the *Initiation of Review* section below at AD/CVD Operations, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW, Washington, DC 20230. For information from the ITC, contact Mary Messer, Office of Investigations, U.S. International Trade Commission at (202) 205–3193.

SUPPLEMENTARY INFORMATION:

Background

Commerce's procedures for the conduct of Sunset Reviews are set forth in its *Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders,* 63 FR 13516 (March 20, 1998) and 70 FR 62061 (October 28, 2005). Guidance on methodological or analytical issues relevant to Commerce's conduct of Sunset Reviews is set forth in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification,* 77 FR 8101 (February 14, 2012).

Initiation of Review

In accordance with section 751(c) of the Act and 19 CFR 351.218(c), we are initiating the Sunset Reviews of the following antidumping and countervailing duty order(s) and suspended investigation(s):

DOC case No.	ITC case No.	Country	Product	Commerce contact
A–570–073	731–TA–1399	China	Common Alloy Aluminum Sheet (1st Review).	Jacky Arrowsmith, (202) 482–5255.
A–570–069	731–TA–1408	China	Rubber Bands (1st Review)	Mary Kolberg, (202) 482–1785.
A–549–835	731–TA–1410	Thailand	Rubber Bands (1st Review)	Mary Kolberg, (202) 482–1785.
A–570–040	731–TA–1311	China	Truck and Bus Tires (1st Review)	Mary Kolberg, (202) 482–1785.
C–570–074	701–TA–591	China Common Alloy Aluminum Sheet (1st Review).	Jacky Arrowsmith, (202) 482–5255.	
C–570–041	701–TA–556	China	Truck and Bus Tires (1st Review)	Mary Kolberg, (202) 482–1785.
C–570–070	701–TA–598	China	Rubber Bands (1st Review)	Mary Kolberg, (202) 482–1785.

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the pertinent statute and Commerce's regulations, Commerce's schedule for Sunset Reviews, a listing of past revocations and continuations, and current service lists, available to the public on Commerce's website at the following address: *https://enforcement.trade.gov/sunset/.* All submissions in these Sunset Reviews must be filed in accordance with Commerce's regulations regarding format, translation, and service of documents. These rules, including electronic filing requirements via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS), can be found at 19 CFR 351.303.

In accordance with section 782(b) of the Act, any party submitting factual information in an AD/CVD proceeding must certify to the accuracy and completeness of that information. Parties must use the certification formats provided in 19 CFR 351.303(g). Commerce intends to reject factual submissions if the submitting party does not comply with applicable revised certification requirements.

Letters of Appearance and Administrative Protective Orders

Pursuant to 19 CFR 351.103(d), Commerce will maintain and make available a public service list for these proceedings. Parties wishing to participate in any of these five-year reviews must file letters of appearance as discussed at 19 CFR 351.103(d). To facilitate the timely preparation of the public service list, it is requested that those seeking recognition as interested parties to a proceeding submit an entry of appearance within 10 days of the publication of the Notice of Initiation. Because deadlines in Sunset Reviews can be very short, we urge interested parties who want access to proprietary information under administrative protective order (APO) to file an APO application immediately following publication in the **Federal Register** of this notice of initiation. Commerce's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306. Note that Commerce has amended certain of its requirements pertaining to the service of documents in 19 CFR 351.303(f).[1]

Information Required From Interested Parties

Domestic interested parties, as defined in section 771(9)(C), (D), (E), (F), and (G) of the Act and 19 CFR 351.102(b), wishing to participate in a Sunset Review must respond not later than 15 days after the date of publication in the **Federal Register** of this notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth at 19 CFR 351.218(d)(1)(ii). In accordance with Commerce's regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, Commerce will automatically revoke the order without further review.[2]

If we receive an order-specific notice of intent to participate from a domestic interested party, Commerce's regulations provide that *all parties* wishing to participate in a Sunset Review must file complete substantive responses not later than 30 days after the date of publication in the **Federal Register** of this notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth at 19 CFR 351.218(d)(3). Note that certain information requirements

[1] *Administrative Protective Order, Service, and Other Procedures in Antidumping and Countervailing Duty Proceedings; Final Rule,* 88 FR 67069 (September 29, 2023)

[2] *See* 19 CFR 351.218(d)(1)(iii).

differ for respondent and domestic parties. Also, note that Commerce's information requirements are distinct from the ITC 's information requirements. Consult Commerce's regulations for information regarding Commerce's conduct of Sunset Reviews. Consult Commerce's regulations at 19 CFR part 351 for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at Commerce.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: December 15, 2023.

James Maeder,

Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations.

[FR Doc. 2023–28822 Filed 12–29–23; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD623]

Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of public online meeting.

SUMMARY: The Groundfish Subcommittee of the Pacific Fishery Management Council's (Pacific Council's) Scientific and Statistical Committee (SSC) will hold a virtual meeting to review the 2023 groundfish stock assessment process and discuss process improvements for the next stock assessment cycle, review proposed revisions to the Terms of Reference for the Groundfish Stock Assessment Review Process for 2025 and 2026, review proposed revisions to the Terms of Reference for the Groundfish Rebuilding Analysis for 2025 and 2026, and update the Accepted Practices Guidelines for Groundfish Stock Assessments document. The SSC Groundfish Subcommittee meeting is open to the public.

DATES: The SSC Groundfish Subcommittee's online meeting will be held Wednesday, January 17, 2024 beginning at 8 a.m. and continuing until 5 p.m. Pacific time or until business for the day has been completed. The Subcommittee will reconvene on Thursday, January 18, 2024 beginning at 8 a.m. and ending at 5 p.m. or when business for the day has been completed.

ADDRESSES: The SSC Groundfish Subcommittee's meeting is being conducted online. Specific meeting information, materials, and instructions for how to connect to the meeting remotely will be provided in the meeting announcement on the Pacific Council's website (see *https://www.pcouncil.org*). Please contact Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov*) or (503) 820–2412 for technical assistance.

Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 101, Portland, Oregon 97220.

FOR FURTHER INFORMATION CONTACT: Marlene A. Bellman, Staff Officer, Pacific Council; telephone: (503) 820–2414, email: *marlene.bellman@noaa.gov.*

SUPPLEMENTARY INFORMATION: The purpose of the SSC Groundfish Subcommittee's meeting includes, (a) review proposed changes to the Terms of Reference for the Groundfish Stock Assessment Review Process for 2025 and 2026, and Terms of Reference for the Groundfish Rebuilding Analysis for 2025 and 2026, that will inform the process for conducting and reviewing groundfish assessments and rebuilding analyses in the next cycle, (b) review proposed changes to the Accepted Practices Guidelines for Stock Assessments in 2025 and 2026, which is a compilation of guidelines for groundfish stock assessment scientists, and (c) to review and evaluate the 2023–2024 groundfish stock assessment review process to solicit process improvements for future reviews. Stock assessment teams and review participants are encouraged to attend, as well as members of the Pacific Council's groundfish advisory bodies in order to prepare their recommendations to the Pacific Council.

No management actions will be decided by the SSC Groundfish Subcommittee. Process improvement recommendations and proposed changes to the Terms of Reference and Accepted Practices Guidelines documents will first be considered during this online meeting, with a Groundfish Subcommittee post-meeting report to the full SSC at their March 2024 meeting and their recommended changes to the Terms of Reference scheduled for preliminary Pacific Council adoption for public review. The Pacific Council is scheduled to adopt a final Terms of Reference for the 2025–2026 stock assessment cycle at their June 2024 meeting in San Diego, California.

Although non-emergency issues not contained in the meeting agendas may be discussed, those issues may not be the subject of formal action during these meetings. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the intent to take final action to address the emergency.

Special Accommodations

Requests for sign language interpretation or other auxiliary aids should be directed to Mr. Kris Kleinschmidt (*kris.kleinschmidt@noaa.gov;* (503) 820–2412) at least 10 days prior to the meeting date.

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

Dated: December 22, 2023.

Diane M. DeJames-Daly,

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

[FR Doc. 2023–28845 Filed 12–29–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[RTID 0648–XD612]

North Pacific Fishery Management Council; Public Meeting

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

ACTION: Notice of web conference.

SUMMARY: The North Pacific Fishery Management Council (Council) Joint Groundfish Plan Teams will meet on January 17, 2024.

DATES: The meeting will be held on Wednesday, January 17, 2024, from 8 a.m. to 12 p.m., Alaska time.

ADDRESSES: The meeting will be a web conference. Join online through the link at *https://meetings.npfmc.org/Meeting/Details/3031.*

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

FOR FURTHER INFORMATION CONTACT: Sara Cleaver, Council staff; email:

sara.cleaver@noaa.gov or Diana Stram, Council staff; email: *diana.stram@noaa.gov*.

For technical support, please contact our administrative staff; email: *npfmc.admin@noaa.gov.*

SUPPLEMENTARY INFORMATION:

Agenda

Wednesday, January 17, 2024

The Joint Groundfish Plan Teams will be reviewing research priorities to provide recommendations to the SSC at the February 2024 meeting. The agenda is subject to change, and the latest version will be posted at *https://meetings.npfmc.org/Meeting/Details/3031* prior to the meeting, along with meeting materials.

Connection Information

You can attend the meeting online using a computer, tablet, or smart phone; or by phone only. Connection information will be posted online at: *https://meetings.npfmc.org/Meeting/Details/3031.*

Public Comment

Public comment letters will be accepted and should be submitted electronically to *https://meetings.npfmc.org/Meeting/Details/3031.*

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

Dated: December 22, 2023.

Diane M. DeJames-Daly,

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

[FR Doc. 2023–28841 Filed 12–29–23; 8:45 am]

BILLING CODE 3510–22–P

DEPARTMENT OF ENERGY

Record of Decision for the Final Environmental Impact Statement for the Civil Nuclear Credit Program Proposed Award of Credits to Pacific Gas and Electric Company for Diablo Canyon Power Plant

AGENCY: Grid Deployment Office; U.S. Department of Energy.

ACTION: Record of decision.

SUMMARY: The U.S. Department of Energy (DOE) announces its decision to award credits to Pacific Gas and Electric Company (PG&E) under the Civil Nuclear Credit (CNC) Program for the continued operation of Diablo Canyon Power Plant Units 1 and 2 (DCPP) under DCPP's current operating licenses issued by the U.S. Nuclear Regulatory Commission (NRC). This decision is pursuant to the *Final Environmental Impact Statement for the Civil Nuclear Credit Program Proposed Award of Credits to Pacific Gas and Electric Company for Diablo Canyon Power Plant* (DOE/EIS–0555). DCPP is an existing commercial nuclear power plant located in San Luis Obispo County, California. PG&E will be eligible to receive payments from the first award cycle of funding from the CNC Program over a four-year award period (January 2023–December 2026), subject to PG&E's satisfaction of the applicable payment terms and NRC license extension approvals. The action being taken by DOE does not change the operational configuration (*i.e.,* the way PG&E operates the plant) of the facility. The action awards credits to PG&E to help DCPP to continue to operate under the existing NRC approved licenses and programs. Payments of credits are expected to occur annually beginning in 2025 and will be paid retroactively to compensate PG&E for DCPP operations in the prior year(s).

ADDRESSES: For further information on this record of decision (ROD), contact Mr. Jason Anderson, Document Manager, by mail at U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, Idaho 83415; or by email to *cnc_program_mailbox@hq.doe.gov.* This ROD and DOE/EIS–0555, as well as other general information concerning the DOE National Environmental Policy Act (NEPA) process, are available for viewing or download at: *https://www.energy.gov/gdo/cnc-cycle-1-diablo-canyon-conditional-award-nepa-documentation.* For general information on the CNC Program, visit *www.energy.gov/gdo/civil-nuclear-credit-program.*

FOR FURTHER INFORMATION CONTACT: Mr. Jason Anderson, Document Manager, U.S. Department of Energy, Idaho Operations Office, 1955 Fremont Avenue, Idaho Falls, Idaho 83415; by email to *cnc_program_mailbox@hq.doe.gov* or by phone at (202) 586–4316. For general information on the DOE NEPA process, contact Brian Costner, Director, Office of NEPA Policy and Compliance (GC–54), U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585; by email at *askNEPA@hq.doe.gov;* or by facsimile at (202) 586–7031.

SUPPLEMENTARY INFORMATION:

Background

DOE's mission ensures America's security and prosperity by addressing its energy, environmental, and nuclear challenges through transformative science and technology solutions. As described at *www.energy.gov/gdo/civil-nuclear-credit-program,* the CNC Program was established on November 15, 2021, when President Biden signed the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117–58), also known as the Bipartisan Infrastructure Law, into law. Section 40323 of the IIJA (42 U.S.C. 18753) provides $6 billion to establish a program to award civil nuclear credits. The CNC Program is a strategic investment to help preserve the existing U.S. commercial power reactor fleet and save thousands of high-paying jobs across the country.

Under the CNC Program, owners or operators of U.S. commercial power reactors can apply for certification to bid on credits to support nuclear reactors' continued operation. An application must demonstrate that the nuclear reactor is projected to close for economic reasons and that closure will lead to a rise in air pollutants and carbon emissions, among other conditions. An owner or operator of a certified nuclear reactor whose bid for credits is selected by DOE is then eligible to receive payments from the Federal Government in the amount of the credits awarded to the owner or operator, provided it continues to operate the nuclear reactor for the four-year award period (for DCPP, January 2023 to December 2026) and subject to its satisfaction of other specified payment terms. PG&E submitted its application for certification and its bid for credits under the CNC Program on September 9, 2022. DOE made a conditional award of credits to PG&E on November 21, 2022.

NEPA requires Federal agencies to evaluate the environmental impacts of proposals for major Federal actions with the potential to significantly affect the quality of the human environment. Awarding credits for continued operation of a commercial nuclear power reactor under the CNC Program is subject to NEPA. Therefore, DOE conducted a review of the existing NEPA documentation for continued operation of the DCPP reactors in accordance with the Council on Environmental Quality (CEQ) and DOE NEPA regulations, 40 CFR 1506.3 and 10 CFR 1021.200(d), respectively. DOE also considered non-NEPA documents, such as available licensing basis documents, the 2021 Safety Analysis Report, Federal and State permits, site reports and documents, and relevant public information to inform DOE's evaluation of the existing NEPA documents.

NEPA Review

The NRC has principal regulatory authority over the licensing of commercial nuclear power reactors, and DOE conducted a review of the NRC environmental documents and those of their predecessor, the U.S. Atomic Energy Commission (AEC), related to the licensing of Diablo Canyon. DOE determined that the project analyzed in the NRC NEPA documents was substantially the same as the project that would be covered by the DOE CNC Program. DOE determined that continued operation of DCPP Units 1 and 2 as NRC licensed commercial nuclear power reactors would have environmental consequences that have been adequately analyzed in the existing NEPA documentation for the purposes of adoption in accordance with 40 CFR 1506.3. Further, DOE determines that continued operation of DCPP would have beneficial impacts to air quality when compared against construction and operation of alternative energy generation methods that would be available to replace the electrical energy currently generated by DCPP if the plant were to shut down.

Because DCPP is one of the few operating nuclear plants that has not completed a license renewal process with the NRC, the NEPA documentation available for DCPP includes some documents that are more dated than for other plants expected to apply to the CNC Program. The first NEPA document is from 1973, the *Final Environmental Statement related to the Nuclear Generating Station Diablo Canyon Units 1&2* (1973 ES), and was prepared by the AEC and supplemented by a 1976 *Addendum to the Final Environmental Statement for the Operation of the Diablo Canyon Nuclear Plant Units 1 and 2* (1976 ES Addendum) and a 1993 *Pacific Gas and Electric Company Diablo Canyon Nuclear Power Plant, Units 1 and 2 Notice of Issuance of Environmental Assessment and Finding of No Significant Impact* (1993 EA) prepared by the NRC. Further, in part because the continued operation of DCPP may result in additional accumulation of spent nuclear fuel, DOE also reviewed DCPP's 2003 *Environmental Assessment Related to the Construction and Operation of the Diablo Canyon Independent Spent Fuel Storage Installation* (ISFSI) (2003 ISFSI EA) and 2007 *Supplement to the Environmental Assessment and Final Finding of No Significant Impact Related to the Construction and Operation of the Diablo Canyon Independent Spent Fuel Storage Installation* (2007 ISFSI EA Supplement). The 1973 ES, 1976 ES Addendum, 1993 EA, 2003 ISFSI EA, and 2007 ISFSI EA Supplement collectively constitute the Final NEPA Documents for DOE adoption in respect of DCPP. As additional background, in March 2023 the NRC made a categorical exclusion determination which the NRC relied on in its decision to grant an exemption to Diablo Canyon from the NRC's timely renewal requirements so long as it submits its license renewal application by December 31, 2023. The NRC's decision permits DCPP's operating license to continue beyond the expiration dates of November 2, 2024 (Unit 1) and August 26, 2025 (Unit 2) until the NRC makes a final determination on DCPP's license renewal application. On November 7, 2023, PG&E submitted a license renewal application for both DCPP units to the NRC, which is currently undergoing NRC review.

In addition to reviewing the NRC NEPA documents, DOE reviewed various other reports and more recent sources of information to evaluate the adequacy of the NRC NEPA documents, including the following: (1) the *Applicant's Environmental Report—Operation License Renewal Stage* (2009 ER); (2) the *Annual Update to the Diablo Canyon Power Plant License Renewal Application (LRA), Applicant's Environmental Report—Operating License Renewal Stage, Amendment 1* (2014 ER Amendment 1); (3) the *Update to the Diablo Canyon Power Plant License Renewal Application (LRA) Applicant's Environmental Report—Operating License Renewal Stage. Amendment 2* (2015 ER Amendment 2); (4) the *Diablo Canyon Power Plant Units 1 and 2 Final Safety Analysis Report Update* (2021 Safety Analysis Report (SAR)); (5) the *Generic Environmental Impact Statement for License Renewal of Nuclear Plants* (NUREG–1437), Revision 1 (2013 GEIS); and (6) permits and other available documents from the period May 1973 through July 2023.

The NRC has principal regulatory authority over the licensing of commercial nuclear power reactors. DOE conducted a review of the NRC environmental documents related to the licensing of Diablo Canyon, in accordance with 10 CFR 1021.200(d). DOE conducted an independent review of the NRC NEPA documents and related documents for the purpose of determining whether DOE could adopt them pursuant to CEQ regulations at 40 CFR 1506.3. DOE did not participate as a cooperating agency in preparation of the DCPP NEPA documents and subsequently adopted them as a DOE environmental impact statement (EIS) (DOE/EIS–0555). Formal announcements of adoption were published by the U.S. Environmental Protection Agency (EPA) and DOE in the **Federal Register** at 88 FR 51798, 51812 (Aug. 4, 2023). The Notice of Adoption provided that DOE would execute a ROD no sooner than 30 days after publication of the Notice of Availability.

DOE's review and adoption of the NRC NEPA documents covers only the period that DCPP's current operating licenses remain in effect. That is to say, so long as the DCPP operating licenses continue in effect by operation of law, DOE will continue to pay credits during the four-year award period. PG&E submitted its application for DCPP operating license renewal on November 7, 2023, which is currently undergoing NRC review. If the NRC denies renewal of the DCPP operating licenses, DOE will stop payment of credits. If the NRC grants renewal of the DCPP operating licenses during the January 2023–December 2026 award period, DOE will stop payment of credits and initiate a process to satisfy DOE's NEPA obligations with respect to continuing payments.

Alternatives Considered

The present DOE decision is whether to approve the proposed action described in the cover memorandum to DOE/EIS–0555: an award of credits to PG&E under the CNC Program to support continued operation of DCPP as constructed, licensed, and authorized under current NRC operating licenses DPR–80 and DPR–82. Accordingly, the alternatives considered by DOE include (1) the proposed action of awarding CNC Program credits to PG&E, which is substantially the same as the primary proposed DCPP plant design analyzed in the 1973 Environmental Statement; and (2) the alternative of not awarding CNC Program credits to PG&E, which is substantially the same as the Alternative Sources of power generation discussed in the 1973 Environmental Statement. Unlike NRC/AEC, DOE is not deciding whether to authorize construction of DCPP or whether to license its operations. However, DOE's proposed action is *substantially* the same as the prior Federal actions by NRC/AEC that led to the construction, licensure and present operating configuration of DCPP. The proposed credit award would provide financial support for the continued operation of DCPP under its existing NRC licenses during a limited four-year award period (2023–2026).

The alternative of not awarding credits to PG&E could result in PG&E discontinuing operation of DCPP Unit 1

upon license expiration on November 2, 2024, and Unit 2 upon license expiration on August 26, 2025. Discontinued operations would result in a loss of 2,200 electric megawatts of power for the DCPP service area, that would likely need to be replaced by other forms of energy generation that would result in greater amounts of air pollution.

Potential Environmental Impacts

DOE finds that despite the age of some of the NRC/AEC NEPA documents, there is sufficient available information to complete DOE's analysis of the proposed action. In DOE/EIS–0555, DOE considered changes to the affected environment and environmental impacts of DCPP operation since the publication of the 1973 ES, through available licensing basis documents, Federal and State permits, site reports and documents, and relevant public information. Changes to the affected environment include the following resource topics:

Meteorology and Air Quality: The region surrounding the DCPP currently attains all national ambient air quality standards but does not attain the California air quality standards for ozone and respirable particulates (PM10). DCPP operates under several San Luis Obispo County Air Pollution Control District Permits to Operate and submits Annual Air Emissions Reports that identify annual fuel usages for permitted sources. As air emissions from DCPP are regulated by site-specific permits in order to comply with the State's air quality standards, air quality impacts from continued operation are anticipated to be small.

In addition, continued operation of DCPP would result in fewer air pollutants emissions (including greenhouse gases) compared to those that would occur with potential replacement power generation sources. As described in the cover memorandum for the DOE EIS, DOE reviewed three independent studies (DOE/EIS–0555 pg. 6) examining the potential impact of DCPP's retirement. Each study indicates that while deployment of renewable energy generation would continue, partially driven by existing State laws and policies, natural gas generation and the associated carbon dioxide and nitrous oxide emissions would increase if DCPP were to cease operations. All three studies project that a substantial proportion of DCPP's lost generation between 2024 and 2030 would be covered largely by increased utilization of gas-fired units rather than newly constructed renewable electric sources. DOE found nothing to refute that emissions would increase during the credit award period were DCPP to cease operations.

A review of the permitted emission sources at DCPP, the diesel-fired auxiliary steam boiler and seven emergency diesel-fired generators, determined that the combined annual emissions of all current sources would be much less than the major source threshold of 100 tons per year of an air pollutant. Therefore, emissions from the continued operation of DCPP would be substantially less than the emissions estimated for increased utilization of natural gas-fired power generation.

Finally, if an alternative generating technology were to be constructed to replace generation as a result of DCPP ceasing operations, the construction process would be an additional source of air pollutant and greenhouse gas emissions from construction equipment and transportation vehicles.

Overall, the adverse environmental impacts to air quality of continued operation of DCPP would be expected to be smaller than such impacts of construction and operation of an equivalent gas-powered electrical power generation facility or facilities.

Geologic Environment: Section 2.4.2 of the 1973 ES discusses seismology of the plant and that DCPP has been designed to safely withstand the earthquakes as discussed in the staff's Safety Evaluation Report (SER). In Chapter 5 of the 2009 ER, Assessment of New and Significant Information, PG&E described its notification to the NRC that preliminary results from ongoing studies by PG&E and the U.S. Geological Survey (USGS) indicated the presence of a new fault, which has since been referred to as the ''Shoreline Fault.'' The NRC staff subsequently undertook several independent reviews of possible implications of the potential Shoreline Fault to DCPP and concluded that the Shoreline Fault will not likely cause ground motions that exceed those for which DCPP has already been analyzed (DOE/EIS–0555, pg. 7).

In 2013 the NRC established an Ad Hoc Review Panel in response to a Differing Public Opinion (DPO) raised by an NRC employee regarding the NRC's consideration of the new fault information near DCPP. The Ad Hoc Review Panel conducted a thorough review of the new fault information and concluded that the ''Los Osos, San Luis Bay, and the Shoreline faults do not exceed the level of ground motion already considered in the design and licensing of DCPP.'' (DOE/EIS–0555, pg. 7).

The issue of the Shoreline Fault was again raised in 2017 through public petition. The NRC Director of Nuclear Reactor Regulation reviewed the prior information, including that of the Ad Hoc Review Panel, and concluded that, ''the NRC Staff determines that DCPP is safe to continue operating and is able to safely shut down following an earthquake caused by the Shoreline, San Luis Bay, or Los Osos faults'' and that it ''did not find that the continued operation of DCPP would adversely affect public health and safety.'' (DOE/EIS–0555, pg. 7).

In 2012, the NRC issued a letter to all nuclear power plant licensees requiring that they reevaluate the seismic and flooding hazard at their sites using present-day NRC requirements and guidance, which PG&E did. The NRC reviewed the information and in 2020, issued a letter to PG&E finding no further regulatory actions were required related to the seismic hazard reevaluation activities (DOE/EIS–0555, pgs. 7–8).

DOE determined that the analysis of seismological effects, soil effects, and other aspects of the geologic environment including the Shoreline Fault which the NRC found was ''already considered in the design and licensing of DCPP,'' remain adequate for adoption through the current operating licenses.

Water Resources: DCPP utilizes a desalination system for potable water and a once-through cooling water system using Pacific Ocean water. DOE reviewed the impacts of the resulting discharge into the ocean. Section 2.5 and Table 5.13 of the 1973 ES shows the minimum ambient ocean water temperature recorded at Diablo Cove between January 1970 and December 1971 was 45 °F and the maximum ambient ocean water temperature was 63.5 °F. The 1976 Addendum described the coordinated jurisdiction over water effluents between the NRC and the State of California, noting ''the exclusive jurisdiction over plant effluent discharges and water quality matters resides with the State of California and [U.S.] EPA'' and thus while NRC ''lacks jurisdiction to regulate liquid effluent discharged into Diablo Cove or to alter the design of the intake or discharge structures, the NRC has a mandated responsibility to assess the environmental effects of discharges proposed by the applicant or permitted by those agencies that have jurisdiction.''

Water discharges from the DCPP once-through cooling water system continue to be regulated and monitored in accordance with a Central Coast Regional Water Quality Control Board (CCRWQCB) National Pollutant

Discharge Elimination System (NPDES) permit, which is in administrative extension *(i.e.,* pending renewal). Information on routine and effluent monitoring and the NPDES Receiving Water Monitoring Program are reported annually to the NRC in the Nonradiological Environmental Operating Report required under DCPP's Environmental Protection Plan (EPP) as part of its NRC operating license. Section 2 of PG&E's NPDES Receiving Water Monitoring Program 2020 Annual Report recorded the intertidal monthly mean ambient seawater temperatures at the Diablo Canyon North Control station, outside the influence of the thermal discharge, as ranging from a low of 53.8 °F to a high of 59 °F, within the range measured in the 1973 ES for ambient ocean water temperature. Intertidal temperatures at measurement stations regularly contacted by the discharge plume averaged 4.9 °F warmer than the temperature in South Diablo Cove and 6.7 °F warmer than the temperature in North Diablo Cove. Subtidal monthly mean ambient seawater temperatures at the Diablo Canyon North Control station ranged from a low of 53.4 °F to a high of 58.8 °F, also within the range measured in the 1973 ES for ambient ocean water temperature. Subtidal temperatures at measurement stations regularly contacted by the discharge plume averaged 3.8 °F warmer than the temperature in South Diablo Cove and 6.8 °F warmer than the temperature in North Diablo Cove. Please reference the Ecological Resources section for discussion of the effects of thermal discharge.

The DOE concluded that continued operation of the DCPP would not result in any new or substantially different environmental impacts related to water resources that have not been assessed by previous NEPA documents. In addition, in accordance with DCPP's NRC operating license, radionuclide monitoring in groundwater is routinely conducted and reported in the publicly available Diablo Canyon Annual Radiological Environmental Operating Reports. In particular the latest reports from 2022, 2021, 2020 have supported the original NEPA analyses by finding that ''the ambient direct radiation levels in DCPP offsite environs did not change and were within the pre-operational background range.'' (DOE/EIS–0555, pg. 15). Therefore, DOE determined that the impact findings in the existing NEPA documentation remain adequate for DOE's adoption through the current operating licenses.

Ecological Resources: DOE reviewed the impacts to the ecological resources due to the operation of DCPP as analyzed in the existing NEPA documents. The 1973 ES identified that operation of the plant was expected to result in a number of impacts, including that thermal discharge from the plant ''will cause an ecological shift in benthic organisms and fish that will result in an increase in the number of warmwater-tolerant forms. The higher temperatures will also increase the feeding activity of the giant sea urchin, which competes with the abalone for the existing food supply (mainly kelp); this may lead to a decline in the abalone population unless measures are taken to control the urchin. A total of 110,000 abalone may be lost as a result of the station operation.''

The NRC Staff subsequently issued the 1976 ES Addendum which considered impacts that differed in extent and/or intensity from those described in the 1973 ES, noting that ''extensive changes have occurred in the baseline conditions on which the [1973 ES] impacts were based . . . brought about mainly by the southward migration of the sea otter, increased commercial harvesting in the Diablo Canyon region, red tides, and to a lesser extent toxicity problems associated with the plant's cooling water system.'' The 1976 ES Addendum summary identified that ''major changes have been the decline of abalone and sea urchin populations.''

Section 5.2.1 of the 1976 ES Addendum found that releases of copper in the concentrations that occurred during the startup of the cooling water system for DCPP Unit 1 were not anticipated, and that the State of California concluded that the release of copper during DCPP startup operations in the 1970s contributed to ''significant abalone mortality in Diablo Cove.'' After the copper discharge, PG&E took measures to eliminate the release of copper from the main condensers, and NRC Staff concluded that the very low concentration of copper should have no detrimental effect on the biota of Diablo Cove. With respect to the effects of thermal temperature on the benthic environment, section 5.3.2 noted that the population of red abalone had declined 95 percent at subtidal stations, and that Diablo Cove ''will not afford a viable habitat in those areas where the thermal plume remains in constant contact with the bottom.''

The 2003 ISFSI EA notes that, ''[t]he marine ecology in the area of Diablo Cove has been studied since 1976 under the Thermal Effects Monitoring Program (TEMP). This program includes periodic monitoring of intertidal and subtidal algae, invertebrates and fish and several physical parameters. Two marine species that frequent near-shore areas around the DCPP and are listed as threatened by the Federal Endangered Species Act are the southern sea otter and green sea turtle. However, the proposed ISFSI activities will not result in discharges to the marine environment, and thus, there will be no impact on these species.''

In 2005, the NRC prepared a Biological Assessment (BA) that addressed the effects of the continued operation of DCPP on threatened and endangered marine species in accordance with section 7 of the Endangered Species Act under the jurisdiction of the National Marine Fisheries Service. Based on this BA, the NRC determined that continued operation of DCPP may adversely affect the green sea turtle, loggerhead sea turtle, leatherback sea turtle, and olive ridley sea turtle. The NRC also determined that continued operation of DCPP would have no effect on the southern California or the southcentral coast stocks of steelhead, the Guadalupe fur seal, Steller sea lion, the blue whale, fin whale, Sei whale, sperm whale, or the humpback whale. No critical habitat for any of these species would be affected by the continued operation of DCPP nor is any critical habitat present in the vicinity of DCPP. Although the NRC has determined that individuals of the four species of sea turtles may be adversely affected by the continued operation of DCPP, the NRC also determined that DCPP does not contribute to the overall mortality of these species nor jeopardize the continued existence of any of these species.

In 2006, the National Oceanic Atmospheric Administration (NOAA) National Marine Fisheries Service (NMFS) issued a Biological Opinion and Incidental Take Statement for Continued Operations for green sea turtles, leatherback sea turtles, loggerhead sea turtles, and olive ridley sea turtles. NMFS found hat that the continued operation of DCPP ''is not likely to jeopardize the continued existence of endangered or threatened green, leatherback, loggerhead, or olive ridley sea turtles.'' The incidental take statement noted that the ''consultation will cover the plant until the expiration of its existing operating license in 2026'' and that ''that the levels of anticipated take are not likely to result in jeopardy to green, leatherback, loggerhead, or olive ridley sea turtles.'' As part of the incidental take statement, DCPP reports all sea turtle entrainments to NMFS via the NMFS Stranding Reports.

In 2021, PG&E and the Central Coast Regional Water Quality Control Board (CCRWQCB) reached a settlement agreement to resolve alleged thermal discharge permit violations from 2003. A public review and comment period was completed in early 2021 for the settlement agreement, which had been negotiated between PG&E and CCRWQCB during 2020. The settlement agreement addressed impacts on receiving waters from past and ongoing power plant cooling water discharges. The funds generated by the settlement are to be used for regional water quality projects. In addition to this settlement, PG&E has been making annual payments since 2015 to mitigate the potential impacts of its discharges, in accordance with the California State Water Board's Once-through Cooling Water Policy Requirements. Regardless of the thermal discharge impacts settlement resolution, the plant NPDES permit remains under administrative extension.

Environmental monitoring continues to be conducted at DCPP under the Receiving Water Monitoring Program and includes monitoring tasks such as temperature monitoring, State Mussel Watch activities, and intertidal and subtidal surveys.

PG&E is required to comply with Federal, State, and local environmental regulations, agreements, and mechanisms (*e.g.,* best management practices) that are in place to protect ecological resources.

Historic and Cultural Resources: DOE's proposed action would not add to or alter the undertaking that would be subject to the National Historic Preservation Act (NHPA) section 106 review process, as DOE's proposed action does not change the operational configuration of any facility, and it would not add to or alter the undertaking (see 36 CFR 800.16(y)) that would be subject to the section 106 review process.

Accordingly, DOE determined that the impact findings in the existing NEPA documentation remain adequate through the current operating licenses and DOE's section 106 compliance requirements for the proposed credit allocation for the Project have been met.

Cumulative Impacts: Cumulative impacts were not evaluated in the 1973 ES and the 1976 ES. Addendum but were evaluated in the 2003 ISFSI EA and 2014 ER Amendment 1. The 2003 ISFSI EA contains a partial assessment of cumulative impacts, stating: ''The impact of the proposed Diablo Canyon ISFSI, when combined with previously evaluated effects from the Diablo Canyon Power Plant, is not anticipated to result in any significant cumulative impact at the site. The offsite radiation exposure limits for an ISFSI specified in 10 CFR 72.104(a) explicitly include any contribution to offsite dose from other uranium fuel cycle facilities in the region.'' Therefore, the offsite dose contribution from the DCPP has been included in the evaluation of radiological impacts from the proposed Diablo Canyon ISFSI. In addition, the 2014 ER Amendment 1 evaluated cumulative impacts for all resources areas except Noise, Environmental Justice, Waste Management, and Global Climate Change. For the evaluated resources areas, the ER Amendment 1 found impacts to be small.

With respect to overall cumulative impacts, DCPP's continued operation is governed by Federal and State permits, licenses and plans which ensure that any impact from DCPP's continued operation are minimized. This includes the Environmental Protection Plan (EPP) which is part of the NRC licenses for operation of DCPP. PG&E is required to report ''unreviewed environmental questions'' which ''may result in a significant increase in any adverse environmental impact previously evaluated in the final environmental statement.'' Implementation of such changes are subject to prior approval by the NRC in the form of a license amendment incorporating the appropriate revision into the EPP. PG&E's compliance with NPDES permit conditions would ensure no changes in the temperature differential of DCPP's existing thermal discharge. Further, PG&E's conformity with requirements to avoid incidental intake of protected species helps assure impacts to the environment are mitigated.

Therefore, DOE has determined the NEPA documentation and other supporting documents adequately address cumulative impacts for continued operation through the period DCPP's current NRC licenses remain in effect.

DOE also considered whether license renewal is a reasonably foreseeable future action. PG&E applied for a license renewal from NRC on November 7, 2023, which is currently undergoing NRC review. While the license renewal application is for a 20-year life extension per NRC regulations, in Senate Bill 846 (SB846) the State of California limited DCPP's life extension to just five years (no later than October 31, 2029 for Unit 1 and no later than October 31, 2030, for Unit 2). DOE cannot at this time reasonably ascertain the scope or terms of any license that NRC might grant to PG&E in the future. Due to this uncertainty, DOE cannot meaningfully analyze the potential impacts of any license renewal without undue speculation. Further, if and when NRC acts on PG&E's application, DOE would consider the need for further NEPA review prior to deciding whether to issue any credits or make any payments during the period of operation under an NRC license renewal.

In summary, DOE's review of the NRC NEPA documents and other available information for DCPP, indicates that the impacts of continued DCPP operation for the duration of the current licenses would be consistent with the impacts of current and historic operations as described in DOE/EIS–0555.

In addition, DCPP complies with Federal, State, and local environmental regulations, requirements, and agreements, and operates using best management practices. Based upon DCPP's ongoing compliance requirements, and that an award under the CNC Program does not change the existing operating configuration of DCPP facilities or result in significant new circumstances or information relevant to environmental concerns, therefore a Supplemental EIS does not need to be prepared.

Environmentally Preferable Alternative

The Proposed Action, providing credits for continued operation of DCPP, would be the Environmentally Preferable Alternative. This alternative offers environmental benefits consistent with the statutory objectives of the IIJA, which include consideration of air pollutant emissions including greenhouse gases. Compared to natural gas-fired sources producing the same amount of base-load power, annual GHG emission rates from nuclear power plants (including the fuel cycle processes) are considerably less.

Comments on Adoption of the NRC NEPA Documents

DOE received two letters from the Alliance for Nuclear Responsibility (A4NR) during the 30-day waiting period for DOE/EIS–0555. No other comments were received. DOE has considered all comments submitted, including any alternatives, information, analyses, and objections included in or attached to the comment letters. A summary of the comments and DOE's responses are as follows:

Comment 1: None of the NRC NEPA documents adopted by DOE in DOE/EIS–0555 evaluates licensed operation of the Diablo Canyon Power Plant past September 2021 for Unit 1, and April 2025 for Unit 2. Therefore, DOE's proposed action is not substantially the same as the actions evaluated by the

NRC NEPA documents and environmental impacts have not been evaluated beyond those dates.

Comment 1 DOE Response: DCPP's current NRC operating licenses are valid until November 2, 2024 (Unit 1) and August 26, 2025 (Unit 2), and the operating licenses may remain in effect by operation of law beyond those dates in accordance with NRC rules and 5 U.S.C. 558(c). The 1993 EA analyzes the license extension for ''40 years after the date of the issuance of the 'low-power' operating licenses'' or to extend the expiry on DCPP Unit 1 from April 23, 2008 to September 22, 2021, and for Unit 2 from December 9, 2010 to April 26, 2025. In 1999, the NRC amended its policy to allow reactor licensees to recapture time spent in low-power testing or shutdown time. In 2005, PG&E took advantage of this policy change and filed a License Amendment Request (LAR) to extend the Diablo Canyon licenses to 40 years from the date of issuance of the full-power operating license (FPOL). In its LAR, PG&E stated that, ''[t]he environmental affects [sic] associated with the proposed license amendments are enveloped by the original and recapture environmental reviews . . . since these reviews assumed 40 years of full-power operation. The impacts associated with the additional periods of operation have thus been previously addressed.'' In October 2005, the NRC published a notice of the proposed amendments to revise the license expiration dates in the **Federal Register**, and the proposed finding that the amendments involve no significant hazards consideration (70 FR 59087). In July 2006, NRC granted the LAR and amended the license dates to November 2, 2024 for Unit 1 and August 26, 2025 for Unit 2, explaining, with respect to environmental considerations:

> The amendments change a requirement with respect to the installation or use of a facility component located within the restricted area as defined in 10 CFR part 20. The NRC staff has determined that the amendments involve no significant increase in the amounts, and no significant change in the types, of any effluents that may be released offsite, and that there is no significant increase in individual or cumulative occupational radiation exposure. The Commission has previously issued a proposed finding that the amendments involve no significant hazards consideration and there has been no public comment on such finding on October 11, 2005 (70 FR 59087). Accordingly, the amendments meet the eligibility criteria for categorical exclusion set forth in 10 CFR 51.22(c)(9). Pursuant to 10 CFR 51.22(b) no environmental impact statement or environmental assessment need be prepared in connection with the issuance of the amendments.

While the NRC's intervening decision to permit plants to recapture low-power testing time resulted in an operating license extension of approximately 37 months for Unit 1 and 4 months for Unit 2, the environmental impacts of this change were encompassed in the original NRC NEPA documents, which assumed environmental impacts from a 40-year period of full-power operation. Thus, this intervening change in NRC policy did not result in significant new circumstances or information relevant to environmental concerns. Indeed, the 1973 ES reviewed 40 years of full power operation, but as NRC noted in granting the LAR, the revised expiration dates equate to 35.2 effective full power years (EFPY) of power operations for Unit 1 and 35.8 EFPY for Unit 2.[1] DOE's review and adoption of the NRC NEPA documents cover its proposed action, which is providing credits for continued operation of DCPP within the period that DCPP's current NRC operating licenses remain in effect.

Comment 2: DOE's proposed action's impact on the environment should be evaluated through 2045 as it is an enabling factor for PG&E's pending application for a 20-year renewal of the DCPP operating licenses.

Comment 2 DOE Response: The proposed action awards credits to PG&E to help allow DCPP to continue to operate under the existing NRC approved licenses. Relicensing of DCPP operating licenses would require the NRC to complete a NEPA evaluation. If the NRC completes a NEPA evaluation and decides to renew the operating licenses of DCPP prior to the end of the four-year award period, DOE would consider the NRC's NEPA evaluation prior to deciding whether to continue to issue credits.

Comment 3: A DCPP license renewal may not occur until after the DOE four-year award period has ended. PG&E has indicated that a reasonable timeline for an accelerated license renewal process would be 4–5 years; that its prior effort was on a trajectory to finish in about seven years; and that it has taken as long as 11 years for the NRC license renewal process to be completed. DOE's EIS would need to consider environmental effects, including cumulative effects, over a substantially longer period of time than the dates cited in the NRC NEPA documents because operation of the Diablo Canyon Power Plant past September 2021 for Unit 1, and April 2025 for Unit 2 is reasonably foreseeable.

Comment 3 DOE Response: As explained in the Comment 1 DOE response, DCPP's current NRC operating licenses are valid until November 2, 2024 (Unit 1) and August 26, 2025 (Unit 2). If PG&E continues to operate the reactors beyond their existing expiration dates during the NRC's review of a renewal application, the NRC's existing NEPA evaluations that support operation of DCPP would remain adequate, as stated by the NRC in the Federal Response brief to the United States Court of Appeals for the Ninth Circuit Case No. 23–852:

> The NRC will prepare an environmental impact statement before making any decision to renew PG&E's licenses for a new term, which the Exemption Decision does not do. And in the event PG&E is able to temporarily continue operating the reactors past their current expiration dates while in timely renewal, permitting such operation to occur under the terms of the existing licenses would not be a new 'major Federal action significantly affecting the quality of the human environment.' The possibility of such continued operation inheres in every license granted by the NRC, by nature of the Administrative Procedures Act and its incorporation into the Atomic Energy Act.

Comment 4: Because of the significant and material differences in the proposed action(s) evaluated in the NRC NEPA documents from the DOE proposed action, DOE is restricted by 40 CFR 1506.3(b)(1) to treating the NRC NEPA documents as a draft EIS rather than a final EIS. DOE is required by 10 CFR 1021.313 to conduct public review of a draft EIS.

Comment 4 DOE Response: CEQ regulations authorize the adoption of an EIS or EA prepared by another Federal agency, ''provided that the statement, assessment, portion thereof, or determination meets the standards for an adequate statement, assessment, or determination . . . .'' 40 CFR 1506.3(a). If the actions covered by an existing EIS and the proposed action are ''substantially the same,'' the adopting agency ''shall'' republish it as a final EIS. 40 CFR 1506.3(b)(1). As stated in DOE/EIS–0555, DOE's award of credits to PG&E would not change existing NRC licenses or the present operational configuration of DCPP. DOE's credit award analyzed under DOE/EIS–0555 would provide financial support for continued DCPP operations under its existing NRC licenses. Although CEQ regulations do not define the phrase ''substantially the same,'' CEQ discussed the phrase in the preamble to its Update to the Regulations Implementing the Procedural Provisions

[1] NRC, Diablo Canyon, Units 1 and 2—Issuance of License Amendments 188 & 190, July 17, 2006 (ADAMS Accession No. ML061660220).

of the National Environmental Policy Act: ''when one agency's action may be a funding decision for a proposed project, and another agency's action is to consider a permit for the same project.'' 85 FR 43304 (Jul. 7, 2020). For purposes of 40 CFR 1506.3(b)(1), DOE's credit award action is ''substantially the same'' as the prior Federal actions that authorized the construction, licensure, and continued operations of DCPP under the existing license. Therefore, in accordance with 40 CFR 1506.3(b)(1), DOE did not republish the adopted NEPA documents as a draft EIS but instead republished them as a final EIS consistent with 40 CFR 1506.10.

Comment 5: The statement in DOE/EIS–0555 that ''A DOE award under the CNC Program would not change the operating configuration or environmental impact of the DCPP facilities'' overlooks the material changes in PG&E financial incentives under [California Senate Bill (SB)] 846 that will take effect on November 3, 2024 for Unit 1 and August 27, 2025 for Unit 2. A DOE award is the necessary prerequisite for this fundamental alteration of Diablo Canyon Power Plant's rate recovery paradigm, and the environmental impacts stemming from reasonably foreseeable changes in operating practices (*e.g.,* a greater frequency of unplanned outages and reactor trips) should be addressed in DOE's EIS.

Comment 5 DOE Response: The commenter's basis for asserting that there will be ''reasonably foreseeable changes in operating practices (*e.g.,* a greater frequency of unplanned outages and reactor trips)'' at DCPP is unclear. The commenter appears to assert that certain provisions of SB 846 alter ''financial incentives'' related to DCPP operations and will therefore cause PG&E to change the way it operates DCPP in a manner that will cause additional outages and reactor trips. DOE finds this assertion to be speculative. There have been no changes proposed by PG&E to the operational configuration of DCPP. As stated in DOE/EIS–0555, the NRC granted PG&E a one-time exemption for DCPP from 10 CFR 2.109(b) to allow PG&E to submit a license renewal application for DCPP less than 5 years prior to expiration of the current operating licenses, but no later than December 31, 2023. As the NRC explained in the PG&E DCPP exemption decision, the NRC has determined that the issuance of the requested exemption meets the provisions of the categorical exclusion in 10 CFR 51.22(c)(25). Under 10 CFR 51.22(c)(25), the granting of an exemption from the requirements of any regulation of chapter 10 qualifies for a categorical exclusion if (i) there is no significant hazards consideration; (ii) there is no significant change in the types or significant increase in the amounts of any effluents that may be released offsite; (iii) there is no significant increase in individual or cumulative public or occupational radiation exposure; (iv) there is no significant construction impact; (v) there is no significant increase in the potential for or consequences from radiological accidents; and (vi) the requirements from which an exemption is sought involves one of several matters, including scheduling requirements (10 CFR 51.22(c)(25)(iv)(G)). The NRC further stated that the exempted regulation is not associated with construction, and the exemption does not propose any changes to the site, alter the site, or change the operation of the site. Therefore, NRC concluded that the requirements of 10 CFR 51.22(c)(25)(iv) were met and grant of the requested exemption would have no significant impact. Where neither NRC nor PG&E has expressed any expectation that operating practices at DCPP would meaningfully change during the four-year award period, DOE declines to find that enactment of SB 846 will cause a ''reasonably foreseeable'' change in PG&E's operating practices. Please reference DOE's response to Comment 10 for further discussion.

Comment 6: DOE did not conduct adequate public involvement before publishing DOE/EIS–0555. There was no notice of intent published, as required by 40 CFR 1501.9(d), and no public scoping process. There was no draft EIS published requesting public comments as required by 40 CFR 1506.3(b)(1). A4NR urges DOE to utilize a public scoping process to address them.

Comment 6 DOE Response: DOE published DOE/EIS–0555 in accordance with the adoption requirements in CEQ's NEPA regulations, 40 CFR 1506.3. DOE found that the NRC documents adopted by DOE/EIS–0555 meet the standards for adequacy under NEPA and CEQ regulations, and the actions covered by them are substantially the same as DOE's proposed action within the meaning of 40 CFR 1506.3(b)(1). In such circumstances, 40 CFR 1506.3(b)(1) instructs DOE to adopt the NRC documents and republish them as a final EIS (DOE/EIS–0555) and does not require a new public scoping process or a new draft EIS or formal public comment period.

Comment 7: DOE/EIS–0555 is devoid of any discussion of alternatives to the proposed DOE action of awarding the Credits, including the no action alternative, despite the requirement of 42 U.S.C.A. section 4332(C)(iii). This void reinforces the divergence between the DOE proposed action and the NRC proposed action(s) evaluated in the NRC NEPA documents in 1973, 1976, 1993, 2003, and 2007. With regard to the DOE proposed action, the no action alternative has the benefit of retaining any unissued credits within the DOE CNC program for use by other certified reactors with potentially fewer adverse environmental effects. DOE is required by 10 CFR 1021.210(d) to consider the alternatives analyzed in DOE/EIS–0555 before rendering a decision on the proposed action, and to confine its decision to one within the range of alternatives analyzed in DOE/EIS–0555.

Comment 7 DOE Response: A description of the alternatives considered is included in this ROD. The commenter suggests DOE/EIS–0555 should have identified as a benefit the fact that declining to award credits would retain unissued credits in the CNC Program such that they could be awarded in the future to other nuclear reactors that might have fewer adverse environmental effects. DOE has considered both the costs and benefits of declining to make the proposed credit award and retaining unused credits within the CNC Program. As explained in DOE's Amended Guidance for Award Cycle 1 of the CNC Program, ''the first award cycle of the CNC Program is directed toward Nuclear Reactors most at risk of imminent closure'' such that the operator can sufficiently demonstrate that it intends to ''permanently cease operations . . . before September 30, 2026'' and that ''Air Pollutants would increase if the Nuclear Reactor were to cease operations and be replaced with other types of power generation.'' [2] Noting that 12 commercial nuclear reactors had already shut down since 2013, DOE explained that prioritizing a credit award to reactors at risk of imminent closure in Cycle 1 would address near-term risk of further reactor shutdowns ''while retaining Credits for future award cycles to assist as many additional Nuclear Reactors as possible that are projected to cease operation due to economic factors in a future period.''

[2] U.S. Dep't of Energy Guidance for the Civil Nuclear Credit Program, pg. 11 (June 30, 2022), *https://www.energy.gov/sites/default/files/2022-06/US%20DOE%20CNC%20Guidance-Revision%201-June%202022.pdf.*

DCPP was the only applicant in Award Cycle 1 that met the eligibility criteria.

Comment 8: DOE/EIS–0555 states that no refurbishment of Diablo Canyon Power Plant is planned, relying on a PG&E 2009 Environmental Report (and its 2014 update) attached as an appendix to PG&E's previously withdrawn license renewal application. DOE/EIS–0555's assertion appears unfounded in light of the emphasis in SB 846's urgency clause on ''ensuring electrical reliability in the California electrical system''. SB 846 requires that the $1.4 billion General Fund loan be conditioned on the operator conducting an updated seismic assessment and commissioning an independent study ''to catalog and evaluate any deferred maintenance at the Diablo Canyon powerplant and to provide recommendations as to any risk posed by the deferred maintenance, potential remedies, and cost estimates of those remedies, and a timeline for undertaking those remedies.'' DOE/EIS–0555's dismissal of refurbishment prior to completion of these statutorily-mandated reviews is premature.

Comment 8 DOE Response: There has been no proposed refurbishment of DCPP ripe for NEPA analysis. See the Comment 5 DOE Response for NRC's decision on the exemption request.

Comment 9: As DOE's proposed action will have impacts on ecological resources. DOE should engage in formal consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Service pursuant to 50 CFR 402.13 and 50 CFR 600.920.

Comment 9 DOE Response: As stated in section 7.6 of DOE/EIS–0555, in 2005, the NRC prepared a Biological Assessment that addressed the effects of the continued operation of DCPP on threatened and endangered marine species in accordance with section 7 of the Endangered Species Act (ESA) under the jurisdiction of the National Marine Fisheries Service. PG&E is required to comply with Federal, State, and local environmental regulations, agreements, and mechanisms (*e.g.,* best management practices) that are in place to protect ecological resources. A DOE award under the CNC Program would not change the operating configuration or environmental impact of the DCPP facilities. As such, DOE concludes that consultation under the ESA is not required for the proposed action to award credits for continued operation of DCPP under the current licenses.

Comment 10: A two-page excerpt from a fact-finding report approved by the Diablo Canyon Independent Safety Committee at its September 13, 2023, meeting identifies a contemplated ocean dredging project for accumulated sediment in the Diablo Canyon Intake Cove necessitated by potential extended operation of the power plant. The area of concern was originally designed to have an average (base) depth of 36 to 38 feet. Over nearly 40 years of operations, about 16 to 20 feet of sand have accumulated in that area, significantly reducing the depth and increasing the velocity of seawater being drawn into the intake bays. The higher amount of sand and increased velocity of seawater makes it more difficult for divers to keep the intake racks and bays clear of debris. These conditions also make it more likely for kelp to be drawn into the intake and foul the racks or condensers. Kelp ingestion has the potential to cause the circulating water system to trip, which stops cooling of the steam turbine condensers and can place significant stress on plan systems, and possibly a turbine/reactor trip, due to inability to dump steam to the condensers. Concern about the potential to have the circulating water system trip due to kelp ingestion is the reason that the plant will reduce power during some winter storms. The attached document is inadequately evaluated by DOE/EIS–0555.

Comment 10 DOE Response: DOE notes that approval of the referenced fact-finding report by the Diablo Canyon Independent Safety Committee occurred after DOE had noticed the adoption of DOE/EIS–0555 in the **Federal Register**, on August 4, 2023.

On October 3, 2023, the U.S. Army Corps of Engineers (Corps) published a public notice of an application by PG&E (SPL–2023–00468–LM) for a Clean Water Act section 404 permit authorizing dredging of accumulated material at the intake structure located at the north end of the intake cove of DCPP, and placement of dredge material at the Corps Nearshore Placement Area. The notice stated that ''[t]he depth of the center portions of the Intake Cove varies from –16 FT mean lower low water (MLLW) in the back (eastern) part of the cove to –33 FT MLLW in front of the intake structure.'' Although 16–20 feet of sediment have accumulated in certain parts of the Intake Cove away from the intake structure, other areas of the Intake Cove remain near the target average base depth. Based upon the Corps' preliminary review of relevant factors, including water quality, coastal zone management, essential fish habitat, cultural resources, and endangered species, the Corps made a preliminary determination that ''an environmental impact statement is not required for the proposed work.''

DOE does not have primary jurisdiction or control over PG&E's proposed dredging activity. At this time, whether the Corps will grant the requested permit and what conditions (*e.g.,* required avoidance or mitigation measures) the Corps may attach to any permit granted, are unclear. As indicated in the Corps' notice, before granting any section 404 permit, the Corps will ''prepar[e] an Environmental Assessment and/or Environmental Impact Statement pursuant to the National Environmental Policy Act.''

DOE has reviewed the Corps' notice of permit application and an Administrative Draft Environmental Assessment dated August 21, 2023, prepared for PG&E by Stantec Consulting Services, Inc. and attached as Appendix A to the Summary of Staff Recommendation of the California Coastal Commission filed September 15, 2023. DOE finds persuasive the Corps' preliminary determination that the proposed dredging activity will not require an environmental impact statement. DOE also finds that the changes in depth in certain portions of the Intake Cove, which the Diablo Canyon Independent Safety Committee agrees can be remedied by dredging the shallow areas, do not represent significant new circumstances or information relevant to environmental concerns that might require preparation of an EIS supplement.

Decision

DOE has decided to implement the Proposed Action to issue credits to PG&E for continued operation of DCPP, as identified in DOE/EIS–0555 and authorized under NRC licenses DPR–80 and DPR–82.

Basis for Decision

Approval of credits responds to the DOE purpose and need pursuant to the IIJA, which authorizes the Secretary of Energy to provide credits for nuclear reactors that meet certain minimum requirements: (1) a determination that the nuclear reactor is projected to close for economic reasons; (2) a determination that pollutants would increase if the nuclear reactor were to cease operations and be replaced with other types of power generation; and (3) that the NRC has reasonable assurance that the nuclear reactor will continue to be operate in accordance with its current license and poses no significant safety hazards (42 U.S.C. 18753). DOE also considered the environmental impacts and public comments when making its decision.

Mitigation Measures

The Project for which DOE has decided to issue credits includes all mitigation measures, terms, and conditions applied by the NRC in licenses DPR–80 and DPR–82. The mitigation measures, terms, and conditions represent practicable means by which to avoid or minimize environmental impacts from operation of DCPP. NRC is responsible for ensuring compliance with all adopted mitigation measures, terms, and conditions for the Project set forth by NRC in licenses DPR–80 and DPR–82.

DOE's issuance or payment of any credits awarded to PG&E beyond the period that DCPP's current NRC operating licenses are in effect—that is, operations under a renewed license and not the current license—would be conditioned on PG&E's compliance with NRC requirements applicable to license renewal. DOE would stop payment of credits and initiate a process to satisfy DOE's NEPA obligations with respect to continuing payments during the period of operation under an NRC license renewal.

Habitat monitoring of the DCPP is continuous and ongoing due to mitigation measures put in place in the DCPP license terms after the 1976 ES Addendum, which required as a license condition that, ''[b]efore engaging in additional construction or operational activities which may result in a significant adverse environmental impact that was not evaluated or that is significantly greater than that evaluated in this Environmental Statement, the applicant shall provide written notification to the Director of the Office of Nuclear Reactor Regulation.'' This license condition continues in the current NRC license, which states, ''[a]s a condition of the Environmental Protection Plan (EPP) which is part of the NRC licenses for operation of DCPP, PG&E is required to report ''unreviewed environmental questions'' which ''may result in a significant increase in any adverse environmental impact previously evaluated in the final environmental statement.'' Implementation of such changes are subject to prior approval by the NRC in the form of a license amendment incorporating the appropriate revision into the EPP. PG&E is required to submit an annual report identifying if any of these events [which may result in a significant increase in any adverse environmental impact previously evaluated] occurred.

Environmental monitoring continues to be conducted at DCPP under the Receiving Water Monitoring Program (RWMP) and includes monitoring tasks such as temperature monitoring, State Mussel Watch activities, and intertidal and subtidal surveys.

DOE's form credit award agreement for the CNC Program, which is publicly available,[3] also contains mitigation and monitoring measures. As applied to DCPP, this includes annual reporting requirements on estimates of emission of air pollutants avoided by the continued operation of the DCPP compared to the emission of air pollutants reasonably expected had DCPP terminated operation prior to the commencement of the award. Annual reporting requirements also include the number of stakeholder or community engagement events held by PG&E and their attendance, including organizations who represent community-based organizations, Disadvantaged Communities, federally-recognized Indian Tribes, State and local governments, economic development organizations, and labor representatives, as well as any community benefits agreements created, feedback received from stakeholders and federally-recognized Indian Tribes and steps to address feedback where necessary.

Finally, the award agreement requires recipients to attest to their compliance with all applicable laws, including environmental laws, in all material respects at the time of award agreement and each time the awardee requests payment. Environmental laws include any laws in effect as of the date of the award agreement and in the future which regulate or impose obligations relating to environmental impacts, and necessarily include any associated environmental mitigation measures in the terms of NRC licenses DPR–80 and DPR–82 and the associated mitigation measures contained therein. Future requirements imposed by the NRC would also be required by the credit award agreement for the Project. A recipient's misstatement or omission in representation of its compliance with all applicable laws may constitute an event of default, upon which DOE would have the right to exercise remedies, including withholding the payment of any credits.

Signing Authority

This document of the Department of Energy was signed on December 21, 2023, by Maria D. Robinson, Director, Grid Deployment Office, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the **Federal Register**.

Signed in Washington, DC, on December 27, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

[FR Doc. 2023–28808 Filed 12–29–23; 8:45 am]

BILLING CODE 6450–01–P

[3] U.S. Dep't of Energy Form of Civil Nuclear Credit Redemption Agreement, *https://www.energy.gov/sites/default/files/2022-05/US%20DOE%20CNC%20Guidance-%20Appendix%20B%20Draft%20Credit%20Redemption%20Agreement%20April%202022.pdf.*

DEPARTMENT OF ENERGY

National Nuclear Security Administration

Agency Information Collection Extension

AGENCY: National Nuclear Security Administration, Department of Energy.

ACTION: Notice of request for comments.

SUMMARY: The Department of Energy (DOE) invites public comment on a proposed extension for three years of a collection of information that DOE with 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 March 4, 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 to Laura Fellow, Foreign Affairs Specialist, by mail at Office of Nonproliferation and Arms Control, National Nuclear Security Administration, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, or by fax at (865) 203–3946 or by email at *laura.fellow@nnsa.doe.gov.* Due to potential delays in DOE's receipt and processing of mail sent through the U.S. Postal Service, DOE encourages responders to submit comments electronically to ensure timely receipt.

FOR FURTHER INFORMATION CONTACT: For other questions, contact Laura Fellow, Foreign Affairs Specialist, Office of

Nonproliferation and Arms Control, National Nuclear Security Administration, U.S. Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585, *laura.fellow@nnsa.doe.gov,* (865) 203–3946.

SUPPLEMENTARY INFORMATION: DOE published in the **Federal Register** a Notice of Availability for the American Assured Fuel Supply (AAFS), 76 FR 51357 (Aug. 18, 2011), and an application to standardize the information that must be provided in a request to access the material in the AAFS. 78 FR 72071 (Dec. 2, 2013). DOE previously submitted information collection extension requests to the OMB under the Paperwork Reduction Act of 1995 in 2017 and 2020. 82 FR 17650 (April 12, 2017), 85 FR 60451 (Sep. 25, 2020).

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:* The American Assured Fuel Supply Program;

(3) *Type of Review:* Extension;

(4) *Purpose:* DOE created the AAFS, a reserve of low enriched uranium (LEU) to serve as a backup fuel supply for foreign recipients to be supplied through U.S. persons, or for domestic recipients, in the event of fuel supply disruption. This effort supports the United States Government's nuclear nonproliferation objectives by supporting civilian nuclear energy development while minimizing proliferation risks. This collection of information in the event of supply disruption is necessary for DOE to identify if applicants meet basic requirements to access the AAFS and implement this important nonproliferation initiative;

(5) *Annual Estimated Number of Respondents:* 10;

(6) *Annual Estimated Number of Total Responses:* 10;

(7) *Annual Estimated Number of Burden Hours:* 8 per respondent for a total of 80 per year;

(8) *Annual Estimated Reporting and Recordkeeping Cost Burden:* $950.74 per respondent for a total of $9057.44 per year.

Statutory Authority: The Secretary of Energy is authorized, pursuant to the Atomic Energy of 1954, as amended (Pub. L. 83–703) (42 U.S.C. 2011 *et seq.*), and the Nuclear Non-Proliferation Act of 1978 (Pub. L. 95–242) (22 U.S.C. 3201 *et seq.*), to encourage the widespread use of atomic energy for peaceful purposes, and to enter into agreements and distribute nuclear material in cooperation with other nations where appropriate safeguard measures are in place to ensure the material is properly controlled and used for peaceful purposes.

DOE published in the **Federal Register** a notice of availability for the AAFS, 76 FR 51357 (Aug. 18, 2011), and a notice of availability of application guidance to standardize the information that must be provided in an application requesting LEU from the AAFS, 78 FR 72071 (Dec. 2, 2013). This second notice ''requests that persons or companies that seek to purchase low enriched uranium (LEU) from the U.S. Department of Energy's American Assured Fuel Supply (AFS) provide information sufficient to evaluate the request to the Office of Nonproliferation and International Security [now called Office of Nonproliferation and Arms Control], National Nuclear Security Administration.''

Signing Authority

This document of the Department of Energy was signed on December 20, 2023, by Corey Hinderstein, Deputy Administrator for Defense Nonproliferation, National Nuclear Security Administration, pursuant to delegated authority from the Acting 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 December 27, 2023.

Treena V. Garrett,

Federal Register Liaison Officer, U.S. Department of Energy.

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FEDERAL COMMUNICATIONS COMMISSION

[OMB 3060–XXXX, 3060–1248; FR ID 194708]

Information Collections Being Submitted for Review and Approval to Office of Management and Budget

AGENCY: Federal Communications Commission.

ACTION: Notice and request for comments.

SUMMARY: As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995, the Federal Communications Commission (FCC or the Commission) invites the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Pursuant to the Small Business Paperwork Relief Act of 2002, the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

DATES: Written comments and recommendations for the proposed information collection should be submitted on or before February 1, 2024.

ADDRESSES: Comments should be sent 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. Your comment must be submitted into *www.reginfo.gov* per the above instructions for it to be considered. In addition to submitting in *www.reginfo.gov* also send a copy of your comment on the proposed information collection to Cathy Williams, FCC, via email to *PRA@fcc.gov* and to *Cathy.Williams@fcc.gov.* Include in the comments the OMB control number as shown in the **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection, contact Cathy Williams at (202) 418–2918. To view a copy of this information collection request (ICR) submitted to OMB: (1) go to the web page *http://www.reginfo.gov/*

public/do/PRAMain, (2) look for the section of the web page called ''Currently Under Review,'' (3) click on the downward-pointing arrow in the ''Select Agency'' box below the ''Currently Under Review'' heading, (4) select ''Federal Communications Commission'' from the list of agencies presented in the ''Select Agency'' box, (5) click the ''Submit'' button to the right of the ''Select Agency'' box, (6) when the list of FCC ICRs currently under review appears, look for the Title of this ICR and then click on the ICR Reference Number. A copy of the FCC submission to OMB will be displayed.

SUPPLEMENTARY INFORMATION: The Commission may not conduct or sponsor a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the PRA that does not display a valid OMB control number.

As part of its continuing effort to reduce paperwork burdens, as required by the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3520), the FCC invited the general public and other Federal Agencies to take this opportunity to comment on the following information collection. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, see 44 U.S.C. 3506(c)(4), the FCC seeks specific comment on how it might ''further reduce the information collection burden for small business concerns with fewer than 25 employees.''

OMB Control Number: 3060–XXXX.

Title: Targeting and Eliminating Unlawful Text Messages.

Form Number: N/A.

Type of Review: New information collection.

Respondents: Business or other for-profit entities, and state, local, or tribal government.

Number of Respondents: 2,893 respondents; 34,716 responses.

Estimated Time per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Obligation to Respond: Required to obtain or retain benefits. Statutory authority for this of information is contained in sections 4(i), 4(j), 227, 301, 303, 307, and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 227, 301, 303, 307, and 316.

Total Annual Burden: 34,716 hours.

Total Annual Cost: No cost.

Needs and Uses: This notice and request for comments seeks to establish a new information collection as it pertains to the Targeting and Eliminating Unlawful Text Messages, Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991, CG Docket No. 21–402, CG Docket No. 02–278, Report and Order and Further Notice of Proposed Rulemaking, FCC 23–21, (rel. Mar. 17, 2023) (Text Blocking Report and Order). Text message-based scams can include links to well-designed phishing websites that appear identical to the website of a legitimate company and can fool a victim into providing personal or financial information. Texted links can also load unwanted software onto a device, including malware that steals passwords, credentials, or other personal information. The Federal Communications Commission (Commission) is therefore, for the first time, requiring all mobile wireless providers to block certain text messages that are highly likely to be illegal, so that all subscribers have a basic level of protection. In the Text Blocking Report and Order, adopted on March 16, 2023 and released on March 17, 2023, the Commission is requiring mobile wireless providers to block certain text messages that are highly likely to be illegal. The Commission is requiring mobile wireless providers to block—at the network level—texts purporting to be from North American Numbering Plan (NANP) numbers on a reasonable Do-Not-Originate (DNO) list, which include numbers that purport to be from invalid, unallocated, or unused numbers, and NANP numbers for which the subscriber to the number has requested that texts purporting to originate from that number be blocked.

Text Blocking Report and Order, FCC 23–21, para. 16.

We adopt our proposal to require mobile wireless providers to block text messages at the network level (*i.e.,* without requiring consumer opt in or opt out). The rule we adopt requires that they block texts purporting to be from numbers on a reasonable DNO list. As the Commission determined with calls, we find that no reasonable consumer would wish to receive text messages that spoof a number that is not in operation or, worse, purports to be from a well-known, trusted organization that does not send text messages and thus is highly likely to be a scam. Our requirement to block texts that purport to be from numbers on a reasonable DNO list does not include text messages from short codes.

The new information collection for which OMB approval is sought comes from the affirmative obligation adopted in the Text Blocking Report and Order that all mobile wireless providers must block calls using a reasonable DNO list. Currently, the Commission requires gateway providers to block voice calls purporting to originate on a reasonable DNO list, under section 47 CFR 64.1200(o) of the Commission's rules, but this is the first time that the Commission has required mobile wireless providers to block texts. The Commission is also ensuring that any erroneous blocking can be quickly remedied by requiring mobile wireless providers and other entities to maintain a point of contact for texters to report erroneously blocked texts.

OMB Control Number: 3060–1248.

Title: Transition from TTY to Real-Time Text Technology, CG Docket No. 16–145 and GN Docket No. 15–178.

Form Number: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Businesses or other for-profit entities.

Number of Respondents and Responses: 600 respondents; 4,358 responses.

Estimated Time per Response: 0.2 hours (12 minutes) to 60 hours.

Frequency of Response: Annual, ongoing, and semiannual reporting requirements; recordkeeping requirement.

Obligation to Respond: Required to obtain or retain benefit. The statutory authority can be found at §§ 4(i), 225, 255, 301, 303(r), 316, 403, 715, and 716 of the Communications Act of 1934, as amended, and § 106 of the Twenty-First Century Communications and Video Accessibility Act of 2010, 47 U.S.C. 154(i), 225, 255, 301, 303(r), 316, 403, 615c, 616, 617; Public Law 111–260, 106, 124 Stat. 2751, 2763 (2010).

Total Annual Burden: 71,142 hours.

Total Annual Cost: No cost.

Needs and Uses: Text telephone (TTY) technology provides a way for people with disabilities to send and receive text communications over the public switched telephone network (PSTN). Changes to communications networks, particularly ongoing technology transitions from circuit

switched to IP-based networks and from copper to wireless and fiber infrastructure, have affected the quality and utility of TTY technology, prompting discussions on transitioning to an alternative advanced communications technology for text communications. Accordingly, on December 16, 2016, the Commission released Transition from TTY to Real-Time Text Technology, Report and Order, document FCC 16–169, 82 FR 7699, January 23, 2017, amending its rules that govern the obligations of wireless service providers and manufacturers to support TTY technology to permit such providers and manufacturers to provide support for real-time text (RTT) over wireless IP-based networks to facilitate an effective and seamless transition to RTT in lieu of continuing to support TTY technology.

In document FCC 16–169, the Commission adopted measures requiring the following:

(a) Each wireless provider and manufacturer that voluntarily transitions from TTY technology to RTT over wireless IP-based networks and services is encouraged to develop consumer and education efforts that include (1) the development and dissemination of educational materials that contain information pertinent to the nature, purpose, and timelines of the RTT transition; (2) internet postings, in an accessible format, of information about the TTY to RTT transition on the websites of covered entities; (3) the creation of a telephone hotline and an online interactive and accessible service that can answer consumer questions about RTT; and (4) appropriate training of staff to effectively respond to consumer questions. All consumer outreach and education should be provided in accessible formats including, but not limited to, large print, Braille, videos in American Sign Language and that are captioned and video described, emails to consumers who have opted to receive notices in this manner, and printed materials. Service providers and manufacturers are also encouraged to coordinate with consumer, public safety, and industry stakeholders to develop and distribute education and outreach materials. The information will inform consumers of alternative accessible technology available to replace TTY technology that may no longer be available to the consumer through their provider or on their device.

(b) Each wireless provider that requested or will request and receive a waiver of the requirement to support TTY technology over wireless IP-based networks and services must apprise its customers, through effective and accessible channels of communication, that (1) until TTY is sunset, TTY technology will not be supported for calls to 911 services over IP-based wireless services, and (2) there are alternative PSTN-based and IP-based accessibility solutions for people with disabilities to reach 911 services. These notices must be developed in coordination with public safety answering points (PSAPs) and national consumer organizations, and include a listing of text-based alternatives to 911, including, but not limited to, TTY capability over the PSTN, various forms of PSTN-based and IP-based TRS, and text-to-911 (where available). The notices will inform consumers on the loss of the use of TTY for completing 911 calls over the provider's network and alert them to alternatives service for which TTY may be used.

(c) Once every six months, each wireless provider that requests and receives a waiver of the requirement to support TTY technology must file a report with the Commission and inform its customers regarding its progress toward and the status of the availability of new IP-based accessibility solutions. Such reports must include (1) information on the interoperability of the provider's selected accessibility solution with the technologies deployed or to be deployed by other carriers and service providers, (2) the backward compatibility of such solution with TTYs, (3) a showing of the provider's efforts to ensure delivery of 911 calls to the appropriate PSAP, (4) a description of any obstacles incurred towards achieving interoperability and steps taken to overcome such obstacles, and (5) an estimated timetable for the deployment of accessibility solutions. The information will inform consumers of the progress towards the availability of alternative accessible means to replace TTY, and the Commission will be able to evaluate the reports to determine if any changes to the waivers are warranted or of any impediments to progress that it may be in a position to resolve.

Federal Communications Commission.

Katura Jackson,

Federal Register Liaison Officer.

[FR Doc. 2023–28819 Filed 12–29–23; 8:45 am]

BILLING CODE 6712–01–P

GOVERNMENT ACCOUNTABILITY OFFICE

Request for Medicaid and CHIP Payment and Access Commission (MACPAC) Nominations

AGENCY: Government Accountability Office.

ACTION: Request for letters of nomination and resumes.

SUMMARY: The Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA) established MACPAC to review Medicaid and CHIP access and payment policies and to advise Congress on issues affecting Medicaid and CHIP. CHIPRA gave the Comptroller General of the United States responsibility for appointing MACPAC's members. The U.S. Government Accountability Office (GAO) is now accepting nominations for MACPAC appointments that will be effective May 2024. Nominations should be sent to the email address listed below. Acknowledgement of receipt will be provided within a week of submission.

DATES: Letters of nomination and resumes should be submitted no later than January 25, 2024, to ensure adequate opportunity for review and consideration of nominees prior to appointment.

ADDRESSES: Submit letters of nomination and resumes to *MACPACappointments@gao.gov.*

FOR FURTHER INFORMATION CONTACT: Corissa Kiyan-Fukumoto at (206) 287–4808 or *KiyanFukumotoC@gao.gov* if you do not receive an acknowledgment or need additional information. For general information, contact GAO's Office of Public Affairs, (202) 512–4800.

Authority: 42 U.S.C. 1396.

Gene L. Dodaro,

Comptroller General of the United States.

[FR Doc. 2023–28102 Filed 12–29–23; 8:45 am]

BILLING CODE 1610–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

[CMS–3446–FN]

Medicare and Medicaid Programs; Application from the Community Health Accreditation Program (CHAP) for Continued Approval of Its Home Health Agency Accreditation Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces our decision to approve the Community Health Accreditation Program (CHAP) for continued recognition as a national accrediting organization for home health agencies (HHAs) that wish to participate in the Medicare or Medicaid programs.

DATES: The decision announced in this notice is applicable March 31, 2024, to March 31, 2030.

FOR FURTHER INFORMATION CONTACT: Caecilia Andrews, (410) 786–2190.

SUPPLEMENTARY INFORMATION:

I. Background

Under the Medicare program, eligible beneficiaries may receive covered services from a home health agency (HHA), provided certain requirements are met. Sections 1861(m) and (o), 1891 and 1895 of the Social Security Act (the Act) establish distinct criteria for an entity seeking designation as an HHA. Regulations concerning provider agreements are at 42 Code of Federal Regulations (CFR) part 489 and those pertaining to activities relating to the survey and certification of facilities and other entities are at 42 CFR part 488. The regulations at 42 CFR parts 409 and 484 specify the conditions that an HHA must meet to participate in the Medicare program, the scope of covered services and the conditions for Medicare payment for home health care.

Generally, to enter into a provider agreement with the Medicare program, an HHA must first be certified by a state survey agency as complying with the conditions or requirements set forth in 42 CFR part 484 of our regulations. Thereafter, the HHA is subject to regular surveys by a state survey agency to determine whether it continues to meet these requirements.

However, there is an alternative to surveys by state agencies. Section 1865(a)(1) of the Act provides that, if a provider entity demonstrates through accreditation by a Centers for Medicare & Medicaid Services (CMS) approved national accrediting organization (AO) that all applicable Medicare requirements are met or exceeded, we will deem those provider entities as having met such requirements. Accreditation by an AO is voluntary and is not required for Medicare participation.

If an AO is recognized by the Secretary of the Department of Health and Human Services (HHS) (the Secretary) as having standards for accreditation that meet or exceed Medicare requirements, any provider entity accredited by the national accrediting body's approved program would be deemed to meet the Medicare requirements. A national AO applying for approval of its accreditation program under 42 CFR part 488, subpart A, must provide CMS with reasonable assurance that the AO requires the accredited provider entities to meet requirements that are at least as stringent as the Medicare requirements.

Our regulations concerning the approval of AOs are at §§ 488.4 and 488.5. The regulations at § 488.5(e)(2)(i) require an AO to reapply for continued approval of its accreditation program every 6 years or sooner, as determined by CMS. This notice is to announce our continued approval of CHAP's HHA accreditation program for a period of 6 years.

II. Application Approval Process

Section 1865(a)(3)(A) of the Act provides a statutory timetable to ensure that our review of applications for CMS-approval of an accreditation program is conducted in a timely manner. The Act provides us 210 days after the date of receipt of a complete application, with any documentation necessary to make the determination, to complete our survey activities and application process. Within 60 days after receiving a complete application, we must publish a notice in the **Federal Register** that identifies the national accrediting body making the request, describes the request, and provides no less than a 30-day public comment period. At the end of the 210-day period, we must publish a notice in the **Federal Register** approving or denying the application.

III. Provisions of the Proposed Notice

In the August 8, 2023 **Federal Register** (88 FR 53489), we published a proposed notice announcing CHAP's request for continued approval of its Medicare HHA accreditation program. In the August 2023 proposed notice (88 FR 53489), we detailed our evaluation criteria. Under section 1865(a)(2) of the Act and in our regulations at § 488.5, we conducted a review of CHAP's Medicare HHA accreditation application in accordance with the criteria specified by our regulations, which include, but are not limited to the following:

- An administrative review of CHAP's—

++ Corporate policies;

++ Financial and human resources available to accomplish the proposed surveys;

++ Procedures for training, monitoring, and evaluation of its surveyors;

++ Ability to investigate and respond appropriately to complaints against accredited facilities; and

++ Survey review and decision-making process for accreditation.

- A comparison of CHAP's accreditation to our current Medicare HHA conditions of participation (CoPs).
- A documentation review of CHAP's survey process to do the following:

++ Determine the composition of the survey team, surveyor qualifications, and CHAP's ability to provide continuing surveyor training.

++ Compare CHAP's processes to those of state survey agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities.

++ Evaluate CHAP's procedures for monitoring HHAs out of compliance with CHAP's program requirements. The monitoring procedures are used only when CHAP identifies noncompliance. If noncompliance is identified through validation reviews, the state survey agency monitors corrections as specified at § 488.7(d).

++ Assess CHAP's ability to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner.

++ Establish CHAP's ability to provide CMS with electronic data and reports necessary for effective validation and assessment of the organization's survey process.

++ Determine the adequacy of staff and other resources.

++ Confirm CHAP's ability to provide adequate funding for performing required surveys.

++ Confirm CHAP's policies with respect to whether surveys are unannounced.

++ Obtain CHAP's agreement to provide CMS with a copy of the most current accreditation survey together with any other information related to the survey as we may require, including corrective action plans.

++ Review CHAP's policies and procedures to avoid conflicts of interest, including the appearance of conflicts of interest, involving individuals who conduct surveys or participate in accreditation decisions.

IV. Analysis of and Responses to Public Comments on the Proposed Notice

In accordance with section 1865(a)(3)(A) of the Act, the August 8, 2023 proposed notice also solicited public comments regarding whether CHAP's requirements met or exceeded the Medicare CoPs for HHAs. We received no comments in response to our proposed notice.

V. Provisions of the Final Notice

A. Differences Between CHAP's Standards and Requirements for Accreditation and Medicare Conditions and Survey Requirements

We compared CHAP's HHA requirements and survey process with the Medicare CoPs and survey process as outlined in the State Operations Manual (SOM). Our review and evaluation of CHAP's HHA application were conducted as described in section III. of this notice and have yielded the following areas where, as of the date of this notice, CHAP has completed revising its standards and certification processes to meet the standard's requirements of all the following regulations:

- Section 484.50(c)(8), to clarify under Patient Right's that the HHA must also comply with the requirements of 42 CFR 405.1200 through 405.1204 when providing the patient with written notice, in advance of a specific service being furnished.
- Section 484.75(c)(2), to specify that when rehabilitative therapy services are provided under the supervision of an occupational therapist or physical therapist, the qualified professional meets the requirements of § 484.115(f) or (h), respectively.
- Section 484.75(c)(3), to specify that when medical social services are provided under the supervision of a social worker, the requirements of § 484.115(m) are met.
- Section 484.100(a), to appropriately cross-reference the Medicare conditions of §§ 420.201, 420.202, and 420.206 or corresponding comparable CHAP standards.
- Section 484.102(d)(2)(iii), to include the requirement for HHAs to analyze the HHA's response to and maintain documentation of all drills, tabletop exercises, and emergency events, and revise the HHA's emergency plan, as needed.
- Section 484.105(g), to appropriately cross-reference the Medicare conditions of §§ 485.713, 485.715, 485.719, 485.723, and 485.727 or corresponding comparable CHAP standards.

In addition to the standards review, CMS also reviewed CHAP's comparable survey processes, which were conducted as described in section III. of this notice, and yielded the following areas where, as of the date of this notice, CHAP has completed revising its survey processes, in order to demonstrate that it uses survey processes that are comparable to state survey agency processes by removing references to ''blackout dates,'' by allowing facilities to select dates which suggested the facility would be unavailable for surveys, as CMS expects all Medicare-participating facilities to be survey ready at all times.

B. Term of Approval

Based on our review and observations described in sections III. and V. of this notice, we approve CHAP as a national AO for HHAs that request participation in the Medicare program. The decision announced in this final notice is effective March 31, 2024, through March 31, 2030 (6 years).

VI. Collection of Information Requirements

This document does not impose information collection requirements, that is, reporting, recordkeeping, or third-party disclosure requirements. Consequently, there is no need for review by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Administrator of the Centers for Medicare & Medicaid Services (CMS), Chiquita Brooks-LaSure, having reviewed and approved this document, authorizes Chyana Woodyard, who is the **Federal Register** Liaison, to electronically sign this document for purposes of publication in the **Federal Register**.

Chyana Woodyard,

Federal Register Liaison, Centers for Medicare & Medicaid Services.

[FR Doc. 2023–28831 Filed 12–29–23; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Lists of Designated Primary Medical Care, Mental Health, and Dental Health Professional Shortage Areas

AGENCY: Health Resources and Services Administration (HRSA), Department of Health and Human Services.

ACTION: Notice.

SUMMARY: This is the second of two planned notices informing the public of the availability of the complete lists of all geographic areas, population groups, and facilities designated as primary medical care, dental health, and mental health professional shortage areas (HPSA). This notice includes the lists of HPSAs in a designated status as of December 2, 2023. The lists are available on the shortage area topic page on HRSA's *data.hrsa.gov* website. The first **Federal Register** notice was published on July 3, 2023, and included HPSAs in a designated status and those proposed for withdrawal, while extending the transition time communicated in the prior notice published on July 7, 2022. State primary care offices had additional time to submit HPSA data that was re-evaluated in preparation for the publication of this notice. This second **Federal Register** notice includes the lists of HPSAs in a designated status and withdraws designations proposed for withdrawal not meeting the requirements for designation as of the data pull on December 2, 2023.

ADDRESSES: Complete lists of HPSAs designated as of December 2, 2023, are available on the website at *https://data.hrsa.gov/tools/health-workforce/shortage-areas/frn.* Frequently updated information on HPSAs is available at *https://data.hrsa.gov/topics/health-workforce/health-workforce-shortage-areas.* Information on shortage designations is available at *https://bhw.hrsa.gov/workforce-shortage-areas/shortage-designation.*

FOR FURTHER INFORMATION CONTACT: For further information on the HPSA designations listed on the website or to request additional designation, withdrawal, or reapplication for designation, please contact Anthony Estelle, Chief, Shortage Designation Branch, Division of Policy and Shortage Designation, Bureau of Health Workforce (BHW), HRSA, 5600 Fishers Lane, Room 11W16, Rockville, Maryland 20857, *sdb@hrsa.gov.*

SUPPLEMENTARY INFORMATION:

Background

Section 332 of the Public Health Service (PHS) Act, 42 U.S.C. 254e, provides that the Secretary shall designate HPSAs based on criteria established by regulation. HPSAs are defined in section 332 to include (1) urban and rural geographic areas with shortages of health professionals, (2) population groups with such shortages, and (3) facilities with such shortages. Section 332 further requires that the Secretary annually publish lists of the designated geographic areas, population groups, and facilities. The lists of HPSAs are to be reviewed at least annually and revised as necessary.

Final regulations (42 CFR part 5) were published in 1980 that include the criteria for designating HPSAs. Criteria were defined for seven health professional types: primary medical care, dental, psychiatric, vision care, podiatric, pharmacy, and veterinary care. The criteria for correctional facility

HPSAs were revised and published on March 2, 1989 (54 FR 8735). The criteria for psychiatric HPSAs were expanded to mental health HPSAs on January 22, 1992 (57 FR 2473). Currently funded PHS Act programs use only the primary medical care, mental health, or dental HPSA or relevant sub-score designations such as Maternity Care Target Areas.

HPSA designation offers access to potential federal assistance. Public or private nonprofit entities are eligible to apply for assignment of National Health Service Corps personnel to provide primary medical care, mental health, or dental health services in or to these HPSAs. National Health Service Corps health professionals enter into service agreements to serve in federally designated HPSAs. Entities with clinical training sites located in HPSAs are eligible to receive priority for certain residency training program grants administered by HRSA's BHW. Other federal programs also utilize HPSA designations. For example, under authorities administered by the Centers for Medicare & Medicaid Services, certain qualified providers in geographic area HPSAs are eligible for increased levels of Medicare reimbursement.

Content and Format of Lists

The three lists of designated HPSAs are available on the HRSA Data Warehouse shortage area topic web page and include a snapshot of all geographic areas, population groups, and facilities that were designated HPSAs as of December 2, 2023. This notice incorporates the most recent annual reviews of designated HPSAs, which can be located on HRSA's *data.hrsa.gov* website, and supersedes the HPSA lists published in the **Federal Register** on July 3, 2023 (88 FR 42725).

In addition, all Indian Tribes that meet the definition of such Tribes in the Indian Health Care Improvement Act of 1976, 25 U.S.C. 1603, are automatically designated as population groups with primary medical care and dental health professional shortages. Further, the Health Care Safety Net Amendments of 2002 provides eligibility for automatic facility HPSA designations for all federally qualified health centers (FQHC) and rural health clinics that offer services regardless of ability to pay. Specifically, these entities include FQHCs funded under section 330 of the PHS Act, FQHC Look-Alikes, and Tribal and urban Indian clinics operating under the Indian Self-Determination and Education Act of 1975 (25 U.S.C. 450) or the Indian Health Care Improvement Act. Many, but not all, of these entities are included on this listing. Since they are automatically designated by statute, absence from this list does not exclude them from HPSA designation; facilities eligible for automatic designation are included in the database when they are identified.

Each list of designated HPSAs is arranged by state. Within each state, the list is presented by county. If only a portion (or portions) of a county is (are) designated, a county is part of a larger designated service area, or a population group residing in a county or a facility located in the county has been designated, the name of the service area, population group, or facility involved is listed under the county name. A county that has a whole county geographic or population group HPSA is indicated by the phrase ''County'' following the county name.

Development of the Designation and Withdrawal Lists

Requests for designation or withdrawal of a particular geographic area, population group, or facility as a HPSA are received continuously by BHW. Under a Cooperative Agreement between HRSA and the 54 state and territorial Primary Care Offices (PCO), PCOs conduct needs assessments and submit applications to HRSA to designate HPSAs. BHW also receives other requests for designation from other sources and refers them to PCOs for review. As part of the HPSA designation process, interested parties, including Governors, state Primary Care Associations, and state professional associations, are notified of requests so that they may submit their comments and recommendations.

BHW reviews each recommendation for possible addition, continuation, revision, or withdrawal. Following review, BHW notifies the appropriate agency, individuals, and interested organizations of each designation of a HPSA, rejection of recommendation for HPSA designation, revision of a HPSA designation, and/or advance notice of pending withdrawals from the HPSA list. Designations (or revisions of designations) are effective as of the date on the notification from BHW and are updated daily on the HRSA Data Warehouse website. While this list is a snapshot of HPSAs at a point in time, HPSA designations are regularly being updated so the best source of current designation status is the HRSA Data Warehouse website at (*https://data.hrsa.gov/tools/shortage-area*).

In 2024, BHW will publish two **Federal Register** notices to inform the public of the availability of the complete lists of all geographic areas, population groups, and facilities designated as primary medical care, dental health, and mental health professional shortage areas. The first notice will be on or before May 1, 2024, and will list all designated HPSAs and those that are proposed for withdrawal HPSAs that will remain in a designated status until the second **Federal Register** notice which will be scheduled on or before November 1, 2024. The second **Federal Register** notice will withdraw all HPSAs that were proposed for withdrawl and do not meet the requirements for designation. This two-step process provides greater clarity for jurisdictions and facilities to prepare for any changes in HPSA designation.

Carole Johnson,

Administrator.

[FR Doc. 2023–28844 Filed 12–29–23; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a summary of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (240) 276–0361.

Project: Survey of Current and Alumni SAMHSA Fellows of the Minority Fellowship Program (MFP) (OMB No. 0930–0304)—REVISION

In 1973, in response to a substantial lack of ethnic and racial minorities in the mental health professions, the Center for Minority Health at the National Institute of Mental Health established the MFP. Since the MFP's transition to SAMHSA in 1992, the program has continued to facilitate the entry of graduate students and psychiatric residents into mental health careers and has increased the number of psychology, psychiatry, nursing, and social work professionals trained to provide mental health and substance abuse services to minority groups. The traditional MFP offers sustained grants to six national behavioral health professional associations: the American Association of Marriage and Family Therapy (AAMFT), American Nurses Association (ANA), American Psychiatric Association (APsychA),

American Psychological Association (APA), Council on Social Work Education (CSWE), and National Board for Certified Counselors (NBCC). In addition, the NBCC also administers the MFP for the Association for Addiction Professionals (NAADAC). A more recent program, The Interdisciplinary MFP, is also administered by the American Psychological Association.

This data collection includes two survey instruments, the Survey of Current SAMHSA MFP Fellows and the Survey of Alumni SAMHSA MFP Fellows. The two online surveys (with the option for a hard copy mailed through the U.S. Postal Service) will be used with the following stakeholders in the MFP grant programs:

1. *Current SAMHSA MFP Fellows (n=411)*

a. *Current MFP fellows* (doctoral-level fellows) and *master's-level fellows* currently receiving support during their doctoral-level, master's-level, psychiatric residency, or certificate training programs will be asked about their experiences in the MFP (from recruitment into the program through their participation in the various activities provided by the grantees).

2. *MFP Alumni (n=1,280)*

a. *MFP Alumni* who participated in the MFP during the time the program was administered by SAMHSA will be asked about their previous experiences as fellows in the MFP, their subsequent involvement and leadership in their professions, and intentions to stay in the behavioral health field.

The information gathered by these two surveys will be used to document contributions and impacts of current and former MFP fellows. The current fellows survey includes questions to assess the following measures: background items on training specialty and demographics, practicum and internship experiences, professional development activities (*e.g.,* number of certifications obtained, types of professional development/contributions to the field such as number of presentations or publications), and learning opportunities related to MFP fellows' preparation to provide culturally competent mental and substance use disorder services to underserved populations. The alumni fellows survey includes questions to measure: background items on specialization and demographics, status of degree completion, employment experiences and settings where providing culturally competent mental and substance use disorder services to underserved populations, contributions to the field, application of MFP learning opportunities in current employment experiences, mentoring and other support received during the MFP, satisfaction with their preparation during MFP for their current employment or educational placement, intentions to stay in or leave the behavioral health field, and suggestions for improving the MFP.

This request amends the OMB approval that expired August 31, 2019, by omitting questions that gathered information on number of mentors and total mentored hours; as well as self-reported impacts on current and alumni fellows such as increased knowledge, skills, and aptitude. Both the current and alumni fellows' surveys are revised accordingly. For the alumni survey, the respondent pool has been limited only to those who have completed the MFP within the past five years. Additionally, to further streamline this data collection SAMHSA has also deleted eleven other questions that are not critical to assessing the program's progress. In turn, the following questions have been added to the survey instruments to help better assess the program's progress with meeting stated goals and plan for future cohorts of fellows:

(1) Specialization

Response choices were modified and added to align with position titles in HRSA's annual behavioral workforce survey.

My specialization would best prepare me/prepared me for positions such as those held by (check more than one if applicable):

[ ] Adult psychiatrists
[ ] Child and adolescent psychiatrists
[ ] Psychiatric nurse practitioners
[ ] Physician assistants
[ ] Psychologists
[ ] Social workers
[ ] Marriage and family therapists
[ ] Addictions counselors
[ ] Mental health counselors
[ ] School counselors
[ ] Other: *Please specify* [text box]

(2) Personal Background

Items and response choices were added or revised to align with how these are asked in federal national data collections (*e.g.,* American Community Survey or NIH's PhenX Toolkit).

The next set of questions will help SAMHSA understand the variation in responses based on characteristics of MFP fellows.

(5) What is your gender?

[ ] Male
[ ] Female
[ ] Non-binary, ...
[ ] Two-Spirit
[ ] TF (Transgender Female)
[ ] TM (Transgender Male)/
[ ] Other *(please specify):* [text box] *
[ ] Prefer not to answer

*(6) Are you of Hispanic, Latina/Latino, or Spanish origin? **

[ ] No, not of Hispanic, Latino, or Spanish origin
[ ] Yes
  [ ] Mexican, Mexican Am., Chicano
  [ ] Puerto Rican
  [ ] Cuban
  [ ] Another Hispanic, Latino, or Spanish origin—for example, Salvadoran, Dominican, Colombian, Guatemalan, Spaniard, Ecuadorian, etc.) [text box]*
[ ] Prefer not to answer

*(7) What is your race? For this survey (as in the U.S. Census), Hispanic origins are not races. Check all that apply.**

[ ] White—for example, German, Irish, English, Italian, Lebanese, Egyptian, etc.
[ ] Black, African, or African American—for example, African American, Jamaican, Haitian, Nigerian, Ethiopian, Somali, etc.
[ ] American Indian or Alaska Native—Print name of enrolled or principal tribe(s), for example, Navajo Nation, Blackfeet Tribe, Mayan, Aztec, Native Village of Barrow Inupiat Traditional Government, Nome Eskimo Community, etc.
[ ] Asian or Asian American
[ ] Chinese
[ ] Filipino
[ ] Asian Indian
[ ] Vietnamese
[ ] Korean
[ ] Japanese
[ ] Other Asian—for example, Pakistani, Cambodian, Hmong, etc.
  [ ] Native Hawaiian, Samoan, Chamorro, or Other Pacific Islander—for example, Tongan, Fijian, Marshallese, etc.
  [ ] Some other race—specify race or origin: [text box]*
  [ ] Prefer not to answer

The following items will help us understand the immigrant status of our trainees and the extent to which we are diversifying our trainees to respond to the growing needs of immigrant families.

(8) Are you from an immigrant family?

[ ] NO
[ ] YES
[ ] Prefer not to answer

a. Was either of your parents born outside of the U.S.?

  [ ] YES, one parent
  [ ] YES, both parents
  [ ] NO, neither parent
  [ ] Prefer not to answer

b. Was at least one of your grandparents born outside of the U.S.?
[ ] YES
[ ] NO
[ ] Prefer not to answer

c. Were you born outside of the U.S.?
[ ] YES
[ ] NO
[ ] Prefer not to answer

*(9) List any language(s), other than English, in which you have at least minimum professional speaking proficiency (i.e., can participate effectively in most formal and informal conversations on practical and professional topics). Check all that apply.**

[ ] English only
[ ] African-other than Amharic (please specify below)
[ ] Amharic
[ ] Chinese-Mandarin
[ ] Chinese-Other
[ ] French
[ ] German
[ ] Hindi
[ ] Japanese
[ ] Korean
[ ] Kreyol
[ ] Portuguese
[ ] Russian
[ ] Spanish
[ ] Other language *(please specify):* [text box]
[ ] Prefer not to answer

*(10) Do you have a disability or require accommodations to perform essential professional functions? **

[ ] Yes
[ ] No
[ ]Prefer not to answer

(3) Learning Opportunities

Added items or response choices (*e.g.,* use of telehealth) to reflect changes in behavioral practices and service delivery due to COVID–19 restrictions.

20. During the past MFP year, as part of your program, please check the types of learning opportunities you had for each of the following topics.

(a) Working with individuals from racially and ethnically diverse backgrounds?
(Please select all that apply.)
[ ] Opportunities to learn via telehealth
[ ] Observation of clinical encounters in-person
[ ] Observation of clinical encounters via telehealth
[ ] Clinical experience with the population(s)
[ ] Education about the CLAS standards and their impact on the delivery of care
[ ] Instruction in cultural humility/competence and its impact on the delivery of care
[ ] Distance learning (virtual learning, web-based learning)
[ ] Supervision of the clinical experience with the population(s)

(4) Intentions to Stay/Leave Behavioral Health Field (alumni only)

Additional items were added to better understand how the stress and burnout being witnessed in the health care workforce generally and behavioral health workforce in particular (due to COVID–19 pandemic) may have impacted alumni fellows' intentions to stay in or leave the field.

The following questions ask about your intentions to stay in the mental or behavioral health field. Using the scales provided, indicate how often you think about leaving and the likelihood that you would leave.

(31). Do you consider your current job/practice/training as in the mental and behavioral health field?

__ No: *Which field are you in?* TEXT BOX (then skip to Q34)
__ Yes (ANSWER INTENTIONS 1 and 2 below)

31. INTENTIONS–1	1–Never	2–A few times a year or less	3–Once a month or less	4–A few times a month	5–Once a week	6–A few times a week	7–Every day
a. How often do you think about leaving your job/training program?	☐	☐	☐	☐	☐	☐	☐
b. How often do you think about leaving for another job/training program in the field?	☐	☐	☐	☐	☐	☐	☐

32. INTENTIONS–2	1–Extremely unlikely	2–Very unlikely	3–Somewhat unlikely	4–Neutral/unsure	5–Somewhat likely	6–Very likely	7–Extremely likely
a. How likely is it that you will search for a job in the same primary role—*e.g.,* clinical care, practice, teaching, research, prevention, administration/policy development?	☐	☐	☐	☐	☐	☐	☐
b. How likely is it that you will actually leave the mental and behavioral health field next year?	☐	☐	☐	☐	☐	☐	☐

(33) If you are considering leaving the mental and behavioral health field, what is/are the primary driver(s)?

(34) What changes are needed that would convince you to stay? [Limit characters to 450]

Burden Estimate

The total annual burden estimate for conducting the surveys is shown below:

Survey name	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total burden hours
SAMHSA MFP Current Fellows Survey	411	1	411	0.42	173

Survey name	Number of respondents	Responses per respondent	Total number of responses	Hours per response	Total burden hours
SAMHSA MFP Alumni Survey	1,280	1	1,280	0.42	538
Totals	1,691 [a]		1,691		711

[a] This is an unduplicated count of total respondents.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain*. Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function.

Alicia Broadus,

Public Health Advisor.

[FR Doc. 2023–28809 Filed 12–29–23; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–R7–ES–2023–N092; FXES111607MMTRP–245–FF07CAMM00; OMB Control Number 1018–0066]

Agency Information Collection Activities; Submission to the Office of Management and Budget; Marine Mammal Marking, Tagging, and Reporting Certificates, and Registration of Certain Dead Marine Mammal Hard Parts

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to renew an information collection without change.

DATES: Interested persons are invited to submit comments on or before February 1, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of publication of this notice at *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference ''1018–0066'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

On July 26, 2023, we published in the **Federal Register** (88 FR 48260) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on September 25, 2023. In an effort to increase public awareness of, and participation in, our public commenting processes associated with information collection requests, the Service also published the **Federal Register** notice on *Regulations.gov* (Docket No. FWS–R7–ES–2023–0097) to provide the public with an additional method to submit comments (in addition to the typical U.S. mail submission methods). We received one anonymous comment in response to that notice which did not address the information collection requirements. No response to that comment is required.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

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

Abstract: Under section 101(b) of the Marine Mammal Protection Act of 1972, as amended (MMPA; 16 U.S.C. 1361–1407), Alaska Natives residing in Alaska and dwelling on the coast of the North Pacific or Arctic Oceans may harvest polar bears, northern sea otters, and Pacific walruses for subsistence or handicraft purposes. Section 109(i) of the MMPA authorizes the Secretary of the Interior to prescribe marking, tagging, and reporting regulations applicable to the Alaska Native subsistence and handicraft take.

On behalf of the Secretary, we implemented regulations at 50 CFR 18.23(f) for Alaska Natives harvesting polar bears, northern sea otters, and Pacific walruses. These regulations enable us to gather data on the Alaska Native subsistence and handicraft harvest and on the biology of polar bears, northern sea otters, and Pacific walruses in Alaska to determine what effect such take may be having on these populations. The regulations also provide us with a means of monitoring the disposition of the harvest to ensure that any commercial use of products created from these species meets the criteria set forth in section 101(b) of the MMPA.

We collect harvest information related to Alaska Native harvest to provide a chronology of the harvest in population modeling, determining which cohorts are being killed, determining the status of populations, and predicting population trends. We will use the collected information to gain insight into the distribution and relative abundance of the three species, the level and intensity of the harvest, and the harvest impacts on the species and their subpopulations. We use three Service forms to collect the following information from Alaska Natives as part of the harvest reporting requirement:

A. *Form 3–2414, ''Polar Bear Tagging Certificates'':* Form 3–2414 collects the following information:

- Date and location of tagging;
- Hide and skull tag number;
- Village hunted from (if different from tagging location);
- Age class and sex;
- Whether sex could be verified by tagger and, if yes, sex identification information;
- Skull measurements (length, width, or not provided);
- Whether cubs were present with sow and, if yes, how many cubs;
- Bear condition (obese, average, skinny);
- Specimens collected (tooth, hair, skin, liver, fat, muscle, skin/muscle, baculum/penis bone, or other);
- Research marks/tags (collar, ear tag number, lip tattoo, or other);
- Date and location of kill (to include latitude/longitude);
- Whether it was a conflict or problem bear and whether it was taken in defense of life;
- Additional remarks; and
- Whether hunter is available for post-hunt interview and, if yes, phone number, with the following post-hunt interview questions for problem bear situations:

a. Was there a food source/attractant that the bear was interested in? What was the attractant?

b. Was there any attempt to haze the bear to get it to leave?

c. Was it believed that the bear could be a threat to people?

Note: We would only ask these typical post-hunt questions if the biologist needed information on a bear that was marked as a problem bear. There is no standardized questioning.

B. *Form 3–2415, ''Walrus Tagging Certificates'':* Form 3–2415 collects the following information:

- Date and location of tagging;
- Village hunted from (if different than tagging location);
- Marine Mammals Management Marking, Tagging, and Reporting Program (MTRP) tag number of plastic-headed wire tag used for left or right tusk;
- Type of take for walrus (LK = live killed, BF = beach found)—This information increases the accuracy of the known mortality and harvest data by discriminating between a walrus killed for subsistence purposes or found dead and salvaged. Requiring all ivory that has been taken or collected (pursuant to the Alaska Native exemption) to be marked, tagged, and reported simplifies Service enforcement efforts.
- Date and location killed/found;
- Age and sex;
- Walrus tusk length and circumference;
- Number of walrus harvested without tusks; and
- Additional remarks.

C. *Form 3–2416, ''Sea Otter Tagging Certificates'':* Form 3–2416 collects the following information:

- Date and location of tagging;
- Hide and skull tag number;
- FWS permit number;
- Age class and sex;
- Details identification information;
- Specimens collected (tooth, muscle vial, whisker, carcass, or other);
- Number of otters present in pod and number harvested from pod;
- Date and location of kill (to include latitude and longitude); and
- Additional remarks.

We also require non-Native collectors to use *Form 3–2406, ''Non-Native Marine Mammal Certificates.''* The collection of information via Form 3–2406 allows the Service to track individuals who register (within 30 days) beach-found hard parts to determine whether the take of marine mammal hard parts is legal. We use the below listed information collected via Form 3–2406 to verify whether it is legal for the individual to retain them:

- Date and location of tagging;
- MTRP tag number of plastic-headed wire tag used for left or right tusk;
- Date found;
- Age and sex;
- Tusk circumference at gum line and tusk length from gum line to tip along front side following the curve of the tusk;
- Exact location of kill or find;
- Tag number for skull (polar bear or sea otter) or other part;
- Any information of interest about the beach-found hard part collected;
- Other remarks; and
- Name, address, phone number, and date of birth of the person who collected the hard part.

You may request copies of all forms in this information collection by submitting a request to the Service Information Collection Clearance Officer, using one of the methods identified in the **ADDRESSES** section of this notice.

Title of Collection: Marine Mammal Marking, Tagging, and Reporting Certificates, and Registration of Certain Dead Marine Mammal Hard Parts, 50 CFR 18.23(f) and 18.26.

OMB Control Number: 1018–0066.

Form Number: Forms 3–2406, 3–2414, 3–2415, and 3–2416.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Individuals and households.

Total Estimated Number of Annual Respondents: 370.

Total Estimated Number of Annual Responses: 2,030.

Estimated Completion Time per Response: 15 minutes.

Total Estimated Number of Annual Burden Hours: 508 (rounded).

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion.

Total Estimated Annual Nonhour Burden Cost: None.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2023–28827 Filed 12–29–23; 8:45 am]

BILLING CODE 4333–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

[FWS–HQ–NWRS–2023–N103; FXRS12630900000–245–FF09R81000; OMB Control Number 1018–0181]

Agency Information Collection Activities; Submission to the Office of Management and Budget; U.S. Fish and Wildlife Service Concessions

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of information collection; request for comment.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, we, the U.S. Fish and Wildlife Service (Service), are proposing to renew an information collection without change.

DATES: Interested persons are invited to submit comments on or before February 1, 2024.

ADDRESSES: Written comments and recommendations for the proposed information collection should be submitted within 30 days of publication of this notice at *https://www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function. Please provide a copy of your comments to the Service Information Collection Clearance Officer, U.S. Fish and Wildlife Service, MS: PRB (JAO/3W), 5275 Leesburg Pike, Falls Church, VA 22041–3803 (mail); or by email to *Info_Coll@fws.gov.* Please reference ''1018–0181'' in the subject line of your comments.

FOR FURTHER INFORMATION CONTACT: To request additional information about this ICR, contact Madonna L. Baucum, Service Information Collection Clearance Officer, by email at *Info_Coll@fws.gov,* or by telephone at (703) 358–2503. Individuals in the United States who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services. Individuals outside the United States should use the relay services offered within their country to make international calls to the point-of-contact in the United States.

SUPPLEMENTARY INFORMATION: In accordance with the Paperwork Reduction Act of 1995 (PRA, 44 U.S.C. 3501 *et seq.*) and 5 CFR 1320.8(d)(1), we provide the general public and other Federal agencies with an opportunity to comment on new, proposed, revised, and continuing collections of information. This helps us assess the impact of our information collection requirements and minimize the public's reporting burden. It also helps the public understand our information collection requirements and provide the requested data in the desired format.

On June 30, 2023, we published in the **Federal Register** (88 FR 42382) a notice of our intent to request that OMB approve this information collection. In that notice, we solicited comments for 60 days, ending on August 29, 2023. In an effort to increase public awareness of, and participation in, our public commenting processes associated with information collection requests, the Service also published the **Federal Register** notice on *Regulations.gov* (Docket No. FWS–HQ–NWRS–2023–0098) to provide the public with an additional method to submit comments. We did not receive any comments in response to that notice.

As part of our continuing effort to reduce paperwork and respondent burdens, we are again soliciting comments from the public and other Federal agencies on the proposed ICR that is described below. We are especially interested in public comment addressing the following:

(1) Whether or not the collection of information is necessary for the proper performance of the functions of the agency, including whether or not the information will have practical utility;

(2) The accuracy of our estimate of the burden for this collection of information, including the validity of the methodology and assumptions used;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(4) How might the agency minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of response.

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

Abstract: The Secretary of the Interior is authorized to ensure that we provide opportunities within the Service for compatible wildlife-dependent recreational uses across the National Wildlife Refuge System (System). Furthermore, the Secretary is authorized to award concessions contracts under the following Acts:

- The National Wildlife Refuge System Administration Act of 1966 (Administration Act, 16 U.S.C. 668dd–668ee), as amended by the National Wildlife Refuge System Improvement Act of 1997, authorizes the Secretary of the Interior to negotiate and award contracts and issue regulations to carry out the Administration Act.
- The Refuge Recreation Act of 1962 (16 U.S.C.460k–460k–3) allows the use of refuges for public recreation when such use is not inconsistent with or does not interfere with the primary purpose(s) of the refuge.
- The Refuge Revenue Sharing Act (16 U.S.C. 715s) authorizes the Secretary to grant privileges and collect revenues from leases for public accommodations or facilities established for the System.

Specifically, the Administration Act provides that, with respect to the Refuge System, it is the policy of the United States that—

a. Each refuge shall be managed to fulfill the mission of the System, as well as the specific purposes for which that refuge was established;

b. Compatible wildlife-dependent recreation is a legitimate and appropriate general public use of the System, directly related to the mission of the System and the purposes of many refuges, and which generally fosters refuge management and through which the American public can develop an appreciation for fish and wildlife;

c. Compatible wildlife-dependent recreational uses are the priority general public uses of the System and shall receive priority consideration in refuge planning and management; and

d. When the Secretary determines that a proposed wildlife-dependent recreational use is a compatible use within a refuge, that activity should be facilitated, subject to such restrictions or regulations as may be necessary, reasonable, and appropriate.

The Administration Act also provides that, in administering the Refuge System, the Secretary shall—

a. Recognize compatible wildlife-dependent recreational uses as the priority general public uses of the System, through which the American public can develop an appreciation for fish and wildlife;

b. Ensure that opportunities are provided within the System for

compatible wildlife-dependent recreational uses;

c. Ensure that priority general public uses of the System receive enhanced consideration over other general public uses in planning and management within the System; and

d. Provide increased opportunities for families to experience compatible wildlife-dependent recreation, particularly opportunities for parents and their children to safely engage in traditional outdoor activities, such as fishing and hunting.

Private businesses and non-profit organizations under contract to the Service provide recreational, educational, and interpretive enjoyment of our lands and waters by managing lodging, food, transportation, and supplies and equipment for the enjoyment of the visiting public. These services gross approximately $3,000,000 every year and provide jobs for more than 100 people annually.

The regulations at 50 CFR subpart F (section 25.61) primarily implement the authorities governing public use facilities operated by concessionaires or cooperators under appropriate contact or legal agreement on national wildlife refuges where there is a demonstrated justified need for services or facilities, including but not limited to boat rentals, swimming facilities, conducted tours of special natural attractions, shelters, tables, trailer lots, food, lodging, and related services.

Service Manual chapters 630 FW 6–8 discuss the Service's current policy for concession management and provide guidance for permitting and administering concessions operations on Service lands. We use concessions contracts to assist us in providing wildlife-dependent recreation activities to the visiting public by using contracts between the Service and private entities, where each private entity is allowed to charge a fee for services provided at a field station to the visiting public.

We collect information in a narrative (non-form) format. Details concerning the specific information required are contained in 50 CFR 25.61 and the recently updated Service Manual chapters available to the public on the Service's website at *https://www.fws.gov/policy/manuals/part.cfm?series=600&seriestitle=LAND%20USE%20AND%20MANAGEMENT%20SERIES.* The amount of information or degree of detail requested varies widely, depending upon the size and scope of the business opportunity. For example, a much greater amount of detailed information would be required for a multi-unit camping and food service operation than would be required for a small bait sales operation. We use the information provided by prospective concessionaires to objectively evaluate offers received for a particular business opportunity, assure adequate protection of refuge resources, and to determine which offeror will provide the best service to visitors.

Below are examples of types of information the Service collects from a potential or current concessionaire.

General Concessionaire Information

- Description of how the respondent will conduct operations to minimize disturbance to wildlife; protect refuge resources; and provide visitors with a high-quality, safe, and enjoyable visitor experience.
- Proposal to protect, conserve, and preserve resources of the refuge. The proposal must respond to specific resource management objectives and issues at the refuge and regarding the contract in question.
- Proposal to provide necessary and appropriate visitor services at reasonable rates. This proposal must respond to specific visitor service questions at the refuge and regarding the contract in question.
- Experience and related background of the offeror, including past performance and expertise of the offeror in providing the same or similar visitor services as those to be provided under the draft concession contract.
- Financial capability of the offeror to carry out its proposal. In particular, we require projected financials, including initial investments, startup expenses, income statement, operating assumptions, cash flow statement, recapture of investments, and all associated assumptions.
- The amount of the proposed minimum franchise fee and other forms of financial consideration.

Proposal for Concession Opportunity

- Offeror's transmittal letter, including the name and contact information of the entity offering a proposal to operate a concession contract.
- Business type of the offeror, such as corporation, limited liability company, partnership, etc.
- Business history information, including adverse history that could impact future operations under a concession contract.
- Credit report, so that we can understand the offeror's credit history and any risks of contracting with the entity.
- Proposed staffing/management operation information, including organization charts and delegations of authority, to ensure adequate staffing.
- Proof of indemnification, including public liability insurance that co-names the Government as co-insured.

Reporting Requirements

- Annual financial reports providing concessioner financial information, as required by each concession contract.
- Quarterly and annual progress reports to monitor performance.
- Inspections and inspection reports conducted in concert with the on-site concession manager.

Approval to Sell or Transfer Concession Operation

- Information to assess the transferee's ability to manage the business successfully and fulfill the terms of the concession contract, in order for the Regional Director to grant approval.

Recordkeeping Requirements

- In accordance with Service Manual chapter 630 FW 8.3, a concessioner (and any subconcessioner) must keep and make available to the Service records for the term of the concession contract.

Title of Collection: U.S. Fish and Wildlife Service Concessions.

OMB Control Number: 1018–0181.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents/Affected Public: Private sector (profit and nonprofit organizations).

Respondent's Obligation: Required to obtain or retain a benefit.

Frequency of Collection: On occasion for proposals, amendments, and appeals; annually for financial reports; quarterly for progress reports; and ongoing for recordkeeping.

Total Estimated Annual Nonhour Burden Cost: $69,900 (associated with administrative overhead, as well as costs associated with the development of proposals in response to concessions opportunities).

Requirement	Average number of annual respondents	Average number of responses each	Average number of annual responses	Average completion time per response (hours)	Estimated annual burden hours *
Approval to Sell/Transfer A Concession Operation	1	1	1	8	8
General Concessionaire Information—Inspection Form	80	1	80	8	640
Proposal for Concessions Opportunities—Large Concessions	3	2	6	40	240
Proposal for Concessions Opportunities—Small Concessions	3	1	3	16	48
Recordkeeping Requirements—Large Concession	5	1	5	40	200
Recordkeeping Requirements—Small Concession	5	1	5	20	100
Reporting Requirements—Annual Financial Report	10	1	10	16	160
Reporting Requirements—Annual Progress Report	10	1	10	16	160
Reporting Requirements—Quarterly Progress Report	3	4	12	4	48
Totals	120		132		1,604

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

The authority for this action is the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Madonna Baucum,

Information Collection Clearance Officer, U.S. Fish and Wildlife Service.

[FR Doc. 2023–28829 Filed 12–29–23; 8:45 am]

BILLING CODE 4333–15–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–684 and 731–TA–1597 (Final)]

Gas Powered Pressure Washers From China; Supplemental Schedule for Final Phase of Countervailing Duty and Antidumping Duty Investigations

AGENCY: United States International Trade Commission.

ACTION: Notice.

DATES: December 21, 2023.

FOR FURTHER INFORMATION CONTACT: Nitin Joshi ((202) 708–1669), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for these investigations may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION: Effective June 8, 2023, the Commission established a general schedule for the conduct of the final phase of its countervailing duty and antidumping duty investigations on gas powered pressure washers from China and Vietnam (88 FR 40865, June 22, 2023), following preliminary determinations by the U.S. Department of Commerce (''Commerce'') that imports of gas powered pressure washers from China were being subsidized by the government of China (88 FR 36531, June 5, 2023) and that imports of gas powered pressure washers from Vietnam are being sold in the United States at less than fair value (88 FR 39221, June 15, 2023). Subsequently, on August 3, 2023, Commerce issued a preliminary affirmative antidumping duty determination with respect to gas powered pressure washers from China (88 FR 51279). Notice of the scheduling of the final phase of the Commission's investigations and of a public hearing held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on June 22, 2023 (88 FR 40865). All persons who requested the opportunity were permitted to participate.

Commerce issued a final affirmative antidumping duty determination with respect to gas powered pressure washers from Vietnam (88 FR 59503, August 29, 2023). The Commission subsequently issued its final determination that an industry in the United States was materially injured by reason of imports of gas powered pressure washers from Vietnam provided for in subheadings 8424.30.90 and 8424.90.90 of the Harmonized Tariff Schedule of the United States (''HTSUS'') that have been found by Commerce to be sold in the United States at less than fair value (88 FR 71885, October 18, 2023).

Commerce has issued a final affirmative antidumping duty determination (88 FR 88365, December 21, 2023) and a final affirmative countervailing duty determination (88 FR 88578, December 22, 2023) with respect to gas powered pressure washers from China. Accordingly, the Commission currently is issuing a supplemental schedule for its countervailing duty and antidumping duty investigations on imports of gas powered pressure washers from China.

This supplemental schedule is as follows: the deadline for filing supplemental party comments on Commerce's final countervailing duty and antidumping duty determinations is 5:15 p.m. on January 5, 2024. Supplemental party comments may address only Commerce's final countervailing duty and antidumping duty determinations regarding imports of gas powered pressure washers from China. These supplemental final comments may not contain new factual information and may not exceed five (5) pages in length. The supplemental staff report in the final phase of the current investigations will be placed in the nonpublic record on January 17, 2024, and a public version will be issued thereafter.

For further information concerning this proceeding see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A and B (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Additional written submissions to the Commission, including requests pursuant to section 201.12 of the Commission's rules, shall not be accepted unless good cause is shown for

accepting such submissions, or unless the submission is pursuant to a specific request by a Commissioner or Commission staff.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

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.

Authority: This proceeding is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: December 27, 2023.

Katherine Hiner,

Supervisory Attorney.

[FR Doc. 2023–28856 Filed 12–29–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–598 and 731–TA–1408 and 1410 (Review)]

Rubber Bands From China and Thailand; Institution of Five-Year Reviews

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the countervailing duty order on rubber bands from China and the antidumping duty orders on rubber bands from China and Thailand would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted January 2, 2024. To be assured of consideration, the deadline for responses is February 1, 2024. Comments on the adequacy of responses may be filed with the Commission by March 11, 2024.

FOR FURTHER INFORMATION CONTACT: Alec Resch (202–708–1448), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On February 19, 2019, the Department of Commerce (''Commerce'') issued antidumping and countervailing duty orders on imports of rubber bands from China (84 FR 4774). On April 26, 2019, Commerce issued an antidumping duty order on imports of rubber bands from Thailand (84 FR 17779). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Countries* in these reviews are China and Thailand.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined a single *Domestic Like Product* consisting of rubber bands, coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* as all U.S. producers of the domestic like product.

(5) The *Order Dates* are the dates that the antidumping and countervailing duty orders under review became effective. In these reviews, the *Order Date* with respect to China is February 19, 2019, and the *Order Date* with respect to Thailand is April 26, 2019.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission

rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is on or before 5:15 p.m. on February 1, 2024. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is on or before 5:15 p.m. on March 11, 2024. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at 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.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 23–5–586, expiration date June 30, 2026. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

INFORMATION TO BE PROVIDED IN RESPONSE TO THIS NOTICE OF INSTITUTION: If you are a domestic producer, union/worker group, or trade/business association; import/export *Subject Merchandise* from more than one *Subject Country;* or produce *Subject Merchandise* in more than one *Subject Country,* you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent *Subject Country.* As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at *https://usitc.gov/reports/response_noi_worksheet,* where one can download and complete the ''NOI worksheet'' Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of

the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in each *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Dates.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2023, except as noted (report quantity data in pounds and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2023 (report quantity data in pounds and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from each *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from each *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in any *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2023 (report quantity data in pounds and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in each *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in each *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from each *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in each *Subject Country* since the *Order Dates,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in each *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: December 21, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–28552 Filed 12–29–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–556 and 731–TA–1311 (Review)]

Truck and Bus Tires From China; Institution of Five-Year Reviews

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping and countervailing duty orders on truck and bus tires from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted January 2, 2024. To be assured of consideration, the deadline for responses is February 1, 2024. Comments on the adequacy of responses may be filed with the Commission by March 11, 2024.

FOR FURTHER INFORMATION CONTACT: Peter Stebbins (202–205–2039), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On February 15, 2019, the Department of Commerce (''Commerce'') issued antidumping and countervailing duty orders on imports of truck and bus tires from China (84 FR 4434 and 4436). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Country* in these reviews is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined a single *Domestic Like Product* consisting of all truck and bus tires coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* as all domestic producers of truck and bus tires.

(5) The *Order Date* is the date that the antidumping and countervailing duty orders under review became effective. In these reviews, the *Order Date* is February 15, 2019.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each

interested party response to this notice must provide the information specified below. The deadline for filing such responses is on or before 5:15 p.m. on February 1, 2024. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is on or before 5:15 p.m. on March 11, 2024. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at 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.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 23–5–587, expiration date June 30, 2026. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information to be Provided in Response to This Notice of Institution: As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at *https://usitc.gov/reports/response_noi_worksheet,* where one can download and complete the ''NOI worksheet'' Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandi*se, a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Date.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2023, except as noted (report quantity data in number of tires and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales,

internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2023 (report quantity data in number of tires and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country*.

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2023 (report quantity data in number of tires and value data in U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Date,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: December 21, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–28554 Filed 12–29–23; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–591 and 731–TA–1399 (Review)]

Common Alloy Aluminum Sheet From China; Institution of Five-Year Reviews

AGENCY: United States International Trade Commission.

ACTION: Notice.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to the Tariff Act of 1930 (''the Act''), as amended, to determine whether revocation of the antidumping and countervailing duty orders on common alloy aluminum sheet from China would be likely to lead to continuation or recurrence of material injury. Pursuant to the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission.

DATES: Instituted January 2, 2024. To be assured of consideration, the deadline for responses is February 1, 2024. Comments on the adequacy of responses may be filed with the Commission by March 11, 2024.

FOR FURTHER INFORMATION CONTACT: Caitlyn Hendricks (202–205–2058), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*https://www.usitc.gov*). The public record for this proceeding may be viewed on the Commission's electronic docket (EDIS) at *https://edis.usitc.gov.*

SUPPLEMENTARY INFORMATION:

Background.—On February 6, 2019, the Department of Commerce (''Commerce'') issued a countervailing duty order on imports of common alloy aluminum sheet from China (84 FR 2157). On February 8, 2019, Commerce issued an antidumping duty order on imports of common alloy aluminum sheet from China (84 FR 2813). The Commission is conducting reviews pursuant to section 751(c) of the Act, as amended (19 U.S.C. 1675(c)), to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within

a reasonably foreseeable time. Provisions concerning the conduct of this proceeding may be found in the Commission's Rules of Practice and Procedure at 19 CFR part 201, subparts A and B, and 19 CFR part 207, subparts A and F. The Commission will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full or expedited reviews. The Commission's determinations in any expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) *Subject Merchandise* is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by Commerce.

(2) The *Subject Country* in these reviews is China.

(3) The *Domestic Like Product* is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the *Subject Merchandise.* In its original determinations, the Commission defined a single *Domestic Like Product* consisting of all common alloy aluminum sheet coextensive with Commerce's scope.

(4) The *Domestic Industry* is the U.S. producers as a whole of the *Domestic Like Product,* or those producers whose collective output of the *Domestic Like Product* constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the *Domestic Industry* to include all domestic producers of common alloy aluminum sheet.

(5) The *Order Dates* are the dates that the antidumping and countervailing duty orders under review became effective. In these reviews, the *Order Date* with respect to the countervailing duty order is February 6, 2019, and the *Order Date* with respect to the antidumping duty order is February 8, 2019.

(6) An *Importer* is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the *Subject Merchandise* into the United States from a foreign manufacturer or through its selling agent.

Participation in the proceeding and public service list.—Persons, including industrial users of the *Subject Merchandise* and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the proceeding as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the proceeding.

Former Commission employees who are seeking to appear in Commission five-year reviews are advised that they may appear in a review even if they participated personally and substantially in the corresponding underlying original investigation or an earlier review of the same underlying investigation. The Commission's designated agency ethics official has advised that a five-year review is not the same particular matter as the underlying original investigation, and a five-year review is not the same particular matter as an earlier review of the same underlying investigation for purposes of 18 U.S.C. 207, the post-employment statute for Federal employees, and Commission rule 201.15(b) (19 CFR 201.15(b)), 79 FR 3246 (Jan. 17, 2014), 73 FR 24609 (May 5, 2008). Consequently, former employees are not required to seek Commission approval to appear in a review under Commission rule 19 CFR 201.15, even if the corresponding underlying original investigation or an earlier review of the same underlying investigation was pending when they were Commission employees. For further ethics advice on this matter, contact Charles Smith, Office of the General Counsel, at 202–205–3408.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in this proceeding available to authorized applicants under the APO issued in the proceeding, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the proceeding. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to § 207.3 of the Commission's rules, any person submitting information to the Commission in connection with this proceeding must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will acknowledge that information submitted in response to this request for information and throughout this proceeding or other proceeding may be disclosed to and used: (i) by the Commission, its employees and Offices, and contract personnel (a) for developing or maintaining the records of this or a related proceeding, or (b) in internal investigations, audits, reviews, and evaluations relating to the programs, personnel, and operations of the Commission including under 5 U.S.C. Appendix 3; or (ii) by U.S. government employees and contract personnel, solely for cybersecurity purposes. All contract personnel will sign appropriate nondisclosure agreements.

Written submissions.—Pursuant to § 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is on or before 5:15 p.m. on February 1, 2024. Pursuant to § 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is on or before 5:15 p.m. on March 11, 2024. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's *Handbook on Filing Procedures,* available on the Commission's website at *https://www.usitc.gov/documents/handbook_on_filing_procedures.pdf,* elaborates upon the Commission's procedures with respect to filings. Also, in accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the proceeding must be served on all other parties to the proceeding (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the proceeding you do not need to serve your response).

Please note the Secretary's Office will accept only electronic filings at 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.

No response to this request for information is required if a currently valid Office of Management and Budget (''OMB'') number is not displayed; the OMB number is 3117 0016/USITC No. 23–5–585, expiration date June 30, 2026. Public reporting burden for the request is estimated to average 15 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

Inability to provide requested information.—Pursuant to § 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to § 776(b) of the Act (19 U.S.C. 1677e(b)) in making its determinations in the reviews.

Information to be Provided in Response to this Notice of Institution: As used below, the term ''firm'' includes any related firms.

Those responding to this notice of institution are encouraged, but not required, to visit the USITC's website at *https://usitc.gov/reports/response_noi_worksheet,* where one can download and complete the ''NOI worksheet'' Excel form for the subject proceeding, to be included as attachment/exhibit 1 of your overall response.

(1) The name and address of your firm or entity (including World Wide Web address) and name, telephone number, fax number, and Email address of the certifying official.

(2) A statement indicating whether your firm/entity is an interested party under 19 U.S.C. 1677(9) and if so, how, including whether your firm/entity is a U.S. producer of the *Domestic Like Product,* a U.S. union or worker group, a U.S. importer of the *Subject Merchandise,* a foreign producer or exporter of the *Subject Merchandise,* a U.S. or foreign trade or business association (a majority of whose members are interested parties under the statute), or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in this proceeding by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping and countervailing duty orders on the *Domestic Industry* in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in § 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of *Subject Merchandise* on the *Domestic Industry.*

(5) A list of all known and currently operating U.S. producers of the *Domestic Like Product.* Identify any known related parties and the nature of the relationship as defined in § 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the *Subject Merchandise* and producers of the *Subject Merchandise* in the *Subject Country* that currently export or have exported *Subject Merchandise* to the United States or other countries since the *Order Dates.*

(7) A list of 3–5 leading purchasers in the U.S. market for the *Domestic Like Product* and the *Subject Merchandise* (including street address, World Wide Web address, and the name, telephone number, fax number, and Email address of a responsible official at each firm).

(8) A list of known sources of information on national or regional prices for the *Domestic Like Product* or the *Subject Merchandise* in the U.S. or other markets.

(9) If you are a U.S. producer of the *Domestic Like Product,* provide the following information on your firm's operations on that product during calendar year 2023, except as noted (report quantity data in short tons and value data in U.S. dollars, f.o.b. plant). If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total U.S. production of the *Domestic Like Product* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm to produce the *Domestic Like Product* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix);

(c) the quantity and value of U.S. commercial shipments of the *Domestic Like Product* produced in your U.S. plant(s);

(d) the quantity and value of U.S. internal consumption/company transfers of the *Domestic Like Product* produced in your U.S. plant(s); and

(e) the value of (i) net sales, (ii) cost of goods sold (COGS), (iii) gross profit, (iv) selling, general and administrative (SG&A) expenses, and (v) operating income of the *Domestic Like Product* produced in your U.S. plant(s) (include both U.S. and export commercial sales, internal consumption, and company transfers) for your most recently completed fiscal year (identify the date on which your fiscal year ends).

(10) If you are a U.S. importer or a trade/business association of U.S. importers of the *Subject Merchandise* from the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2023 (report quantity data in short tons and value data in U.S. dollars). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of *Subject Merchandise* imported from the *Subject Country;* and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of *Subject Merchandise* imported from the *Subject Country.*

(11) If you are a producer, an exporter, or a trade/business association of producers or exporters of the *Subject Merchandise* in the *Subject Country,* provide the following information on your firm's(s') operations on that product during calendar year 2023 (report quantity data in short tons and value data in U.S. dollars, landed and duty-paid at the U.S. port but not

including antidumping or countervailing duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of *Subject Merchandise* in the *Subject Country* accounted for by your firm's(s') production;

(b) Capacity (quantity) of your firm(s) to produce the *Subject Merchandise* in the *Subject Country* (that is, the level of production that your establishment(s) could reasonably have expected to attain during the year, assuming normal operating conditions (using equipment and machinery in place and ready to operate), normal operating levels (hours per week/weeks per year), time for downtime, maintenance, repair, and cleanup, and a typical or representative product mix); and

(c) the quantity and value of your firm's(s') exports to the United States of *Subject Merchandise* and, if known, an estimate of the percentage of total exports to the United States of *Subject Merchandise* from the *Subject Country* accounted for by your firm's(s') exports.

(12) Identify significant changes, if any, in the supply and demand conditions or business cycle for the *Domestic Like Product* that have occurred in the United States or in the market for the *Subject Merchandise* in the *Subject Country* since the *Order Dates,* and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the *Domestic Like Product* produced in the United States, *Subject Merchandise* produced in the *Subject Country,* and such merchandise from other countries.

(13) (OPTIONAL) A statement of whether you agree with the above definitions of the *Domestic Like Product* and *Domestic Industry;* if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: This proceeding is being conducted under authority of Title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.61 of the Commission's rules.

By order of the Commission.

Issued: December 21, 2023.

Lisa Barton,

Secretary to the Commission.

[FR Doc. 2023–28536 Filed 12–29–23; 8:45 am]

BILLING CODE 7020–02–P

JUDICIAL CONFERENCE OF THE UNITED STATES

Advisory Committee on Appellate Rules; Hearing of the Judicial Conference

AGENCY: Judicial Conference of the United States.

ACTION: Advisory Committee on Appellate Rules; notice of cancellation of open hearing.

SUMMARY: The following public hearing on proposed amendments to the Federal Rules of Appellate Procedure has been canceled: Appellate Rules Hearing on January 24, 2024.

DATES: January 24, 2024.

FOR FURTHER INFORMATION CONTACT: H. Thomas Byron III, Esq., Chief Counsel, Rules Committee Staff, Administrative Office of the U.S. Courts, Thurgood Marshall Federal Judiciary Building, One Columbus Circle NE, Suite 7–300, Washington, DC 20544, Phone (202) 502–1820, *RulesCommittee_Secretary@ao.uscourts.gov.*

SUPPLEMENTARY INFORMATION: The announcement for this hearing was previously published in the **Federal Register** on August 9, 2023 at 88 FR 53917.

(Authority: 28 U.S.C. 2073.)

Dated: December 27, 2023.

Shelly L. Cox,

Management Analyst, Rules Committee Staff.

[FR Doc. 2023–28826 Filed 12–29–23; 8:45 am]

BILLING CODE 2210–55–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0007]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Registrant Record of Controlled Substances Destroyed

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Drug Enforcement Administration, 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. This proposed information collection was previously published in the **Federal Register** on October 26, 2023, allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until February 1, 2023.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Scott A. Brinks, Regulatory Drafting and Policy Support Section, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–3261; email: *DPW@dea.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under

30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection or the OMB Control Number 1117–0007. 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: Registrant Record of Controlled Substances Destroyed.

3. Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: DEA From 41. The applicable component within the Department of Justice is the Drug Enforcement Administration, Diversion Control Division.

4. Affected public who will be asked or required to respond, as well as a brief abstract:

Affected public (Primary): Private Sector—business or other for-profit.

Affected public (Other): Not-for-profit institutions; Federal, State, local, and tribal governments.

Abstract: In accordance with the Controlled Substance Act (CSA), every DEA registrant must make a biennial inventory and maintain, on a current basis, a complete and accurate record of each controlled substance manufactured, received, sold, delivered, or otherwise disposed of. 21 U.S.C. 827 and 958. These records must be maintained separately from all other records of the registrant or, alternatively, in the case of non-narcotic controlled substances, be in such form that required information is readily retrievable from the ordinary business records of the registrant per 21 U.S.C. 827(b)(2). The records must be kept and be available for at least two years for inspection and copying by officers or employees of the United States authorized by the Attorney General. 21 U.S.C. 827(b)(3). The records must be in accordance with and contain such relevant information as may be required by regulations promulgated by DEA. 21 U.S.C. 827(b)(1). These record requirements help to deter and detect diversion of controlled substances and ensure that registrants remain accountable for all controlled substances within their possession and/or control.

5. *Obligation to Respond:* Mandatory per 21 CFR 1314.

6. *Total Estimated Number of Respondents:* 92,832.

7. *Estimated Time per Respondent:* 30 minutes for DEA Form 41.

8. *Frequency:* DEA Form 41 is 1 per year.

9. *Total Estimated Annual Time Burden:* 46,416 hours.

10. *Total Estimated Annual Other Costs Burden:* $0.

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: December 27, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–28816 Filed 12–29–23; 8:45 am]

BILLING CODE 4410–09–P

DEPARTMENT OF JUSTICE

[OMB Number 1117–0046]

Agency Information Collection Activities; Proposed eCollection eComments Requested; Self-Certification, Training, and Logbooks for Regulated Sellers and Mail-Order Distributors of Scheduled Listed Chemicals Products

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: 30-Day notice.

SUMMARY: The Drug Enforcement Administration (DEA), 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. This proposed information collection was previously published in the **Federal Register** on October 26, 2023, allowing for a 60-day comment period.

DATES: Comments are encouraged and will be accepted for 30 days until February 1, 2023.

FOR FURTHER INFORMATION CONTACT: If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Scott A. Brinks, Regulatory Drafting and Policy Support Section, Drug Enforcement Administration; Mailing Address: 8701 Morrissette Drive, Springfield, Virginia 22152; Telephone: (571) 362–3261, email: *DPW@dea.gov.*

SUPPLEMENTARY INFORMATION: Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

—Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

—Enhance the quality, utility, and clarity of the information to be collected; and/or

—Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses.

Written comments and recommendations for this information collection should be submitted within 30 days of the publication of this notice on the following website *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function and entering either the title of the information collection or the OMB Control Number 1117–0046. 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:* Self-Certification, Training, and Logbooks for Regulated Sellers and Mail-Order Distributors of Scheduled Listed Chemical Products.
3. *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* DEA From 597. The applicable component within the Department of Justice is the Drug Enforcement Administration, Diversion Control Division.
4. *Affected public who will be asked or required to respond, as well as a brief abstract:*

Affected public (Primary): Private Sector—business or other for-profit.

Affected public (Other): Not-for-profit institutions; Federal, State, local, and tribal governments.

Abstract: The Combat Methamphetamine Epidemic Act of 2005 (CMEA), which is Title VII of the USA PATRIOT Improvement and Reauthorization Act of 2005 (Pub. L. 109–177), requires that on and after September 30, 2006, a regulated seller must not sell at retail over-the-counter (non-prescription) products containing the List I chemicals ephedrine, pseudoephedrine, or phenylpropanolamine, unless it has self-certified to DEA, through DEA's website. The Methamphetamine Production Prevention Act of 2008 (MPPA) (Pub. L. 110–415) was enacted in 2008 to clarify the information entry and signature requirements for electronic logbook systems permitted for the retail sale of scheduled listed chemical products.

5. *Obligation to Respond:* Mandatory 21 CFR 1314.
6. *Total Estimated Number of Respondents:* 20,467,641.
7. *Estimated Time per Respondent:* 3 minutes for Training Record, 15 minutes for Self-Certification, and 1 minute for Transaction Record (regulated seller) and Transaction Record (customer).
8. *Frequency:* Training Record is 13.200, Transaction Record (regulated seller) is 395.975, and Transaction record (customer) and Self-certification are 1.000.
9. *Total Estimated Annual Time Burden:* 727,455 hours.
10. *Total Estimated Annual Other Costs Burden:* $157,279.

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: December 27, 2023.

Darwin Arceo,

Department Clearance Officer for PRA, U.S. Department of Justice.

[FR Doc. 2023–28818 Filed 12–29–23; 8:45 am]

BILLING CODE 4410–09–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255; NRC–2023–0200]

Holtec Decommissioning International, LLC, and Holtec Palisades, LLC; Palisades Nuclear Plant; Exemption

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) has issued an exemption in response to a request from Holtec Decommissioning International, LLC (HDI), an indirect wholly owned subsidiary of Holtec International, that would allow HDI and Holtec Palisades, LLC, regarding certain emergency planning (EP) requirements. The exemption eliminates the requirements to maintain an offsite radiological emergency preparedness plan and reduce the scope of onsite EP activities at the Palisades Nuclear Plant, based on the reduced risks of accidents that could result in an offsite radiological release at a decommissioning nuclear power reactor.

DATES: The exemption was issued on December 22, 2023.

ADDRESSES: Please refer to Docket ID NRC–2023–0200 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0200. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html*. To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov*. The ADAMS accession number for each document referenced (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.

FOR FURTHER INFORMATION CONTACT: Tanya E. Hood, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–1387; email: *Tanya.Hood@nrc.gov*.

SUPPLEMENTARY INFORMATION: The text of the exemption is attached.

Dated: December 27, 2023.

For the Nuclear Regulatory Commission.

Tanya E. Hood,

Project Manager, Reactor Decommissioning Branch, Division of Decommissioning, Uranium Recovery and Waste Programs, Office of Nuclear Material Safety and Safeguards.

Attachment—Exemption

NUCLEAR REGULATORY COMMISSION

Docket No. 50–255

Holtec Decommissioning International, LLC, and Holtec Palisades, LLC; Palisades Nuclear Plant, Exemption

I. Background

By letter dated October 19, 2017 (Agencywide Documents Access and Management System (ADAMS) Accession No. ML17292A032), Entergy Nuclear Operations, Inc. (ENOI) certified to the U.S. Nuclear Regulatory Commission (NRC, or Commission) that it planned to permanently cease power operations at the Palisades Nuclear Plant (Palisades) no later than May 31, 2022. On May 20, 2022, ENOI permanently ceased power operations at Palisades, and by letter dated June 13, 2022 (ML22164A067), ENOI certified to the NRC that the fuel was permanently removed from the Palisades reactor vessel and placed in the spent fuel pool (SFP) on June 10, 2022.

By application dated December 23, 2020 (ML20358A075), as supplemented

by information provided in letters from Holtec Decommissioning International, LLC (HDI, the licensee) dated December 23, 2020, and October 29, 2021 (ML20358A232, ML20358A239, and ML21302A064), ENOI, Entergy Nuclear Palisades, LLC, Holtec International, and HDI submitted an ''Application for Order Consenting to Transfers of Control of Licenses and Approving Conforming License Amendments'' requesting transfer of the Palisades license to HDI. By letter dated December 13, 2021 (ML21292A145), the NRC issued an order consenting to the license transfer and draft conforming administrative license amendments. The license transfer was executed on June 28, 2022 (ML22173A173), coinciding with the transition of Palisades from an operational to a decommissioning status.

Based on the docketing of the certifications for permanent cessation of operations and permanent removal of fuel from the reactor vessel, as specified in section 50.82(a)(2) of title 10 of the *Code of Federal Regulations* (10 CFR), the 10 CFR part 50 renewed facility operating license for Palisades no longer authorizes operation of the reactor or emplacement or retention of fuel in the reactor vessel. The facility is still authorized to possess and store irradiated (*i.e.,* spent) nuclear fuel. Palisades spent fuel is currently stored in the SFP and in dry cask storage at the independent spent fuel storage installation (ISFSI).

Many of the accident scenarios postulated in the updated safety analysis reports (USARs) for operating nuclear power reactors involve failures or malfunctions of systems, which could affect the fuel in the reactor core and, in the most severe postulated accidents, would involve the release of some fission products. With the permanent cessation of power operations at Palisades and the permanent removal of fuel from the reactor vessel, many accidents are no longer possible. The reactor, reactor coolant system, and supporting systems are no longer in operation and have no function related to the storage of the spent fuel. Therefore, the emergency planning (EP) provisions for postulated accidents involving failure or malfunction of the reactor, reactor coolant system, or supporting systems are no longer applicable.

The EP requirements of 10 CFR 50.47, ''Emergency plans,'' and appendix E, ''Emergency Planning and Preparedness for Production and Utilization Facilities,'' to 10 CFR part 50 continue to apply to nuclear power reactors that have provided certification that they have permanently ceased operations and have permanently removed all fuel from the reactor vessel. There are no explicit regulatory provisions distinguishing EP requirements for a power reactor that is permanently shut down and defueled from those for a reactor that is authorized to operate. To reduce or eliminate EP requirements that are no longer necessary due to the decommissioning status of the facility, the licensee must obtain exemptions from those EP regulations. Only then can HDI modify the Palisades emergency plan to reflect the reduced risk associated with the permanently shutdown and defueled condition of Palisades.

II. Request/Action

By letter dated July 11, 2022 (ML22192A134), HDI requested exemptions from specific portions of the EP requirements of 10 CFR 50.47 and appendix E to 10 CFR part 50 for Palisades. More specifically, HDI requested exemptions from certain planning standards in 10 CFR 50.47(b) regarding onsite and offsite radiological emergency preparedness plans for nuclear power reactors; from certain requirements in 10 CFR 50.47(c)(2) for establishment of plume exposure pathway and ingestion pathway emergency planning zones (EPZs) for nuclear power reactors; and from certain requirements in 10 CFR part 50, appendix E, section IV, ''Content of Emergency Plans.''

The exemptions requested by HDI would eliminate the requirements to maintain formal offsite radiological emergency plans, reviewed by the Federal Emergency Management Agency (FEMA) under the requirements of 44 CFR, ''Emergency Management and Assistance,'' Part 350, ''Review and Approval of State and Local Radiological Emergency Plans and Preparedness,'' and would reduce the scope of the onsite EP activities at Palisades. HDI stated that application of all the standards and requirements in 10 CFR 50.47(b), 10 CFR 50.47(c), and 10 CFR part 50, appendix E is not needed for adequate emergency response capability, based on the substantially lower onsite and offsite radiological consequences of accidents still possible at the permanently shutdown and defueled facility as compared to an operating facility.

If offsite protective actions were needed for a highly unlikely beyond design-basis accidents (DBAs) that could challenge the safe storage of spent fuel at Palisades, provisions exist for offsite agencies to take protective actions using a comprehensive emergency management plan (CEMP) under the National Preparedness System to protect the health and safety of the public. A CEMP in this context, also referred to as an emergency operations plan, is addressed in FEMA's Comprehensive Preparedness Guide 101, ''Developing and Maintaining Emergency Operations Plans,'' which is publicly available at *https://www.fema.gov/pdf/about/divisions/npd/CPG_101_V2.pdf.* Comprehensive Preparedness Guide 101 is the foundation for State, territorial, Tribal, and local EP in the United States. It promotes a common understanding of the fundamentals of risk-informed planning and decision-making and helps planners at all levels of government in their efforts to develop and maintain viable, all-hazards, all-threats emergency plans. An emergency operations plan is flexible enough for use in all emergencies. It describes how people and property will be protected; details who is responsible for carrying out specific actions; identifies the personnel, equipment, facilities, supplies and other resources available; and outlines how all actions will be coordinated. A CEMP is often referred to as a synonym for ''all-hazards planning.''

III. Discussion

In accordance with 10 CFR 50.12, ''Specific exemptions,'' the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50 when: (1) the exemptions are authorized by law, will not present an undue risk to public health or safety, and are consistent with the common defense and security; and (2) any of the special circumstances listed in 10 CFR 50.12(a)(2) are present. These special circumstances include, among other things, that the application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

As noted previously, the EP regulations contained in 10 CFR 50.47(b) and appendix E to 10 CFR part 50 apply to both operating and shutdown power reactors. The NRC has consistently acknowledged that the risk of an offsite radiological release at a power reactor that has permanently ceased operations and permanently removed fuel from the reactor vessel is significantly lower, and the types of possible accidents are significantly fewer, than at an operating power reactor. However, current EP regulations do not recognize that once a power

reactor permanently ceases operation, the risk of a large radiological release from a credible emergency accident scenario is reduced. Due to the permanently defueled status of the reactor, no new spent fuel will be added to the Palisades SFP and the radionuclides in the current spent fuel will continue to decay as the spent fuel ages. The spent fuel will produce less heat due to radioactive decay, increasing the available time to mitigate a loss of water inventory from the SFP. The NRC's NUREG/CR–6451, ''A Safety and Regulatory Assessment of Generic BWR [Boiling Water Reactor] and PWR [Pressurized Water Reactor] Permanently Shutdown Nuclear Power Plants,'' dated August 1997 (ML082260098), and the NRC's NUREG–1738, ''Technical Study of Spent Fuel Pool Accident Risk at Decommissioning Nuclear Power Plants,'' dated February 2001 (ML010430066), confirmed that for permanently shutdown and defueled power reactors that are bounded by the assumptions and conditions in the report, the risk of offsite radiological release is significantly less than for an operating nuclear power reactor.

In the past, EP exemptions similar to those requested by HDI, have been granted to licensees of permanently shutdown and defueled power reactors. However, the exemptions did not relieve the licensees of all EP requirements. Rather, the exemptions allowed the licensees to modify their emergency plans commensurate with the credible site-specific risks that were consistent with a permanently shutdown and defueled status. Specifically, the NRC's approval of these prior exemptions from certain EP requirements was based on the licensee's demonstration that: (1) the radiological consequences of DBAs would not exceed the limits of the U.S. Environmental Protection Agency's (EPA) Protective Action Guidelines (PAGs) at the exclusion area boundary, and (2) in the highly unlikely event of a beyond DBA resulting in a loss of all modes of cooling for the spent fuel stored in the SFP, there is sufficient time to initiate appropriate mitigating actions, and if needed, for offsite authorities to implement offsite protective actions using a CEMP approach to protect the health and safety of the public. In prior exemptions, sufficient time was demonstrated if the time exceeded 10 hours from the loss of coolant until the fuel temperature would be expected to reach 900 degrees Celsius (°C), assuming no air cooling. In this exemption request, the licensee provided an analysis demonstrating that after the spent fuel has decayed for 12 months, for beyond-design-basis events where the SFP is drained and air cooling is not possible, at least 10 hours would be available from the time spent fuel cooling is lost until the hottest fuel assembly reaches a temperature of 900 °C. This 10-hour minimum threshold provides sufficient time for the licensee to take mitigative actions, or if government officials deem warranted, for offsite protective actions to be initiated using a CEMP or ''all-hazards'' approach.

The NRC staff reviewed the licensee's justification for the requested exemptions against the criteria in 10 CFR 50.12(a) and determined, as described below, that the criteria in 10 CFR 50.12(a) are met, and that the exemptions should be granted. An assessment of the HDI EP exemptions is described in SECY–23–0043, ''Request by Holtec Decommissioning International, LLC for Exemptions from Certain Emergency Planning Requirements for Palisades Nuclear Plant,'' dated May 30, 2023 (ML23054A179). The Commission approved the NRC staff's recommendation to grant the exemptions in the staff requirements memorandum to SECY–23–0043, dated December 7, 2023 (ML23341A181). The exemptions are conditioned to make it clear that the exemptions will terminate if the status of the Palisades reactor changes such that the certifications of permanent cessation of operations and permanent removal of fuel from the reactor vessel are no longer applicable. Descriptions of the specific exemptions requested by HDI and the NRC staff's basis for granting each exemption are provided in SECY–23–0043. The staff's detailed review and technical basis for the approval of the specific EP exemptions, requested by HDI, are provided in the NRC staff's safety evaluation dated December 22, 2023 (ML23263A977).

A. The Exemption Is Authorized by Law

The licensee has proposed exemptions from certain EP requirements in 10 CFR 50.47(b), 10 CFR 50.47(c)(2), and 10 CFR part 50, appendix E, section IV, which would allow HDI to revise the Palisades Emergency Plan to reflect the submittal of the certification of the permanently shutdown and defueled condition of the facility. As stated above, in accordance with 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR part 50. The NRC staff has determined that granting of the licensee's proposed exemptions will not result in a violation of the Atomic Energy Act of 1954, as amended, or the NRC's regulations. Therefore, the exemptions are authorized by law.

B. The Exemption Presents no Undue Risk to Public Health and Safety

As stated previously, HDI provided analyses that show the radiological consequences of DBA will not exceed the limits of the EPA PAGs at the exclusion area boundary. Therefore, formal offsite radiological emergency plans required under 10 CFR part 50 are no longer needed for protection of the public beyond the exclusion area boundary, based on the radiological consequences of DBAs still possible at Palisades.

Although highly unlikely, there is one postulated beyond DBA that might result in significant offsite radiological releases. However, NUREG–1738 confirms that the risk of beyond DBAs is greatly reduced at permanently shutdown and defueled reactors. The NRC staff's analyses in NUREG–1738 concludes that the event sequences important to risk at permanently shutdown and defueled power reactors are limited to large earthquakes and cask drop events. For EP assessments, this is an important difference relative to the operating power reactors, where typically a large number of different sequences make significant contributions to risk. As described in NUREG–1738, relaxation of offsite EP requirements in 10 CFR part 50 a few months after shutdown resulted in only a small change in risk. The report further concludes that the change in risk due to relaxation of offsite EP requirements is small because the overall risk is low, and because even under current EP requirements for operating power reactors, EP was judged to have marginal impact on evacuation effectiveness in the severe earthquake event that dominates SFP risk. All other sequences including cask drops (for which offsite radiological emergency plans are expected to be more effective) are too low in likelihood to have a significant impact on risk. Therefore, granting exemptions to eliminate the requirements of 10 CFR part 50 to maintain offsite radiological emergency preparedness plans and to reduce the scope of onsite EP activities will not present an undue risk to the public health and safety.

C. The Exemption Is Consistent With the Common Defense and Security

The requested exemptions by HDI only involve EP requirements under 10 CFR part 50 and will allow HDI to revise the Palisades Emergency Plan to reflect the permanently shutdown and defueled condition of the facility. Physical security measures at Palisades are not affected by the requested EP exemptions. The discontinuation of formal offsite radiological emergency preparedness plans and the reduction in scope of the onsite EP activities at Palisades will not adversely affect the licensee's ability to physically secure the site or protect special nuclear material. Therefore, the proposed exemptions are consistent with common defense and security.

D. Special Circumstances

Special circumstances, in accordance with 10 CFR 50.12(a)(2)(ii), are present whenever application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The underlying purpose of 10 CFR 50.47(b), 10 CFR 50.47(c)(2), and 10 CFR part 50, appendix E, section IV, is to provide reasonable assurance that adequate protective measures can and will be taken in the event of a radiological emergency, to establish plume exposure and ingestion pathway emergency planning zones for nuclear power plants, and to ensure that licensees maintain effective offsite and onsite radiological emergency preparedness plans. The standards and requirements in these regulations were developed by considering the risks associated with operation of a nuclear power reactor at its licensed full-power level. These risks include the potential for a reactor accident with offsite radiological dose consequences.

As discussed previously in Section III, because Palisades is permanently shut down and defueled, there is no longer a risk of offsite radiological release from a DBA and the risk of a significant offsite radiological release from a beyond DBA is greatly reduced when compared to the risk at an operating power reactor. The NRC staff has confirmed the reduced risks at Palisades by comparing the generic risk assumptions in the analyses in NUREG–1738 to site-specific conditions at Palisades and determined that the risk values in NUREG–1738 bound the risks presented for Palisades. As indicated by the results of the research conducted for NUREG–1738, and more recently for NUREG–2161, ''Consequence Study of a Beyond-Design-Basis Earthquake Affecting the Spent Fuel Pool for a U.S. Mark I Boiling Water Reactor,'' dated September 2014 (ML14255A365), while other consequences can be extensive, accidents from SFPs with significant decay time have little potential to cause offsite early fatalities, even if the formal offsite radiological EP requirements were relaxed. HDI's analysis of a beyond DBA involving a complete loss of SFP water inventory, based on an adiabatic heatup analysis of the limiting fuel assembly for decay heat, shows that 12 months after permanent cessation of power operations at Palisades, the time for the limiting fuel assembly to reach 900 °C is at least 10 hours after the assemblies have been uncovered assuming a loss of all cooling means.

The NRC staff has verified the licensee's analyses and its calculations. The analyses provide reasonable assurance that in granting the requested exemptions to HDI, there is no DBA that will result in an offsite radiological release exceeding the EPA PAGs at the exclusion area boundary. In the highly unlikely event of a beyond DBA affecting the SFP that results in a complete loss of heat removal via all modes of heat transfer, there will be a minimum of 10 hours available before an offsite release might occur and, therefore, at least 10 hours to initiate appropriate mitigating actions to restore a means of heat removal to the spent fuel. If a radiological release were projected to occur under this highly unlikely scenario, a minimum of 10 hours is considered sufficient time for offsite authorities to implement protective actions using a CEMP approach to protect the health and safety of the public.

Exemptions from the offsite EP requirements in 10 CFR part 50 have previously been approved by the NRC when the site-specific analyses show that at least 10 hours is available following a loss of SFP coolant inventory with no air cooling (or other methods of removing decay heat) until cladding of the hottest fuel assembly reaches the rapid oxidation temperature. The NRC staff concluded in its previously granted exemptions, as it does with the licensee's requested EP exemptions, that if a minimum of 10 hours is available to initiate mitigative actions consistent with plant conditions or, if needed, for offsite authorities to implement protective actions using a CEMP approach, then formal offsite radiological emergency preparedness plans, required under 10 CFR part 50, are not necessary at permanently shutdown and defueled facilities.

Additionally, in its letter to the NRC dated July 11, 2022, HDI described the SFP makeup strategies that could be used in the event of a catastrophic loss of SFP inventory. The multiple strategies for providing makeup water to the SFP include: using various existing plant systems for inventory makeup and an internal strategy that relies on the portable FLEX pump manifold, and having available two installed diesel-driven fire pumps and one motor-driven fire pump that can provide 1,500 gallons per minute makeup water from the facility intake via hard pipe or hose stations. In addition, HDI states that two onsite FLEX pumper units with a capacity of 1,000 gallons per minute each can provide makeup water from the facility intake or from Lake Michigan directly. Further, Palisades procedures specify that the installation of the SFP spray monitor nozzles and direct fill should be given priority over the hard pipe fill connection due to expected SFP area high radiation levels if the SFP water level cannot be maintained. These strategies will continue to be required as License Condition 6.b of Renewed Facility License No. DPR–20 for Palisades. Considering the very low probability of beyond DBAs affecting the SFP, these diverse strategies provide multiple methods to obtain additional makeup or spray to the SFP before the onset of any postulated offsite radiological release.

For all of the reasons stated above, the NRC staff finds that the licensee's requested exemptions meet the underlying purpose of all of the standards in 10 CFR 50.47(b), as well as the requirements in 10 CFR 50.47(c)(2) and 10 CFR part 50, appendix E, and satisfy the special circumstances provision in 10 CFR 50.12(a)(2)(ii) in view of the greatly reduced risk of offsite radiological consequences associated with the permanently shutdown and defueled state of the Palisades facility 12 months after the facility permanently ceases operation.

The NRC staff further concludes that the exemptions granted by this action will maintain an acceptable level of emergency preparedness at Palisades and provide reasonable assurance that adequate offsite protective measures, if needed, can and will be taken by State and local government agencies using a CEMP approach, in the highly unlikely event of a radiological emergency at Palisades. Since the underlying purposes of the rules, as exempted, would continue to be achieved, even with the elimination of the requirements under 10 CFR part 50 to maintain formal offsite radiological emergency plans and the reduction in the scope of the onsite EP activities at Palisades, the special

circumstances required by 10 CFR 50.12(a)(2)(ii) exist.

E. Environmental Considerations

In accordance with 10 CFR 51.31(a), the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment as discussed in the NRC staff's Environmental Assessment and Finding of No Significant Impact published in the **Federal Register** (FR) on December 21, 2023 (88 FR 88664).

IV. Conclusions

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the licensee's request for exemptions from certain EP requirements in 10 CFR 50.47(b), 10 CFR 50.47(c)(2), and 10 CFR part 50, appendix E, section IV, and as summarized in Enclosure 2 to SECY–23–0043, are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. Also, special circumstances are present. Therefore, the Commission hereby grants HDI exemptions from certain EP requirements in 10 CFR 50.47(b), 10 CFR 50.47(c)(2), and 10 CFR part 50, appendix E, section IV, as discussed and evaluated in detail in the NRC staff's safety evaluation dated December 22, 2023. The exemptions are effective 12 months after permanent cessation of power operations, which was May 20, 2023. Because this period had already elapsed, the exemption is effective upon issuance. These exemptions will terminate if the status of the Palisades reactor changes such that the certifications of permanent cessation of operations and permanent removal of fuel from the reactor vessel are no longer applicable.

Dated: this 22nd day of December 2023.

For the Nuclear Regulatory Commission.

Jane Marshall,

Director, Division of Decommissioning, Uranium Recovery, and Waste Programs, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 2023–28813 Filed 12–29–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285; NRC–2022–0127]

Omaha Public Power District; Fort Calhoun Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a finding of no significant impact (FONSI) and accompanying environmental assessment (EA) regarding the NRC's consideration of a license amendment request by Omaha Public Power District (OPPD) to approve the License Termination Plan (LTP) for the Fort Calhoun Station, Unit 1 (FCS), located in Washington County, Nebraska. If approved, the amendment would add a license condition to the FCS license reflecting the NRC's approval of its LTP and establishing criteria for determining when changes to the LTP require prior NRC approval. OPPD would use the LTP to meet the requirements for terminating the license and releasing the site for unrestricted use. Based on the EA, the NRC staff has concluded that there will be no significant impacts to environmental resources from the requested license amendment, and therefore, a FONSI is appropriate.

DATES: The EA and FONSI referenced in this document is available on January 2, 2024.

ADDRESSES: Please refer to Docket ID NRC–2022–0127 when contacting the NRC about the availability of information regarding this document. You may obtain publicly available information related to this document using any of the following methods:

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2022–0127. Address questions about Docket IDs in *Regulations.gov* to Stacy Schumann; telephone: 301–415–0624; email: *Stacy.Schumann@nrc.gov*. For technical questions, contact the individual listed in the **FOR FURTHER INFORMATION CONTACT** section of this document.
- *NRC's Agencywide Documents Access and Management System (ADAMS):* You may obtain publicly available documents online in the ADAMS Public Documents collection at *https://www.nrc.gov/reading-rm/adams.html.* To begin the search, select ''Begin Web-based ADAMS Search.'' For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1–800–397–4209, at 301–415–4737, or by email to *PDR.Resource@nrc.gov*. For the convenience of the reader, instructions about obtaining materials referenced in this document are provided in the ''Availability of Documents'' section of 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.

FOR FURTHER INFORMATION CONTACT: Marla Morales, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001; telephone: 301–415–0715; email: *Marla.Morales@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is considering issuance of a license amendment request to approve the LTP for the FCS, located in Washington County, Nebraska, as part of OPPD's part 50 of title 10 of the *Code of Federal Regulations* (10 CFR), ''Domestic Licensing of Production and Utilization Facilities,'' Facility Operating License No. DPR–40. If granted, the license amendment would add a condition to FCS's license reflecting the NRC's approval of FCS's LTP and establishing criteria for determining when changes to the LTP require prior NRC approval. As required by 10 CFR part 51, ''Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions,'' the NRC prepared an environmental assessment (EA). Based on the results of the EA, the NRC has determined not to prepare an environmental impact statement (EIS) for the license amendment request and is issuing a finding of no significant impact (FONSI).

Construction of FCS began in 1968, and the NRC issued an operating license to the OPPD in 1973. The FCS began commercial operation in September 1973. The OPPD submitted the Certification of Permanent Cessation of Power Operations in August 2016 in accordance with 10 CFR 50.82 (a)(1)(i) and shutdown on October 24, 2016. Pursuant to 10 CFR 50.82(a)(1)(ii), on November 13, 2016, the OPPD certified to the NRC that as of November 2016, all fuel had been removed from the FCS reactor vessel and placed into the FCS spent fuel pool.

Pursuant to 10 CFR 50.82(a)(4)(i), the OPPD submitted its initial Post-Shutdown Decommissioning Activities Report (PSDAR) on March 30, 2017, and supplemented it by letter dated December 14, 2017. The PSDAR described OPPD's selection of the SAFSTOR method for decommissioning the FCS. The FCS reactor remained in SAFSTOR until December 16, 2019.

On December 16, 2019, as supplemented by letter dated July 16, 2020, the OPPD submitted a revised PSDAR to the NRC to reflect schedule changes and select a new method for decommissioning the FCS pursuant to 10 CFR 50.82(a)(7). The revised PSDAR described OPPD's selection of the DECON method for decommissioning the FCS.

By letter dated May 18, 2020, the OPPD certified to the NRC that as of May 13, 2020, all spent fuel assemblies had been permanently transferred out of the FCS spent fuel pool and placed in storage within the independent spent fuel storage installation (ISFSI). The OPPD submitted the LTP on August 3, 2021, in accordance with 10 CFR 50.82(a)(9).

II. Environmental Assessment

Description of the Proposed Action

The proposed action is the review and subsequent approval, if appropriate, of a license amendment to OPPD to approve the LTP for the FCS. If approved, the amendment would add a license condition to the FCS license reflecting the NRC's approval of the LTP and establishing criteria for determining when changes to the LTP require prior NRC approval.

The proposed action is described in the OPPD's 2021 LTP application and responses to requests for additional information dated June 15, 2022, and February 27, 2023.

Purpose and Need for the Proposed Action

The purpose of and need for the proposed action is to allow for completion of decommissioning of the FCS site by the OPPD, termination of the FCS operating license by the NRC, and subsequent release of the FCS site for unrestricted use. The NRC regulation at 10 CFR 50.82 sets forth the process for the licensee to decommission its nuclear power plant, including submission of the LTP. The NRC will approve the LTP, provided that the LTP meets the criteria in 10 CFR 50.82(a)(10).

Environmental Impacts of the Proposed Action

The NRC staff considered the potential impacts of the proposed action on land use, historical and cultural resources; visual and scenic resources; meteorology, climatology, and air quality; noise; geology and soils; water resources; ecological resources; socioeconomics; public and occupation health; transportation and traffic; environmental justice; and waste management. The Decommissioning Generic Environmental Impact Statement (GEIS) (NUREG–0586) generically addressed many of the potential environmental impacts of decommissioning at the FCS. During its review of the FCS LTP, the NRC concluded that the impacts for most resource areas—onsite land use; water resources; air quality; ecology, not including threatened and endangered species or outside the operational area; socioeconomics; historic and cultural resources within the operational area; aesthetics; noise; transportation; and nonradioactive waste management—were still bounded by the Decommissioning GEIS. Therefore, the NRC does not expect impacts associated with these issues beyond those discussed in the GEIS, which concluded that the impact level for these issues was SMALL.

In the Decommissioning GEIS, the NRC staff concluded that it could not necessarily determine the environmental impacts of decommissioning generically for six environmental resource areas (offsite land use, threatened and endangered species, aquatic ecology beyond the operational area, terrestrial ecology beyond the operational area, environmental justice, and historic and cultural resources beyond the operational area). The Decommissioning GEIS determined that for these six resource areas a site-specific analysis would be required as was done in the FCS EA. In addition, topics not included in the Decommissioning GEIS that the NRC staff evaluated in the FCS EA include the affected environment, climate change, cumulative impacts, contamination of groundwater from decommissioning activities, and nonradioactive waste management.

In the FCS EA, the NRC staff evaluated the potential environmental impacts on the six site-specific environmental resource areas as well as the five resource areas not evaluated in the Decommissioning GEIS and did not identify any significant impacts. For the proposed action there are no planned activities outside of the operational area, and the OPPD commits to using best management practices and obtaining all necessary licenses from Federal or State agencies to protect the surrounding lands. Therefore, the proposed action would result in no significant impacts and there would be no significant cumulative effects when added to the past, present, or reasonably foreseeable future actions at the FCS site.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered the ''no-action'' alternative. Under the no-action alternative, the NRC would not approve the LTP or the license amendment request because regulatory requirements have not been met. If the NRC was unable to approve the LTP because the regulatory requirements were not met, the OPPD would need to take additional actions to prepare an LTP that meets the requirements in 10 CFR 50.82(a)(10). Under this scenario, until the OPPD resubmits the LTP, activities at FCS would likely continue and the environmental impacts would neither increase nor decrease as a result of the additional time required for the LTP resubmission.

Agencies and Persons Consulted

On August 18, 2023, the NRC staff provided a copy of the draft EA to the State of Nebraska Department of Health and Human Services for its review and comment. In a letter dated October 12, 2023, the State provided comments on the State's applicable regulations for air quality, stormwater, water quality, and waste management. The comments were incorporated into the EA, as applicable.

The NRC completed consultation under section 106 of the National Historic Preservation Act by consulting with the Nebraska State Historic Preservation Office and 12 Federally recognized Indian Tribes in correspondence dated August 3, 2022. In addition, the NRC staff, consulted with the U.S. Fish and Wildlife Service (FWS) and determined that the proposed action ''may affect, but not likely to adversely affect'' the Northern Long-eared Bat, Tricolored Bat, Piping Plover, Monarch Butterfly, and the Pallid Sturgeon, and would have ''no effect'' on critical habitat. The NRC staff provided its effect determinations to FWS on August 18, 2023, and FWS concurred with those findings on November 5, 2023, and provided no additional comments. Therefore, consultation has been completed under section 7 of the Endangered Species Act.

III. Finding of No Significant Impact

Based on its review of the license amendment request, in accordance with the requirements of 10 CFR part 51, the NRC staff has determined that issuing the requested amendment, if appropriate, of a license termination to OPPD's DPR–40 license would not significantly affect the quality of human environment. No significant radiological or non-radiological impacts are

expected from the proposed action. Therefore, the NRC staff has determined that pursuant to 10 CFR 51.31, ''Determinations based on environmental assessment,'' preparation of an EIS is not required for the proposed action, and pursuant to 10 CFR 51.32, ''Finding of no significant impact,'' a FONSI is appropriate. In accordance with 10 CFR 51.32(a)(4), this FONSI incorporates the EA set forth in this notice by reference.

IV. Availability of Documents

The documents identified in the following table are available to interested persons through ADAMS.

Document description	ADAMS accession No.
Omaha Public Power District Post-Shutdown Decommissioning Activities Reports and supplemental letters, dated March 30, 2017, December 14, 2017, December 16, 2019, and July 16, 2020.	ML17089A759, ML17348A623, ML19351E355 and ML20202A654.
Omaha Public Power District Certification of Permanent Cessation of Power Operations, dated August 25, 2016.	ML16242A127.
Omaha Public Power District Certification of Permanent Removal of Fuel from the Reactor Vessel, dated November 13, 2016.	ML16319A254.
Omaha Public Power District Certification of Permanent Removal of all Spent Fuel Assemblies from the Spent Fuel Pool, dated May 18, 2020.	ML20139A138.
Omaha Public Power District, License Amendment Application, dated August 3, 2021	ML21271A178 (Package).
Omaha Public Power District Response to Fort Calhoun Station, Unit No. 1 Requests for Additional Information dated June 15, 2022, and February 27, 2023.	ML22167A199 and ML23060A197.
Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities (NUREG–0586), dated November 2002.	ML023470304.
NRC letter to the Nebraska Department of Health and Human Services Request for Review of Draft EA, dated August 18, 2023.	ML23234A239.
Nebraska Department of Health and Human Services email response to NRC Request for Review of Draft EA, dated October 12, 2023.	ML23298A097.
Letter to the Nebraska State Historic Preservation Office initiating consultation under section 106 of the National Historic Preservation Act, dated September 29, 2022.	ML22258A273.
NRC letters to Tribal nations initiating consultation under section 106 of the National Historic Preservation Act, dated August 3, 2022.	ML22137A126 (Package).
NRC letter to FWS regarding informal Section 7 consultation, determinations of effect, dated August 18, 2023.	ML23234A241.
Fish and Wildlife Service concurrence on NRC's determinations of effect, dated November 5, 2023	ML23311A086.
Final Environmental Assessment for Fort Calhoun, Unit 1 License Termination Plan, dated December 14, 2023.	ML23333A049.

Dated: December 27, 2023.

For the Nuclear Regulatory Commission.

Jill S. Caverly,

Acting Chief, Environmental Project Management Branch 2, Division of Rulemaking, Environmental, and Financial Support, Office of Nuclear Material Safety, and Safeguards.

[FR Doc. 2023–28815 Filed 12–29–23; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0001]

Sunshine Act Meetings

TIME AND DATE: Weeks of January 1, 8, 15, 22, 29, and February 5, 2024. The schedule for Commission meetings is subject to change on short notice. The NRC Commission Meeting Schedule can be found on the internet at: *https://www.nrc.gov/public-involve/public-meetings/schedule.html.*

PLACE: The NRC provides reasonable accommodation to individuals with disabilities where appropriate. If you need a reasonable accommodation to participate in these public meetings or need this meeting notice or the transcript or other information from the public meetings in another format (*e.g.,* braille, large print), please notify Anne Silk, NRC Disability Program Specialist, at 301–287–0745, by videophone at 240–428–3217, or by email at *Anne.Silk@nrc.gov.* Determinations on requests for reasonable accommodation will be made on a case-by-case basis.

STATUS: Public.

Members of the public may request to receive the information in these notices electronically. If you would like to be added to the distribution, please contact the Nuclear Regulatory Commission, Office of the Secretary, Washington, DC 20555, at 301–415–1969, or by email at *Betty.Thweatt@nrc.gov* or *Samantha.Miklaszewski@nrc.gov.*

MATTERS TO BE CONSIDERED:

Week of January 1, 2024

There are no meetings scheduled for the week of January 1, 2024.

Week of January 8, 2024—Tentative

There are no meetings scheduled for the week of January 8, 2024.

Week of January 15, 2024—Tentative

Thursday, January 18, 2024

9:00 a.m. Strategic Programmatic Overview of the Decommissioning and Low-Level Waste and Nuclear Materials Users Business Lines (Public Meeting) (Contact: Candace Spore: 301–415–8537)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Week of January 22, 2024—Tentative

Tuesday, January 23, 2024

10:00 a.m. Briefing on International Activities (Public Meeting) (Contacts: Jennifer Holzman: 301–415–8537, Doris Lewis 301–287–3794)

Additional Information: The meeting will be held in the Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland. The public is invited to attend the Commission's meeting in person or watch live via webcast at the Web address—*https://video.nrc.gov/.*

Week of January 29, 2024—Tentative

There are no meetings scheduled for the week of January 29, 2024.

Week of February 5, 2024—Tentative

There are no meetings scheduled for the week of February 5, 2024.

CONTACT PERSON FOR MORE INFORMATION: For more information or to verify the status of meetings, contact Wesley Held at 301–287–3591 or via email at *Wesley.Held@nrc.gov.*

The NRC is holding the meetings under the authority of the Government in the Sunshine Act, 5 U.S.C. 552b.

Dated: December 27, 2023.

For the Nuclear Regulatory Commission.

Monika G. Coflin,

Technical Coordinator, Office of the Secretary.

[FR Doc. 2023–28875 Filed 12–28–23; 11:15 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[NRC–2023–0207]

Applications for Amendments to Facility Operating Licenses Involving Proposed No Significant Hazards Considerations 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 Millstone Power Station, Unit 3 and Watts Bar 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 filed by February 1, 2024. A request for a hearing or petitions for leave to intervene must be filed by March 4, 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 January 12, 2024.

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

- *Federal Rulemaking Website:* Go to *https://www.regulations.gov* and search for Docket ID NRC–2023–0207. 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: Karen Zeleznock, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone: 301–415–1118; email: *Karen.Zeleznock@nrc.gov.*

SUPPLEMENTARY INFORMATION:

I. Obtaining Information and Submitting Comments

A. Obtaining Information

Please refer to Docket ID NRC–2023–0207, 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–2023–0207.
- *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–2023–0207, 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, the Commission will make a final determination on the issue of 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 dockets 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.

Dominion Energy Nuclear Connecticut, Inc.; Millstone Power Station, Unit 3; New London County, CT

Docket No	50–423.
Application Date	October 30, 2023.
ADAMS Accession No	ML23304A047.
Location in Application of NSHC	Pages 20–23 of Attachment 1.
Brief Description of Amendment	The proposed amendment would revise the Millstone Power Station, Unit 3 (MPS3) technical specifications (TSs) to support the implementation of Framatome GAIA fuel which is currently scheduled for onload during the spring 2025 refueling outage. The proposed TS changes include updating the reactor core safety limits (TS 2.1.1.2), reducing the Reactor Trip System Instrumentation Trip Setpoint for the P–8 Interlock (TS Table 2.2–1, Item 18.c), and adding to the list of approved methodologies for the Core Operating Limits Report (TS 6.9.1.6.b). Additionally, the licensee requests approval of the following items to support the use of Framatome GAIA fuel at MPS3: (1) the design basis limits for a fission product barrier associated with MPS3-specific application of certain methodologies (DOM–NAF–2–P–A, Appendix F, VEP–NE–2–A, and ANP–10338–P–A) and (2) mixed-core penalties for application to departure from nucleate boiling ratio analysis results of MPS3 cores containing both Framatome GAIA fuel and the resident Westinghouse fuel.
Proposed Determination	NSHC.
Name of Attorney for Licensee, Mailing Address	W.S. Blair, Senior Counsel, Dominion Energy Services, Inc., 120 Tredegar St., RS–2, Richmond, VA 23219.
NRC Project Manager, Telephone Number	Richard Guzman, 301–415–1030.

Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2; Rhea County, TN

Docket Nos	50–390, 50–391.
Application Date	October 30, 2023.
ADAMS Accession No	ML23303A095.
Location in Application of NSHC	Pages E1–5 through E1–7 of the Enclosure.
Brief Description of Amendments	The proposed amendments would revise the Watts Bar Nuclear Plant, Units 1 and 2, Technical Specification Surveillance Requirement 3.9.5.1 to reduce the minimum flow rate of the residual heat removal system during refueling operations.
Proposed Determination	NSHC.

Name of Attorney for Licensee, Mailing Address	David Fountain, Executive VP and General Counsel, Tennessee Valley Authority, 6A West Tower, 400 West Summit Hill Drive, Knoxville, TN 37902.
NRC Project Manager, Telephone Number	Kimberly Green, 301–415–1627.

Order Imposing Procedures for Access to Sensitive Unclassified Non-Safeguards Information for Contention Preparation

Dominion Energy Nuclear Connecticut, Inc.; Millstone Power Station, Unit 3; New London County, CT;

Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2; Rhea County, TN

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.

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

[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.

[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.

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: December 22, 2023.

For the Nuclear Regulatory Commission.

Russell E. Chazell,

Acting 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: supporting the standing of a potential party identified by name and address; 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).
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. 2023–28643 Filed 12–29–23; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Solicitation of Nominations for Appointment to the Advisory Committee of the Pension Benefit Guaranty Corporation

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice.

SUMMARY: The Pension Benefit Guaranty Corporation (PBGC) is soliciting nominations for appointment to the Advisory Committee of the PBGC.

DATES: Nominations must be received on or before February 16, 2024. Please allow three weeks for regular mail delivery to PBGC.

ADDRESSES: Nominations must be submitted electronically to *OfficeOfTheDirector@pbgc.gov* as email attachments in Word or pdf format, or by mail to Office of the Director, Pension Benefit Guaranty Corporation, 445 12th Street SW, Washington, DC 20024–2101.

SUPPLEMENTARY INFORMATION: The Pension Benefit Guaranty Corporation (PBGC or the Corporation) administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Section 4002(h) of ERISA provides for the establishment of an Advisory Committee to the Corporation. The Advisory Committee consists of seven members appointed by the President from among individuals recommended by the PBGC Board of Directors, which consists of the Secretaries of Labor, Treasury, and Commerce. The Advisory Committee members are as follows:

- two representatives of employee organizations;
- two representatives of employers who maintain pension plans; and
- three representatives of the general public.

No more than four members of the Committee shall be members of the same political party. Anyone currently

[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.

subject to federal registration requirements as a lobbyist is not eligible for appointment.

Advisory Committee members must have experience with employee organizations, employers who maintain defined benefit pension plans, the administration or advising of pension plans, or in related fields. Appointments are for 3-year terms. Reappointments are possible but are subject to the appointment process.

The Advisory Committee's prescribed duties include advising the Corporation as to its policies and procedures relating to investment of moneys, and other issues as the Corporation may request or as the Advisory Committee determines appropriate. The Advisory Committee meets at least six times each year. At least one meeting is a joint meeting with the PBGC Board of Directors.

By February 19, 2024, the term of one of the Advisory Committee members, representing the general public, will have expired. Therefore, PBGC is seeking nominations for one seat.

PBGC is committed to equal opportunity in the workplace and seeks a broad-based and diverse Advisory Committee.

If you or your organization wants to nominate one or more people for appointment to the Advisory Committee to represent the general public, you may submit nominations to PBGC. Nominations may be in the form of a letter, resolution or petition, signed by the person making the nomination. PBGC encourages you to include additional supporting letters of nomination. PBGC will not consider self-nominees who have no supporting letters. Please do not include any information that you do not want publicly disclosed.

Nominations, including supporting letters, should:

- state the person's qualifications to serve on the Advisory Committee (including any specialized knowledge or experience relevant to the nominee's proposed Advisory Committee position to represent the general public);
- state that the candidate will accept appointment to the Advisory Committee if offered;
- include the nominee's full name, work affiliation, mailing address, phone number, and email address;
- include the nominator's full name, mailing address, phone number, and email address; and
- include the nominator's signature, whether sent by email or otherwise.

PBGC will contact nominees for information on their political affiliation and their status as registered lobbyists. Nominees should be aware of the time commitment for attending meetings and actively participating in the work of the Advisory Committee. Historically, this has meant a commitment of at least 15 days per year. PBGC has a process for vetting nominees under consideration for appointment.

Issued in Washington, DC.

Gordon Hartogensis,

Director, Pension Benefit Guaranty Corporation.

[FR Doc. 2023–28803 Filed 12–29–23; 8:45 am]

BILLING CODE 7709–02–P

RAILROAD RETIREMENT BOARD

Actuarial Advisory Committee With Respect to the Railroad Retirement Account; Notice of Public Meeting

Notice is hereby given in accordance with Public Law 92–463 that the Actuarial Advisory Committee will hold a virtual meeting on January 19, 2024, at 9:30 a.m. (central standard time), on the conduct of the 29th Actuarial Valuation of the Railroad Retirement System. The agenda for this meeting will include a discussion of the assumptions to be used in the 29th Actuarial Valuation. A report containing recommended assumptions and the experience on which the recommendations are based will have been sent by the Chief Actuary to the Committee in advance of the meeting.

The meeting will be open to the public. Persons wishing to submit written statements, make oral presentations, or attend the meeting should address their communications or notices to Patricia Pruitt (*Patricia.Pruitt@rrb.gov*) so that information on how to join the virtual meeting can be provided.

Dated: December 27, 2023.

Stephanie Hillyard,

Secretary to the Board.

[FR Doc. 2023–28821 Filed 12–29–23; 8:45 am]

BILLING CODE 7905–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–99238; File No. SR–NYSE–2023–34]

Self-Regulatory Organizations; New York Stock Exchange LLC; Notice of Filing of Amendment No. 1 and Order Granting Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1, Amending Sections 312.03(b) and 312.04 of the NYSE Listed Company Manual To Modify the Circumstances Under Which a Listed Company Must Obtain Shareholder Approval of a Sale of Securities Below the Minimum Price to a Substantial Security Holder of the Company

December 26, 2023.

I. Introduction

New York Stock Exchange LLC (''NYSE'' or the ''Exchange'') filed on September 26, 2023, with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to modify the circumstances under which a listed company must obtain shareholder approval of a sale of securities to a substantial security holder of the listed company. The proposed rule change was published for comment in the **Federal Register** on October 4, 2023.[3] On November 16, 2023, the Commission designated a longer period for Commission action on the proposed rule change.[4] On December 21, 2023, the Exchange filed Amendment No. 1 to the proposed rule change, which amended and superseded the original filing in its entirety.[5] The

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 98662 (September 29, 2023), 88 FR 68675 (October 4, 2023) (''Notice'').

[4] *See* Securities Exchange Act Release No. 98967 (November 16, 2023), 88 FR 81462 (November 22, 2023) (extending the time period for Commission action to January 2, 2024).

[5] In Amendment No. 1, the Exchange revised the proposal to: (1) adopt a new definition of an ''Active Related Party'' in Section 312.03(b)(i) of the NYSE Listed Company Manual (''Manual'') and to retain the current definition of Related Party for purposes of Section 312.03(b)(ii) of the Manual; (2) adopt in Section 312.04 of the Manual definitions of ''control'' and ''group'' for purposes of proposed amended Section 312.03(b)(i) of the Manual; (3) include additional explanation of why the Exchange is proposing the rule change and believes that it is appropriate; (4) explain that the proposal would not have any substantive effect on the application of Section 312.03(b)(ii) of the Manual and that a listed company selling securities to a Related Party under the circumstances set forth in 312.03(b)(ii) of the Manual, as amended, would remain subject to the shareholder approval

Continued

Commission has received no comment letters on the proposal. The Commission is publishing this notice to solicit comments on Amendment No. 1 from interested persons and is approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis.

II. The Exchange's Description of the Proposed Rule Change, as Modified by Amendment No. 1 [6]

In its filing with the Commission, the self-regulatory organization 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 those 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 parts of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

The NYSE previously filed a proposed rule filing to amend Section 312.03(b) of the Manual to modify the circumstances under which a listed company must obtain shareholder approval of a sale of securities to a substantial security holder of the listed company.[7] The proposed rule change was published for comment in the **Federal Register** on October 4, 2023.[8] This Amendment No. 1 supersedes the original filing in its entirety.

Amendment No. 1 includes in the Purpose and Statutory Basis sections additional explanation of why the Exchange is proposing the rule change and believes that it is appropriate, specifically discussing the Exchange's belief that there is a lesser possibility that a substantial security holder may exercise influence over the terms of a transaction with the company if such substantial security holder does not have representation on the board or in management. In addition, Amendment No. 1 amends the rule text to adopt a new definition of an ''Active Related Party'' in Section 312.03(b)(i) and to retain the current definition of Related Party for purposes of Section 312.03(b)(ii).[9] The Purpose section is amended to describe these proposed amendments, as well as to explain that their purpose is to ensure that the proposal would not have any substantive effect on the application of Section 312.03(b)(ii). A listed company selling securities to a Related Party under the circumstances set forth in the rule as amended would remain subject to the shareholder approval requirements in 312.03(b)(ii). Finally, Amendment No. 1 amends the rule text to adopt in Section 312.04 definitions of ''control'' and ''group'' for purposes of proposed amended Section 312.03(b)(i), providing clarity as to the meaning of the terms ''controlling shareholder'' and ''control group'' in that provision as amended. The Purpose section is amended to describe the addition of those new defined terms and to include footnotes explaining how ''control'' is defined and the standards to be applied in determining whether or not a ''group'' exists.

Section 312.04(e) of the Manual provides that an interest consisting of less than either five percent of the number of shares of common stock or five percent of the voting power outstanding of a company or entity shall not be considered a substantial interest or cause the holder of such an interest to be regarded as a substantial security holder.

Section 312.03(b)(i) of the Manual provides that shareholder approval is required prior to the issuance of common stock, or of securities convertible into or exercisable for common stock, in any transaction or series of related transactions, to a director, officer or substantial security holder of the company if the number of shares of common stock to be issued, or if the number of shares of common stock into which the securities may be convertible or exercisable, exceeds either one percent of the number of shares of common stock or one percent of the voting power outstanding before the issuance.

The Manual provides an exception to the shareholder approval requirement if such transaction is a cash sale for a price that is at least the Minimum Price. Section 312.04(h) defines the Minimum Price as a price that is the lower of: (i) the Official Closing Price immediately preceding the signing of the binding agreement; or (ii) the average Official Closing Price for the five trading days immediately preceding the signing of the binding agreement. Section 312.04(i) defines the ''Official Closing Price'' of an issuer's common stock as the official closing price on the Exchange as reported to the Consolidated Tape immediately preceding the signing of a binding agreement to issue the securities.[10]

Certain NYSE listed companies are significantly dependent on their ability to regularly raise additional capital to fund their operations or acquire new assets. For example, pre-revenue stage biotechnology companies regularly seek additional capital to fund their research and development activities and real estate investment trusts seek to fund the acquisition of new properties by selling equity securities in private placements or direct registered sales priced at a small discount to the prevailing market price. It is the Exchange's understanding that, in many cases, existing shareholders of the listed company are willing purchasers of securities in such circumstances, as they already understand the company's business and have a positive view of its future prospects. Sales to existing shareholders can also be advantageous to both the issuer and the shareholders because of the speed with which a direct sale to an existing shareholder can be completed if no shareholder approval is required. However, the benefits of low transaction costs and speed of execution that typically exist when conducting these transactions with existing shareholders face countervailing factors if the counterparty is deemed to be a substantial securityholder for purposes of Section 312.03(b)(i). In such cases, to mitigate potential conflicts of interest, Exchange rules require that any sale below the Minimum Price can relate to no more than one per cent of the shares of common stock or one percent of the voting power outstanding before the issuance. Any such transaction that relates to more than one per cent of the

requirements therein; and (5) make other clarifying and conforming changes. Amendment No. 1 is available at *https://www.sec.gov/comments/sr-nyse-2023-34/srnyse202334-320179-832762.pdf*.

[6] This Section II reproduces Amendment No. 1, as filed by the Exchange.

[7] *See* SR–NYSE–2023–34 (September 26, 2023).

[8] *See* Securities Exchange Act Release No. 98662 (September 29, 2023), 88 FR 68675 (October 4. 2023).

[9] Section 312.03(b)(ii) provides that shareholder approval is required prior to the issuance of common stock, or of securities convertible into or exercisable for common stock, where such securities are issued as consideration in a transaction or series of related transactions in which a Related Party has a five percent or greater interest (or such persons collectively have a ten percent or greater interest), directly or indirectly, in the company or assets to be acquired or in the consideration to be paid in the transaction or series of related transactions and the present or potential issuance of common stock, or securities convertible into common stock, could result in an issuance that exceeds either five percent of the number of shares of common stock or five percent of the voting power outstanding before the issuance.

[10] For example, if the transaction is signed after the close of the regular session at 4:00 p.m. Eastern Standard Time on a Tuesday, then Tuesday's official closing price is used. If the transaction is signed at any time between the close of the regular session on Monday and the close of the regular session on Tuesday, then Monday's official closing price is used.

common stock is subject to shareholder approval, which imposes significant delay and additional costs on the issuer, thereby often making the sale impracticable. This one percent limitation is therefore a significant restriction on the ability of an NYSE listed company to raise capital from its existing shareholders. Notably, the NYSE is the only listing exchange in the United States that has such a limitation in its rules and NYSE companies are therefore at a disadvantage in raising additional capital when compared to their peers listed on other national securities exchanges.

The Exchange believes there are significant benefits from the protection provided to a listed company's investors by the shareholder approval requirements in Section 312.03(b)(i) when a purchaser of the securities in a transaction is an officer or director or other control person of the company. In such cases, the potential exists for a related party purchaser to use their influence within the company to obtain superior terms from the company to the detriment of the company's shareholders as a whole. However, the current definition of substantial security holder used in the rule also applies to holders of a company's common stock who do not participate in the governance or management of the company through board or management representation. The Exchange believes that transactions with these kinds of shareholders who do not participate in the governance or management of the company generally do not give rise to the potential conflicts of interest in the determination of transaction terms that exist where the purchaser has a role in the listed company's board or management. The Exchange believes that these shareholders that do not participate actively in the company in this way generally do not have the same ability to participate in and influence decision making as is the case with a related party that directly participates in the governance or management of the company.[11] As discussed below the Exchange will be adopting the definition contained in Rule 12b–2 under Regulation 12B of the Exchange Act to define control for purposes of the proposed amended rule.

In light of the foregoing, the Exchange proposes to amend Section 312.03(b)(i) to limit its application to related parties whose interest in the company is not passive in nature. As proposed, Section 312.03(b)(i) would be limited in application to sales to a director, officer, controlling shareholder or member of a control group or any other substantial security holder of the company that has an affiliated person [12] who is an officer or director of the company (each an ''Active Related Party''). For purposes of determining the existence of a group, the Exchange proposes to rely on the filings on Schedule 13D or Schedule 13G disclosing the existence of a group as determined under Section 13(d)(3) or Section 13(g)(3) of the Exchange Act, along with any additional follow-up inquiry that is needed.[13] The Exchange proposes to amend Section 312.04 to include new definitions for purposes of Section 312.03, providing that: (i) a ''group'' means a group as determined under Section 13(d)(3) or Section 13(g)(3) of the Exchange Act; and (ii) ''control'' has the same meaning as defined in Rule 12b–2 of Regulation 12B under the Exchange Act.[14] The Exchange intends to revise its internal procedures in reviewing proposed transactions to the extent necessary to obtain the necessary information to make determinations with respect to whether shareholders participating in transactions are Active Related Parties.

In addition to the proposed definition of Active Related Party in the proposed amended version of Section 312.03(b)(i), the Exchange proposes for purposes of Section 312.03(b)(ii) to retain the broader definition of a Related Party included in the current rule (*i.e.,* ''a director, officer or substantial security holder of the company''). Consequently, this proposal would not have any substantive effect on the application of Section 312.03(b)(ii) and a listed company selling securities to a Related Party under the circumstances set forth in the rule as amended remains subject to the shareholder approval requirements in that provision.[15]

The Exchange also notes that any listed company selling securities in a private placement that does not meet the Minimum Price requirement will remain subject to the shareholder approval requirement of Section 312.03(c) if such transaction relates to 20 percent or more of the issuer's common stock. In addition, if the securities in such financing are issued in connection with an acquisition of the stock or assets of another company, shareholder approval will be required if the issuance of such securities alone or when combined with any other present or potential issuance of common stock, or securities convertible into common stock in connection with such acquisition, is equal to or exceeds either 20 percent of the number of shares of common stock or 20 percent of the voting power outstanding before the issuance. Sales of securities will also continue to be subject to all other shareholder approval requirements set forth in Section 312.03 (including limitations with respect to equity compensation under Section 312.03(a) and Section 303A.08) and the change of control requirement of Section 312.03(d). The Exchange notes that Section 312.04(a) provides that shareholder approval is required if any of the subparagraphs of Section 312.03 require such approval, notwithstanding the fact that the transaction does not require approval under one or more of the other subparagraphs. Finally, the Exchange notes that Section 312.03(b)(i) as proposed to be amended would continue to provide a significant protection to shareholders against conflicts of interest in sales of securities to Active Related Parties and that no other listing venue has such a protection in its rules. The Exchange notes that its shareholder approval requirements are as stringent in every respect as those of its competitor listing venues.[16]

Under the proposal the Exchange will continue to require shareholder approval for below market sales (*i.e.,* below the Minimum Price) over one

[11] The Exchange recognizes that substantial shareholders who are not represented on the board or in management are likely to vote their shares at shareholder meetings but believes that this in itself is generally not sufficient to create a relationship with the company that would give a substantial shareholder the ability to influence inappropriately the terms of any transaction it enters into with the company.

[12] In determining whether a person is an affiliated person for purposes of the definition of an Active Related Party, the Exchange will consider all relevant facts and circumstances, including, but not limited to, whether such person is an affiliate within the meaning of that term under provisions of the federal securities laws and the rules thereunder.

[13] Section 13(d)(3) or Section 13(g)(3) provide: ''When two or more persons act as a [ ] group for the purpose of acquiring, holding, or disposing of [equity] securities of an issuer, the group shall be deemed a 'person'. . . .'' The determination under Sections 13(d)(3) and 13(g)(3) as to whether two or more persons are acting as a group does not depend solely on the presence of an express agreement. Depending on the particular facts and circumstances, concerted actions by two or more persons for the purpose of acquiring, holding—which includes voting—or disposing of securities of an issuer are sufficient to constitute the formation of a group.

[14] Rule 12b–2 under Regulation 12B of the Exchange Act provides that ''[t]he term 'control' (including the terms 'controlling,' 'controlled by' and 'under common control with') means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.''

[15] *See* note 9 *supra* for a description of Section 312.03(b)(ii).

[16] *See,* for example, Nasdaq Stock Market Rule 5635.

percent to Active Related Parties. However, as a consequence of the proposed amendment, below market sales over one percent to substantial securityholders who are not Active Related Parties will be permitted without shareholder approval under 312.03(b)(i), but will continue to be subject to all the other applicable shareholder approval requirements under 312.03.

1. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[17] in general, and furthers the objectives of Section 6(b)(5) of the Act [18] in particular, in that it is 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 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 and is not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The Exchange believes that proposed amended Section 312.03(b)(i) is consistent with the protection of investors and the public interest. Specifically, the amended rule continues to provide for shareholder approval of below-market sales of securities to Active Related Parties of a listed company where a potential conflict of interest exists that Active Related Parties could use their influence within the company to obtain superior terms from the company to the detriment of the company's shareholders as a whole. The current definition of substantial security holder used in the rule extends to holders of a company's common stock who do not participate in the governance or management of the company through board or management representation. The Exchange believes that transactions with these kinds of shareholders who do not participate in the governance or management of the company (except by voting at shareholder meetings) in and of themselves generally do not give rise to the potential conflicts of interest in the determination of transaction terms that exist where the purchaser has a role in the listed company's board or management. The Exchange believes that these shareholders that do not participate actively in the company in this way do not generally have the same ability to participate in and influence decision making as is the case with a related party that directly participates in the governance or management of the company. The proposed rule only modifies the existing rule to permit sales to investors who are not a director, officer, a controlling shareholder or member of a control group or any other substantial security holder of the company that has an affiliated person who is an officer or director of the company and with respect to whom the Exchange therefore believes that the potential for such self-dealing does not exist.

The Exchange proposes to use definitions of ''control'' and ''group'' in the proposed amended rule that are used in the federal securities laws and the rules thereunder and, consequently, the Exchange believes that the use of such definitions is consistent with the Act.

The Exchange believes that the proposed amendment would promote competition among listing venues by removing a limitation on capital raising by listed companies that does not exist for their peers on other listing exchanges.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act. The Exchange believes that the proposed amendment increases competition among listing venues by removing a limitation on capital raising by listed companies that does not exist for their peers on other listing exchanges.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Discussion and Commission Findings

After careful review, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[19] In particular, the Commission finds that the proposed rule change, as modified by Amendment No. 1, is consistent with Section 6(b)(5) of the Act,[20] 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 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; and are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

The development and enforcement of meaningful corporate governance listing standards for a national securities exchange is of substantial importance to financial markets and the investing public, especially given investor expectations regarding the nature of companies that have achieved an exchange listing for their securities. The corporate governance standards embodied in the listing standards of national securities exchanges, in particular, play an important role in assuring that exchange-listed companies observe good governance practices, including safeguarding the interests of shareholders with respect to certain potentially dilutive transactions.[21]

As discussed above, the Exchange proposes to amend Section 312.03(b)(i)

[17] 15 U.S.C. 78f(b).

[18] 15 U.S.C. 78f(b)(5).

[19] 15 U.S.C. 78f(b). In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. *See* 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78f(b)(5).

[21] *See, e.g.,* Securities Exchange Act Release Nos. 91471 (Apr. 2, 2021), 86 FR 18362 (NYSE–2020–85) (revising the shareholder approval requirements in Sections 312.03 and 312.04 and the requirements for related party transactions in Section 314.00); 85374 (Mar. 20, 2019) 84 FR 11354 (Mar. 26, 2019) (NYSE–2018–54) (modifying the price requirements that companies must meet to avail themselves of certain exceptions from the shareholder approval requirements in Section 312.03); 84287 (Sept. 26, 2018) 83 FR 49599 (Oct. 2, 2018) (Nasdaq–2018–008) (approving a Nasdaq proposal to change to the definition of market value for purposes of the shareholder approval rule and eliminate the requirement for shareholder approval of issuances at less than book value but greater than market value); 76814 (Dec. 31, 2015), 81 FR 0820 (Jan. 7, 2016) (NYSE–2015–02) (approving amendments to the NYSE Listed Company Manual to exempt early stage companies from having to obtain shareholder approval in certain circumstances). *See also* Securities Exchange Act Release Nos. 48108 (June 30, 2003), 68 FR 39995 (Jul. 3, 2003) (approving equity compensation shareholder approval rules of both the NYSE and the National Association of Securities Dealers, Inc. n/k/a NASDAQ); and 65225 (Aug. 30, 2011), 76 FR 55148 (Sept. 6, 2011) (approving rules for the qualification, listing and delisting of companies on BATS, noting that qualitative listing requirements including shareholder approval rules are designed to ensure that companies trading on a national securities exchange will adequately protect the interest of public shareholders).

of the Manual to modify its application. Specifically, the Exchange proposes to limit the shareholder approval requirements of Section 312.03(b)(i) of the Manual, which applies to issuances of common stock exceeding either one percent of the number of shares of common stock or one percent of the voting power outstanding before the issuance for a price below the Minimum Price,[22] to require shareholder approval only for issuances to Active Related Parties, defined as directors, officers, controlling shareholders or members of a control group or any other substantial security holders [23] of the company that have an affiliated person who is an officer or director of the company,[24] and to no longer require shareholder approval under this provision for such issuances to Related Parties [25] that are not Active Related Parties (*i.e.,* substantial security holders that are not controlling shareholders or a member of a control group or that do not have an affiliated person who is an officer or director of the company). According to the Exchange, this change would allow substantial security holders who do not participate in the governance or management of the company (and who are thus not in the newly defined Active Related Party category) to acquire additional stock below the Minimum Price without the need for shareholder approval under Section 312.01(b(i), thus making it less burdensome for NYSE listed companies to raise additional capital quickly.[26] The Exchange states its belief that transactions with substantial security holders that are not Active Related Parties generally do not give rise to the potential conflicts of interest in the determination of transaction terms that exist where the purchaser has a role in the listed company's board or management, as there is a lesser possibility that a substantial security holder that is not an Active Related Party may exercise influence over the terms of a transaction with the company if such substantial security holder does not have representation on the board or in management.[27] The Exchange also proposes to adopt two new definitions under the revised rule for purposes of defining ''control'' and ''group.'' ''Control'' would be defined using the definition in Rule 12b–2 under the Act [28] and ''group'' (for purposes of control group) would be defined as a group as determined under Section 13(d)(3) or Section 13(g)(3) of the Act.[29]

After careful consideration, the Commission finds that the proposed rule change is consistent with the Act. As stated by the Exchange, the shareholder approval requirement in Section 312.03(b)(i) of the Manual protects against a potential conflict of interest when the acquirer of additional stock may have enough influence within the company to obtain superior terms from the company to the detriment of the company's shareholders as a whole.[30] As amended, the shareholder approval requirement in Section 312.03(b)(i) of the Manual would continue to apply to below market sales of securities of greater than 1% to Active Related Parties (*i.e.,* directors, officers, controlling shareholders or members of a control group or any other substantial security holders of the company that have an affiliated person [31] who is an officer or director of the company). As a result, these Active Related Parties, that have a role in the listed company's board or management or are substantial security holders that exercise control and thus have a potential conflict of interest in connection with the negotiation of any purchase of stock, will continue to be subject to the shareholder approval requirements under Section 312.03(b)(i) of the Manual. Moreover, even though substantial security holders that are not Active Related Parties will no longer be subject to the shareholder approval requirement in Section 312.03(b)(i) of the Manual, they will continue to be subject to the other shareholder approval requirements set forth in Section 312.03 of the Manual, to the extent applicable.

To make it clear that there are no changes being made to the application of the other shareholder approval requirements in Section 312.03 of the Manual, the Exchange has specifically amended Section 312.03(b)(ii) of the Manual to retain the definition of Related Party in order to clarify that a listed company selling securities to a Related Party (that includes a substantial security holder) [32] under the circumstances set forth in that rule as amended would remain subject to the shareholder approval requirements set forth therein.[33] By amending the proposal so that the substantive requirements of Section 312.03(b)(ii) of the Manual remain unchanged, the provision will continue to provide important investor protections for shareholders when a listed company is selling securities to a Related Party that has an interest, directly or indirectly, in

[22] ''Minimum Price'' means a price that is the lower of: (i) the Official Closing Price immediately preceding the signing of the binding agreement; or (ii) the average Official Closing Price for the five trading days immediately preceding the signing of the binding agreement. *See* Section 312.04(h) of the Manual.

[23] Section 312.04(e) of the Manual provides that ''[a]n interest consisting of less than either five percent of the number of shares of common stock or five percent of the voting power outstanding of a company or entity shall not be considered a substantial interest or cause the holder of such an interest to be regarded as a substantial security holder.''

[24] *See* proposed amended Section 312.03(b)(i) of the Manual defining ''Active Related Party.''

[25] *See* Section 312.03(b)(i) of the Manual and proposed amended Section 312.03(b)(ii) of the Manual defining Related Party. In each case, ''Related Party'' is defined as ''a director, officer or substantial security holder of the company.''

[26] *See supra* Section II.A. Shareholder approval is required if any of the subparagraphs of Section 312.03 of the Manual apply notwithstanding the fact that the transaction does not require approval under on or more of the other subparagraphs. *See* Section 312.04(a). As discussed below, these other shareholder approval provisions require approval for certain sales of discounted stock (*i.e.,* below the Minimum Price) in private placements as well as sales of stock under certain situations regardless of whether or not such sale is below the Minimum Price.

[27] *See supra* Section II.A.

[28] Rule 12b–2 under Regulation 12B of the Exchange Act provides that ''[t]he term 'control' (including the terms 'controlling,' 'controlled by' and 'under common control with') means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract, or otherwise.'' *See supra* note 14 and accompanying text.

[29] Section 13(d)(3) or Section 13(g)(3) provide: ''When two or more persons act as a [ ] group for the purpose of acquiring, holding, or disposing of [equity] securities of an issuer, the group shall be deemed a 'person'. . . .'' The determination under Sections 13(d)(3) and 13(g)(3) as to whether two or more persons are acting as a group does not depend solely on the presence of an express agreement. Depending on the particular facts and circumstances, concerted actions by two or more persons for the purpose of acquiring, holding—which includes voting—or disposing of securities of an issuer are sufficient to constitute the formation of a group. *See supra* note 13 and accompanying text.

[30] *See supra* Section II.A.

[31] In determining whether a person is an affiliated person, the Exchange will consider all relevant facts and circumstances, including, but not limited to whether such person is an affiliate within the meaning of that term under the federal securities laws and rules thereunder. *See supra* note 12.

[32] *See supra* note 23.

[33] *See supra* Section II.A and proposed Section 312.03(b)(ii) of the Manual, as modified by Amendment No. 1. As discussed above, Section 312.03(b)(ii) of the Manual provides that shareholder approval is required prior to the issuance of common stock, or of securities convertible into or exercisable for common stock, where such securities are issued as consideration in a transaction or series of related transactions in which a Related Party has a five percent or greater interest (or such persons collectively have a ten percent or greater interest), directly or indirectly, in the company or assets to be acquired or in the consideration to be paid in the transaction or series of related transactions and the present or potential issuance of common stock, or securities convertible into common stock, could result in an issuance that exceeds either five percent of the number of shares of common stock or five percent of the voting power outstanding before the issuance.

the company or assets to be acquired or consideration to be paid.

The Commission also finds that the Exchange's proposed definitions of ''group'' and ''control'' in Sections 312.04(k) and (l) of the Manual for purposes of Section 312.03 of the Manual are consistent with the Act.[34] The Exchange's proposed use of the standards under Sections 13(d)(3) and 13(g)(3) to determine the existence of a group is consistent with the guidance given by the Commission that ''[t]he appropriate legal standard for determining whether a group is formed is found in sections 13(d)(3) and 13(g)(3) [of the Act].'' [35] The Commission further stated that ''[t]he determination depends on an analysis of all the relevant facts and circumstances and not solely on the presence or absence of an express agreement, as two or more persons may take concerted action or agree informally.'' [36] The Exchange's proposed use of Rule 12b–2 to determine the existence of control also is reasonable and consistent with the Act given that definition applies to ''all reports filed pursuant to section[ ] 13 [ ] of the Act. . . .'' [37]

The Commission notes, in approving the proposal to amend the shareholder approval requirement in Section 312.03(b)(i) of the Manual, that the ability of listed companies to sell securities without shareholder approval continues to remain limited by other important Exchange rules.[38] For example, the Commission notes that any discounted issuance of stock to a company's officers, directors, employees, or consultants would require shareholder approval under the Exchange's equity compensation rules.[39] In addition, any listed company selling securities in a private placement that does not meet the Minimum Price requirement will remain subject to the shareholder approval requirement of Section 312.03(c) of the Manual if such transaction relates to 20 percent or more of the issuer's common stock or voting power.[40] Section 312.03(c) of the Manual also requires shareholder approval for issuances of 20% or more of the common stock or the voting power in connection with an acquisition of the stock or assets of another company irrespective of whether the price meets or exceeds the Minimum Price. Furthermore, shareholder approval would be required if the issuance resulted in a change of control and, as discussed above, for the acquisition of stock or assets of another company where the issuance increases voting power or common shares by 5% or more and a Related Party has a 5% direct or indirect interest (or collectively 10%) in the company or assets to be acquired.[41]

Finally, the Exchange also states its belief that Section 312.03.(b)(i) as proposed to be amended would continue to provide a significant protection to shareholders against conflicts of interest in sales of securities to Active Related Parties and that no other listing exchange has such a requirement.[42] The Exchange also represents that its shareholder approval requirements are as stringent as those of its competitor listing venues.[43] The Commission is cognizant of the fact that the Exchange operates in a highly competitive environment including with respect to the listing of issuers. While the proposal would allow below market sales (*i.e.,* below the Minimum Price) over one percent by listed companies to substantial security holders that are not Active Related Parties without shareholder approval, the other shareholder approval requirements remain unchanged and provide additional protections on the amount of shares that can be issued without a shareholder vote.[44] Importantly, Active Related Parties, that have a role in the listed company's board or management or are substantial security holders that exercise control and thus have a potential conflict of interest in connection with the negotiation of any purchase of stock, will continue to be subject to the shareholder approval requirements under Section 312.03(b)(i) of the Manual. The proposal also will promote fair competition among listing exchanges. For the reasons discussed above, the Commission believes that the proposed rule change, as modified by Amendment No. 1, is consistent with the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as modified by Amendment No. 1, 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–NYSE–2023–34 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–NYSE–2023–34. 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

[34] In its proposal, the Exchange stated that it will revise its internal procedures in reviewing proposed transactions as necessary to obtain the information necessary to determine whether shareholders participating in transaction are Active Related Parties. In addition, the Exchange stated that it will rely on the filings on Schedule 13D or Schedule 13G for purposes of determining the existence of a group, along with any additional follow-up inquiry that is needed. *See supra* Section II.A. The Commission believes this is reasonable and will help the Exchange ensure compliance with the revised rule.

[35] *See* Securities Exchange Act Release No. 98704 (Oct. 10, 2023), 88 FR 76896 (Nov. 7, 2023), 76933.

[36] *See id.*

[37] *See* Rule 12b–1, which sets forth the scope of Regulation 12B and provides that all rules contained in Regulation 12B, including Rule 12b–2, apply to such filings. For example, the Commission has enforced violations of Rule 12b–2 in Regulation 12B against beneficial owners for disclosure deficiencies in their Schedule 13D filings.

[38] *See, e.g.,* Section 312.03(a), (b)(ii), (b)(iii), (c) and (d) of the Manual. The Commission notes that if shareholder approval was not required under Section 312.03(b)(i) of the Manual, it could still be required under one of the other shareholder approval provisions in Section 312.03 of the Manual since these provisions apply independently of each other. *See* Section 312.04(a) of the Manual.

[39] *See* Sections 312.03(a), 312.03(b)(iii) and 303A.08 of the Manual.

[40] *See* Section 312.03(c) of the Manual.

[41] *See* Sections 312.03(d) and 312.03(b)(ii) of the Manual. *See also, supra* note 33 and accompanying text concerning Section 312.03(b)(ii).

[42] *See, e.g.,* Nasdaq Rule 5635; NYSE American LLC Company Guide, Section 711–713.

[43] *See supra* Section II.A at note 16 and accompanying text.

[44] *See,* for example, Section 312 (b)(ii), (c) and (d) and *supra* notes 39–42 and accompanying text.

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–NYSE–2023–34 and should be submitted on or before January 23, 2024.

V. Accelerated Approval of Proposed Rule Change, as Modified by Amendment No. 1

The Commission finds good cause, pursuant to Section 19(b)(2) of the Act, to approve the proposed rule change, as modified by Amendment No. 1, prior to the 30th day after the date of publication of Amendment No. 1 in the **Federal Register**. As discussed above, Amendment No. 1, the Exchange revised the proposal to: (1) adopt a new definition of an ''Active Related Party'' in Section 312.03(b)(i) of the Manual and to retain the current definition of ''Related Party'' for purposes of Section 312.03(b)(ii) of the Manual; (2) adopt in Section 312.04 of the Manual definitions of ''control'' and ''group'' for purposes of proposed amended Section 312.03(b)(i) of the Manual; (3) include additional explanation of why the Exchange is proposing the rule change and believes that it is appropriate; (4) explain that the proposal would not have any substantive effect on the application of Section 312.03(b)(ii) of the Manual and that a listed company selling securities to a Related Party under the circumstances set forth in 312.03(b)(ii) of the Manual, as amended, would remain subject to the shareholder approval requirements therein; and (5) make other clarifying and conforming changes. The Commission believes that these revisions provide greater clarity on the application of the proposal and its scope and the circumstances under which shareholder approval is still required under Section 312.03 of the Manual. The additional explanation in support of the proposal as well as the amended rule language in Amendment No. 1 assist the Commission in evaluating the Exchange's proposal and in determining that it is consistent with the Act.

Accordingly, the Commission finds good cause for approving the proposed rule change, as modified by Amendment No. 1, on an accelerated basis, pursuant to Section 19(b)(2) of the Act.

VI. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[45] that the proposed rule change (SR–NYSE–2023–34), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.[46]

Christina Z. Milnor,

Assistant Secretary.

[FR Doc. 2023–28796 Filed 12–29–23; 8:45 am]

BILLING CODE 8011–01–P

[45] 15 U.S.C. 78f(b)(2).

[46] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: 30-Day notice.

SUMMARY: The Small Business Administration (SBA) is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act and OMB procedures, SBA is publishing this notice to allow all interested member of the public an additional 30 days to provide comments on the proposed collection of information.

DATES: Submit comments on or before February 1, 2024.

ADDRESSES: Written comments and recommendations for this information collection request should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection request by selecting ''Small Business Administration''; ''Currently Under Review,'' then select the ''Only Show ICR for Public Comment'' checkbox. This information collection can be identified by title and/or OMB Control Number.

FOR FURTHER INFORMATION CONTACT: You may obtain a copy of the information collection and supporting documents from the Agency Clearance Office at *Curtis.Rich@sba.gov;* (202) 205–7030, or from *www.reginfo.gov/public/do/PRAMain.*

SUPPLEMENTARY INFORMATION: Small Business Administration collects this information from lenders who participate in the secondary market program. The information is used to facilitate and administer secondary market transactions in accordance with 15 U.S.C. 634(f)3 and to monitor the program for compliance with 15 U.S.C. 639(h).

Solicitation of Public Comments

Comments may be submitted on (a) whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

OMB Control No. 3245–0185.

Title: Secondary Participation Guaranty Agreement.

Description of Respondents: Small Business Lending Companies.

SBA Form Number: SBA Forms 1086, 1502.

Estimated Number of Respondents: 4,000.

Estimated Annual Responses: 4,000.

Estimated Annual Hour Burden: 60,000.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2023–28837 Filed 12–29–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments

ACTION: 60-Day notice and request for comments.

SUMMARY: The Small Business Administration (SBA) intends to request approval, from the Office of Management and Budget (OMB) for the collection of information described below. The Paperwork Reduction Act (PRA) requires federal agencies to publish a notice in the **Federal Register** concerning each proposed collection of information before submission to OMB, and to allow 60 days for public comment in response to the notice. This notice complies with that requirement.

DATES: Submit comments on or before March 3, 2023.

ADDRESSES: Send all comments to Terrance Moultrie, Supervisor Business Operations Specialist, Government Contracting, Small Business Administration.

FOR FURTHER INFORMATION CONTACT: Terrance Moultrie, Supervisor Business Operations Specialist, Government Contracting, 202–389–6644, *terrence.moultrieSr@sba.gov* or Curtis B. Rich, Agency Clearance Officer, *curtis.rich@sba.gov.*

SUPPLEMENTARY INFORMATION:

In carrying out its statutory mandate in 15 U.S.C. 637(m) to provide oversight of certification related to the Women-Owned Small Business Federal Contract Program (WOSB Program), the U.S. Small Business Administration (SBA) is currently approved to collect information from WOSB Program applicants or participants through its certification and information collection platform, *Certify.SBA.gov* (Certify). SBA is revising this information collection by updating its hourly burden analysis to reflect the new certification requirements, including the new monthly reporting requirement for third-party certifiers, and adding instructions for firms that wish to document their eligibility using their CVE certification.

Solicitation of Public Comments

SBA is requesting comments on (a) Whether the collection of information is necessary for the agency to properly perform its functions; (b) whether the burden estimates are accurate; (c) whether there are ways to minimize the burden, including through the use of automated techniques or other forms of information technology; and (d) whether there are ways to enhance the quality, utility, and clarity of the information.

Summary of Information Collection

OMB Control Number: 3245–0374.

Title: ''Certification for the Women-Owned Small Business Federal Contract Program''.

Description of Respondents: Women Owned Small Business.

Form Number: 2413, 2414.

Total Estimated Annual Responses: 12,000.

Total Estimated Annual Hour Burden: 24,400.

Curtis Rich,

Agency Clearance Officer.

[FR Doc. 2023–27905 Filed 12–29–23; 8:45 am]

BILLING CODE 8026–09–P

SMALL BUSINESS ADMINISTRATION

Interest Rates

The Small Business Administration publishes an interest rate called the Optional Peg Rate (13 CFR 120.214) on a quarterly basis. This rate is a weighted average cost of money to the Government for maturities similar to the average SBA direct loan. This rate may be used as a base rate for guaranteed fluctuating interest rate SBA loans. This rate will be 4.88 percent for the January–March quarter of FY 2024.

Pursuant to 13 CFR 120.921(b), the maximum legal interest rate for any Third Party Lender's commercial loan which funds any portion of the cost of a 504 project (see 13 CFR 120.801) shall be 6% over the Prime rate or, if that exceeds the maximum interest rate permitted by the constitution or laws of a given State, the maximum interest rate will be the rate permitted by the constitution or laws of the given State.

David Parrish,

Chief, Secondary Market Division.

[FR Doc. 2023–28804 Filed 12–29–23; 8:45 am]

BILLING CODE P

DEPARTMENT OF STATE

[Public Notice: 12296]

Determination and Certification With Respect to the Child Soldiers Prevention Act of 2008

ACTION: Determination.

SUMMARY: The State Department is publishing a Determination signed by the Secretary of State on October 5, 2021.

SUPPLEMENTARY INFORMATION: Antony J. Blinken, Secretary of State, signed the following ''Determination and Certification with Respect to the Child Soldiers Prevention Act of 2008'' on October 5, 2021. The State Department maintains the original document.

(Begin summary.)

Determination and Certification with Respect to the Child Soldiers Prevention Act of 2008 Pursuant to section 404 of the Child Soldiers Prevention Act of 2008 (CSPA) (22 U.S.C. 2370c–1) and Presidential Memorandum dated October 14, 2020, I hereby:

(1) Determine that it is in the national interest of the United States to waive the application of the prohibition under section 404(a) of the CSPA with respect to Mali to allow for the issuance of licenses for direct commercial sales of military equipment; and

(2) Certify that the government of Mali is taking effective and continuing steps to address the problem of child soldiers.

Accordingly, I hereby waive such application of section 404(a) of the CSPA with respect to Mali for Fiscal Year 2022.

This Determination and Certification shall be published in the **Federal Register** and transmitted, along with the accompanying Memorandum of Justification, to the appropriate committees of Congress.

(End summary.)

Danusia K. Hubah,

Director, Office of Security and Human Rights, Bureau of Democracy, Human Rights, and Labor, Department of State.

[FR Doc. 2023–28798 Filed 12–29–23; 8:45 am]

BILLING CODE 4710–18–P

TRADE AND DEVELOPMENT AGENCY

Extension of the Agency's Current Approval for Information Collection

AGENCY: United States Trade and Development Agency.

ACTION: Notice of information collection; submission to the Office of Management and Budget (OMB) for review and approval; request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the U.S. Trade and Development Agency (USTDA) has submitted a request to the Office of Management and Budget (OMB) to review and approve an extension for a currently approved information collection for Evaluation of USTDA Performance.

DATES: Comments on this notice must be received on or before February 2, 2024.

ADDRESSES: To access and review all of the documents related to the data collection listed in this notice, please use *http://www.regulations.gov* by searching the agency name. Written comments and recommendations for the proposed information collection should be submitted within 30 days of the publication of this notice on the following website: *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under Review—Open for Public Comments'' or by using the search function and entering the title of the collection.

FOR FURTHER INFORMATION CONTACT:

Contact Sheneé Turner, Administrative Officer, Attn: PRA, U.S. Trade and Development Agency, 1101 Wilson Blvd., Suite 1100, Arlington, VA 22209–3901; Tel.: (703) 875–4357, Fax: (703) 775–4037; Email: *comments@ustda.gov.*

SUPPLEMENTARY INFORMATION: USTDA published its first **Federal Register** Notice on this data request extension on November 6, 2023, at 88 FR 7626782, at which time a 60-day comment period was announced. No comments were received in response to this notice at the end of the comment period.

Comments are invited on: (1) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Summary Collection Under Review

Type of Request: Extension of a currently approved information collection.

Expiration Date of Previous Approval: 01/31/2024.

Title: Evaluation of USTDA Performance.

Form Number: USTDA 1000E–2014a.

Frequency of Use: Annually for duration of projects.

Type of Respondents: Business or other for profit; not-for-profit institutions; farms; Federal, State, and local government.

Estimated Number of Responses: 1,000 to 1,300 per year.

Estimated Total Annual Burden on Respondents: 334 to 434 hours per year.

Federal Cost: $402,523.

Authority for Information Collection: Government Performance and Results Act of 1993 Public Law 103–62 or GPRA; 107 Stat. 285, the Foreign Aid Transparency and Accountability Act (Pub. L. 114–191) or FATAA, the Information Quality Act (IQA) of 2000 (Pub. L. 106–554), and Foundations for Evidence-Based Policymaking Act of 2018 Public Law 115–435.

Abstract: USTDA will collect information from various stakeholders on USTDA-funded activities regarding development and/or commercial benefits as well as evaluate success regarding GPRA objectives and support evidence-based policymaking. This information collection enables USTDA to assess the outcomes that its program investments have on U.S. commercial interests and economic development abroad. The goal of this information collection is to gather evidence and stakeholder feedback to continually improve program performance and deliver better results to U.S. taxpayers. Such information is necessary to responsibly carry out the Agency's monitoring and evaluation policy and applicable legal requirements to implement a monitoring and evaluation framework.

Dated: December 26, 2023.

Sheneé Turner,

Administrative Officer.

[FR Doc. 2023–28836 Filed 12–29–23; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2023–0143]

Truck Leasing Task Force (TLTF); Notice of Public Meeting

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

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the TLTF.

DATES: The meeting will be held on Thursday, January 18, 2024, from 10 a.m. to 4:30 p.m. ET. Requests for accommodations for a disability must be received by Friday, January 12. Requests to submit written materials for consideration during the meeting must be received no later than Friday, January 12.

ADDRESSES: The meeting will be held virtually for its entirety. Please register in advance of the meeting at*www.fmcsa.dot.gov/tltf.* A copy of the agenda for the entire meeting will be made available at *www.fmcsa.dot.gov/tltf* at least 1 week in advance of the meeting. Once approved, copies of the meeting minutes will be available at the website following the meeting. You may visit the TLTF website at *www.fmcsa.dot.gov/tltf* for further information on the committee and its activities.

FOR FURTHER INFORMATION CONTACT: Ms. Shannon L. Watson, Deputy Designated Federal Officer, TLTF, FMCSA, 1200 New Jersey Avenue SE, Washington, DC 20590, (202) 360–2925, *tltf@dot.gov.* Any committee-related request should be sent to the person listed in this section.

SUPPLEMENTARY INFORMATION:

I. Background

The TLTF was created under the Federal Advisory Committee Act (FACA) in accordance with section 23009 of the Bipartisan Infrastructure Law (BIL) (Pub. L. 117–58), which requires the Federal Motor Carrier Safety Administration (FMCSA) to establish the TLTF. The TLTF will examine the terms, conditions, and equitability of common truck leasing arrangements, particularly as they impact owner-operators and trucking businesses subject to such agreements and submit a report on the task force's identified issues and conclusions regarding truck leasing arrangements, including recommended best practices, to the Secretary, the Secretary of Labor, and the appropriate committees of Congress. The TLTF will work in coordination with, and be informed by, the United States Department of Labor.

The TLTF operates in accordance with FACA under the terms of the TLTF charter, filed February 11, 2022, and amended April 28, 2023.

II. Agenda

TLTF will begin consideration of Task 24–1: Inequitable Leasing Agreements and Terms in the Motor Carrier industry and Whether They Affect the Frequency of Maintenance Performed on Subjected Vehicles and Whether a Vehicle is Kept in a General State of Good Repair. In addition, FMCSA will provide an ethics presentation to the TLTF members.

III. Public Participation

The meeting will be open to the public via virtual platform. Advance registration via the website is required by Friday, January 12.

DOT is committed to providing equal access to this meeting for all participants. If you need alternative formats or services due to a disability, such as sign language interpretation or other ancillary aids, please contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section by Friday, January 12.

Oral comments from the public will be heard during designated comment periods at the discretion of the TLTF chair and Designated Federal Officer. To accommodate as many speakers as possible, the time for each commenter may be limited. Speakers are requested to submit a written copy of their remarks for inclusion in the meeting records and for circulation to TLTF members. All prepared remarks submitted on time will be accepted and considered as part of the record. Any member of the public may present a written statement to the committee at any time.

Larry W. Minor,

Associate Administrator for Policy.

[FR Doc. 2023–28794 Filed 12–29–23; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

[Docket No. DOT–OST–2015–0271]

Agency Request for Renewal of a Previously Approved Information Collection: Prioritization and Allocation Authority Exercised by the Secretary of Transportation Under the Defense Production Act

AGENCY: Office of the Secretary of Transportation, DOT.

ACTION: Notice and request for comments.

SUMMARY: The Department of Transportation (DOT) invites public comments about our intention to request the Office of Management and Budget (OMB) approval to renew an information collection. The collection involves information required in an application to request Special Priorities Assistance. The information to be collected is necessary to facilitate the supply of civil transportation resources to promote the national defense. We are required to publish this notice in the **Federal Register** by the Paperwork Reduction Act of 1995, Public Law 104–13. A 60-day notice was published in the **Federal Register** on November 16, 2023. No comments were received.

DATES: Written comments should be submitted by February 1, 2024.

ADDRESSES: Your comments should be identified by Docket No. DOT–OST–2015–0271 and may be submitted through one of the following methods:

- *Office of Management and Budget, Attention: Desk Officer for U.S. Department of Transportation, Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 17th Street NW, Washington, DC 20503.*
- *Email: oira_submission@omb.eop.gov.*
- *Fax: (202) 395–5806. Attention: DOT/OST Desk Officer.*

FOR FURTHER INFORMATION CONTACT: Anita Womack, 202–366–2250, Office of Intelligence, Security and Emergency Response, Office of the Secretary of Transportation, U.S. Department of Transportation, 1200 New Jersey Avenue SE, Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 2105–0567.

Title: Prioritization and Allocation Authority Exercised by the Secretary of Transportation Under the Defense Production Act.

Form Numbers: OST F 1254.

Type of Review: Renewal of a previously approved information collection.

Background: The Defense Production Act Reauthorization of 2009 requires each Federal agency with delegated authority under section 101 of the Defense Production Act of 1950, as amended (50 U.S.C. App. Sec. 4501 *et seq.*) to issue final rules establishing standards and procedures by which the priorities and allocations authority is used to promote the national defense. The Secretary of Transportation has the delegated authority for all forms of civil transportation. DOT's final rule, Transportation Priorities and Allocation System (TPAS), published October 2012, requires this information collection. Form OST F 1254, Request for Special Priorities Assistance, would be filled out by private sector applicants, such as transportation companies or organizations. The private sector applicant must submit company information, the services or items for which the assistance is requested, and specific information about those services or items.

Respondents: Private sector applicants, such as transportation companies or organizations.

Number of Respondents: We estimate 6 respondents.

Total Annual Burden: We estimate an average burden of 30 minutes per respondent for an estimated total annual burden of 3 hours.

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 the Department's performance; (b) the accuracy of the estimated burden; (c) ways for the Department 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.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. chapter 35, as amended; and 49 CFR 1:48.

Issued in Washington, DC, on December 27, 2023.

Donna O'Berry,

Acting Director, Office of Intelligence, Security and Emergency Response.

[FR Doc. 2023–28817 Filed 12–29–23; 8:45 am]

BILLING CODE 4910–9X–P

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Open Meeting: Community Development Advisory Board

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Community Development Advisory Board (the Advisory Board), which provides advice to the Director of the Community Development Financial Institutions Fund (CDFI Fund). This meeting will be conducted virtually. A link to view the meeting will be posted under the date of the meeting at *www.cdfifund.gov/cdab.*

DATES: The meeting will be held from 2:00 p.m. to 4:00 p.m. Eastern Time on Wednesday, January 17, 2024.

Submission of Written Statements: Participation in the discussions at the meeting will be limited to Advisory Board members, Department of the Treasury staff, and certain invited guests. Anyone who would like to have the Advisory Board consider a written statement must submit it by 5:00 p.m. Eastern Time on Tuesday, January 9, 2024. Send electronic statements to *AdvisoryBoard@cdfi.treas.gov.*

In general, the CDFI Fund will make all statements available in their original format, including any business or personal information provided such as names, addresses, email addresses, or telephone numbers, for virtual public inspection and copying. The CDFI Fund is open on official business days between the hours of 9:00 a.m. and 5:00 p.m. Eastern Time. You can make arrangements to virtually inspect statements by emailing *AdvisoryBoard@cdfi.treas.gov.* All statements received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. You should only submit information that you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Bill Luecht, Senior Advisor, Office of Legislative and External Affairs, CDFI Fund; (202) 653–0322 (this is not a toll-free number); or *AdvisoryBoard@cdfi.treas.gov.* Other information regarding the CDFI Fund and its programs may be obtained through the CDFI Fund's website at *https://www.cdfifund.gov.*

SUPPLEMENTARY INFORMATION: Section 104(d) of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 103–

325), which created the CDFI Fund, established the Advisory Board. The charter for the Advisory Board has been filed in accordance with the Federal Advisory Committee Act, as amended (5 U.S.C. 1001 *et seq.*), and with the approval of the Secretary of the Treasury.

The function of the Advisory Board is to advise the Director of the CDFI Fund (who has been delegated the authority to administer the CDFI Fund) on the policies regarding the activities of the CDFI Fund. The Advisory Board is not a governing board, and it does not advise the CDFI Fund on approving or declining any particular application for monetary or non-monetary awards.

In accordance with section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. 1009 and the regulations thereunder, Bill Luecht, Designated Federal Officer of the Advisory Board, has ordered publication of this notice that the Advisory Board will convene an open meeting, which will be conducted virtually, from 2:00 p.m. to 4:00 p.m. Eastern Time on Wednesday, January 17, 2024. Members of the public who wish to view the virtual meeting will be required to register upon entering into the virtual meeting, which can be accessed 30 minutes prior to its scheduled start time. The link to view the meeting will be posted under the date of the meeting at *https://www.cdfifund.gov/cdab.*

The Advisory Board meeting will include an update from Acting Director Sigal on the CDFI Fund's programs and CDFI Certification.

Authority: 12 U.S.C. 4703.

Marcia Sigal,

Acting Director, Community Development Financial Institutions Fund.

[FR Doc. 2023–28469 Filed 12–29–23; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0515]

Agency Information Collection Activity: Maintenance of Records

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Benefits Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before February 1, 2024. (Inserted by the Clearance Officer.)

ADDRESSES: Submit written comments on the collection of information through *www.Regulations.gov,* or to Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: VA Desk Officer; 725 17th St. NW, Washington, DC 20503 or sent through electronic mail to *oira_submission@omb.eop.gov.* Please refer to ''OMB Control No. 2900–0515'' in any correspondence.

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 1717 H Street NW, Washington, DC 20006, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–0515'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 38 CFR 36.4317.

Title: Maintenance of Records under 38 CFR 36.4333.

OMB Control Number: 2900–0515.

Type of Review: Revision of a currently approved collection.

Abstract: VA is submitting this revised information collection in advance of implementing new technology and oversight procedures in which VA will collect from lenders certain loan origination information via a computable electronic format.

The information collected under § 36.4333 is used by VA to ensure lenders and servicers who participate in VA's Loan Guaranty program follow statutory and regulatory requirements, such as those relating to credit information, loan processing requirements, underwriting standards, servicing requirements, and other applicable laws, regulations and policies. VA also uses data collected under this authority to provide annual feedback to lenders, through the Lender Scorecard, on certain loan characteristics such as interest rate, fees and charges, audit results, etc., as compared to the national average of all VA lenders.

The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 88 FR 73421 on October 25, 2023, page 73421.

Affected Public: Private Sectors.

Estimated Annual Burden: 11,080 hours.

Estimated Average Burden per Respondent: 0.008 hours.

Frequency of Response: 2.9 times.

Estimated Number of Respondents: 1,385,000.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–28806 Filed 12–29–23; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Agency Information Collection Activity Under OMB Review: Veteran Reimbursement Claim Form

AGENCY: Veterans Health Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995, this notice announces that the Veterans Health Administration, Department of Veterans Affairs, will submit the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden and it includes the actual data collection instrument.

DATES: Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to *www.reginfo.gov/public/do/PRAMain.* Find this particular information collection by selecting ''Currently under 30-day Review—Open for Public Comments'' or by using the search function. Refer to ''OMB Control No. 2900–NEW.''

FOR FURTHER INFORMATION CONTACT: Maribel Aponte, Office of Enterprise and Integration, Data Governance Analytics (008), 810 Vermont Avenue NW, Washington, DC 20420, (202) 266–4688 or email *maribel.aponte@va.gov.* Please refer to ''OMB Control No. 2900–NEW'' in any correspondence.

SUPPLEMENTARY INFORMATION:

Authority: 44 U.S.C. 3501–3521.

Title: Veteran Reimbursement Claim Form (VA Form 10–320).

OMB Control Number: 2900–NEW.

Type of Review: New collection.

Abstract: Veterans may claim reimbursement for certain medical

costs, as authorized by 38 U.S.C. 1728. The new Veteran Reimbursement Claim Form, VA Form 10–320, will be utilized by Veterans requesting reimbursement for various out-of-pocket expenses that occurred as a result of non-VA medical services that may be eligible for payment under 38 CFR 17.4025 (Veterans Community Care Program), 38 CFR 17.120 (Unauthorized), 38 CFR 17.1002 (Millennium Bill), and 38 CFR 17.1200—17.1230 (COMPACT Act). In order for VA to process and repay these expenses, Veterans must submit necessary information to support their request and justify reimbursement.

VA Form 10–320 will be used to collect information from Veterans seeking reimbursement for certain medical expenses. This claim form will be used to support payment of certain unauthorized non-VA medical services. Veterans may use this form to submit claims for reimbursement for a variety of services, such as pharmacy costs, training classes, emergent suicide care, and other medical expenses.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published at 88 FR 73942–73943 on October 27, 2023.

Affected Public: Individuals or Households.

Estimated Annual Burden: 14,283.

Estimated Average Burden per Respondent: 10 minutes.

Frequency of Response: Once annually.

Estimated Number of Respondents: 85,700.

By direction of the Secretary.

Maribel Aponte,

VA PRA Clearance Officer, Office of Enterprise and Integration, Data Governance Analytics, Department of Veterans Affairs.

[FR Doc. 2023–28807 Filed 12–29–23; 8:45 am]

BILLING CODE 8320–01–P

FEDERAL REGISTER

Vol. 89 Tuesday,

No. 1 January 2, 2024

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 226

Endangered and Threatened Species; Designation of Critical Habitat for the Nassau Grouper; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 223 and 226

[Docket No. 231219–0312]

RIN 0648–BL53

Endangered and Threatened Species; Designation of Critical Habitat for the Nassau Grouper

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

ACTION: Final rule.

SUMMARY: We, NMFS, designate critical habitat for the threatened Nassau grouper (*Epinephelus striatus*) pursuant to section 4 of the Endangered Species Act (ESA). Specific areas designated as critical habitat contain approximately 2,384.67 sq. kilometers (km) (920.73 sq. miles) of aquatic habitat located in waters off the coasts of southeastern Florida, Puerto Rico, Navassa, and the United States Virgin Islands (USVI). We have considered positive and negative economic, national security, and other relevant impacts of the critical habitat designation, as well as all public comments that were received.

DATES: This rule becomes effective February 1, 2024.

ADDRESSES: The final rule, maps, Final Regulatory Flexibility Analysis, and Critical Habitat Report used in preparation of this final rule are available on the NMFS website at *https://www.fisheries.noaa.gov/national/endangered-species-conservation/critical-habitat.* All comments and information received are available at *http://www.regulations.gov.* All documentation is also available upon request.

FOR FURTHER INFORMATION CONTACT: Orian Tzadik, NMFS Southeast Region, *Orian.Tzadik@noaa.gov,* 813–906–0353.

SUPPLEMENTARY INFORMATION: In accordance with section 4(b)(2) of the ESA and our implementing regulations (50 CFR 424.12), this final rule is based on the best scientific data available concerning the range, biology, habitat, threats to the habitat, and conservation objectives for the Nassau grouper (*Epinephelus striatus*). We have reviewed the available data and public comments received on the proposed rule. We used the best data available to identify: (1) features essential to the conservation of the species; (2) the specific areas within the occupied geographical areas that contain the physical essential feature that may require special management considerations or protection; (3) the Federal activities that may impact the critical habitat; and (4) the potential impacts of designating critical habitat for the species. This final rule is based on the biological information and the economic, national security, and other relevant impacts described in the Critical Habitat Report. This supporting document is available online (see **ADDRESSES**) or upon request (see **FOR FURTHER INFORMATION CONTACT**).

Background

On June 29, 2016, we published a final rule that listed Nassau grouper as a threatened species (81 FR 42268). The listing rule identified fishing at spawning aggregations and inadequate law enforcement as the most serious threats to this species. No critical habitat was designated for the Nassau grouper at that time.

On October 17, 2022, NMFS proposed to designate critical habitat for Nassau grouper within U.S. jurisdictions throughout the range of the species. We requested public comment on the proposed designation and supporting reports during a 60-day comment period, which closed on December 15, 2022 (87 FR 62930). The essential features of the proposed Nassau grouper critical habitat consisted of (1) nearshore to offshore areas necessary for recruitment, development, and growth of Nassau grouper containing a variety of benthic types that provide cover from predators and habitat for prey, and (2) marine sites used for spawning and adjacent waters that support movement and staging associated with spawning. The final rule does not modify the definitions of these essential features but does identify several new areas containing these features. The proposed rule identified 19 specific areas, or units of critical habitat, in waters off the coasts of southeastern Florida, Puerto Rico, Navassa, and the USVI that contain the essential features. The area covered by the Naval Air Station Key West (NASKW) Integrated Natural Resource Management Plan (INRMP) was found to be ineligible for designation pursuant to section 4(a)(3)(B)(i) of the ESA due to the conservation benefits the INRMP affords the Nassau grouper. Pursuant to section 4(b)(2) of the ESA, no areas were proposed for exclusion from the designation on the basis of economic, national security, and other relevant impacts. We did not propose to designate any unoccupied critical habitat.

This final rule relies on the ESA section 4 implementing regulations that are currently in effect, which include provisions that were revised or added in 2019. As explained in the proposed critical habitat rule, on July 5, 2022, the United States District Court for the Northern District of California issued an order vacating the ESA section 4 implementing regulations that were revised or added to 50 CFR part 424 in 2019, which included changes made to the definition of physical or biological feature and the criteria for designating unoccupied critical habitat (''2019 regulations''; 84 FR 45020, August 27, 2019). In the proposed rule, we determined that the critical habitat determination and designation would be the same under the 50 CFR part 424 regulations as they existed before 2019 and under the regulations as revised by the 2019 rule. On September 21, 2022, the U.S. Court of Appeals for the Ninth Circuit granted a temporary stay of the district court's July 5 order, and on November 14, 2022, the Northern District of California issued an order granting the government's request for voluntary remand without vacating the 2019 regulations. As a result, the 2019 regulations are once again in effect, and we are applying the 2019 regulations here. Following the remand of the 2019 regulations, on June 22, 2023, NMFS and the U.S. Fish and Wildlife Service published a proposed rule to revise the ESA section 4 implementing regulations (88 FR 40764). Thus, for purposes of this final rule, we also considered whether our analyses or conclusions would be any different under the regulations in effect prior to 2019 or under the recently proposed regulations (87 FR 62930). We have determined that while our analysis would differ in some respects, the conclusions ultimately reached and presented here would be the same under either set of regulations.

This final rule describes the critical habitat for Nassau grouper in waters off the coasts of Florida, and the U.S. Caribbean (*i.e.,* waters off the coasts of Navassa Island, Puerto Rico, and the U.S. Virgin Islands) and the basis for its designation. It summarizes relevant information regarding the biology and habitat use of Nassau grouper; the methods used to develop the critical habitat designation; a summary of, and responses to, public comments received; and the final critical habitat determination. The more detailed analyses that contributed to the conclusions presented in this final rule, including the analysis of areas eligible for designation, can be found in the Critical Habitat Report (NMFS, 2022)

and the Nassau Grouper Biological Report (Hill and Sadovy de Mitcheson, 2013). These supporting documents are referenced throughout this final rule and are available for review (see **ADDRESSES**).

Statutory and Regulatory Background for Critical Habitat Designations

Section 3(5)(A) of the ESA defines critical habitat as (i) the specific areas within the geographical area occupied by the species, at the time it is listed, on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed, upon a determination by the Secretary of Commerce (Secretary) that such areas are essential for the conservation of the species. (16 U.S.C. 1532(5)(A)). Conservation is defined in section 3(3) of the ESA as the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary (16 U.S.C.1532(3)). Section 3(5)(C) of the ESA provides that, except in those circumstances determined by the Secretary, critical habitat shall not include the entire geographical area which can be occupied by the threatened or endangered species. Our regulations provide that critical habitat shall not be designated within foreign countries or in other areas outside U.S. jurisdiction (50 CFR 424.12(g)).

Section 4(a)(3)(B)(i) of the ESA prohibits designating as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DOD) or designated for its use that are subject to an INRMP prepared under section 101 of the Sikes Act (16 U.S.C. 670a) if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is designated. Section 4(b)(2) of the ESA requires the Secretary to designate critical habitat for threatened and endangered species under the jurisdiction of the Secretary on the basis of the best scientific data available and after taking into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat. This section also grants the Secretary discretion to exclude any area from critical habitat if the Secretary determines the benefits of such exclusion outweigh the benefits of specifying such area as part of the critical habitat. However, the Secretary may not exclude areas if such exclusion will result in the extinction of the species (16 U.S.C. 1533(b)(2)).

Once critical habitat is designated, section 7(a)(2) of the ESA requires Federal agencies to ensure that actions they authorize, fund, or carry out are not likely to destroy or adversely modify that habitat (16 U.S.C. 1536(a)(2)). This requirement is in addition to the section 7(a)(2) requirement that Federal agencies ensure their actions are not likely to jeopardize the continued existence of ESA-listed species. Specifying the geographic area identified as critical habitat also facilitates implementation of section 7(a)(1) of the ESA by identifying areas where Federal agencies can focus their conservation programs and use their authorities to further the purposes of the ESA. See 16 U.S.C. 1536(a)(1). The ESA section 7 consultation requirements do not apply to citizens engaged in actions on private land that do not involve a Federal agency, for example if a private landowner is undertaking an action that does not require a Federal permit or is not federally funded. However, designating critical habitat can help focus the efforts of other, non-federal, conservation partners (*e.g.,* state and local governments, individuals, and non-governmental organizations).

Species Description

Nassau grouper, *Epinephelus striatus* (Bloch 1792), are long-lived, moderate-sized fish (family Epinephelidae) with large eyes and a robust body. Their coloration is generally buff, with distinguishing markings of five dark brown vertical bars, a large black saddle blotch on the caudal peduncle (*i.e.,* the tapered region behind the dorsal and anal fins where the caudal fin attaches to the body), and a row of black spots below and behind each eye. Juveniles exhibit a color pattern similar to adults (*e.g.,* Silva Lee, 1977). Individuals reach sexual maturity between 4 and 8 years (Sadovy and Colin, 1995; Sadovy and Eklund, 1999). Nassau grouper undergo shifts in habitat utilization as they mature: larvae settle in nearshore habitats and then as juveniles move to nearshore patch reefs (Eggleston, 1995), and eventually recruit to deeper waters and reef habitats (Sadovy and Eklund, 1999). As adults, individuals are sedentary except for when they aggregate to spawn—the timing of which appears to be linked to both lunar cycles and water temperature (Kobara *et al.,* 2013). Maximum age has been estimated as 29 years, based on an ageing study using sagittal otoliths (Bush *et al.,* 2006). Maximum size is about 122 cm total length (TL) and maximum weight is about 25 kg (Heemstra and Randall, 1993).

Natural History and Habitat Use

The Nassau grouper, like most large marine reef fishes, demonstrates a two-part life cycle with pelagic eggs and larvae but demersal juveniles and adults. It undergoes a series of shifts of both habitat and diet as it matures from larval to adult stage. Adults maintain resident home ranges (Randall, 1962 1963; Carter *et al.,* 1994), but may undergo long migrations to spawning aggregation sites (Bolden, 2000). Reproduction is known to occur only during annual aggregations, in which large numbers of Nassau grouper, ranging from dozens to tens of thousands, collectively gather to spawn at predictable times and locations.

In the following sections, we describe the natural history of the Nassau grouper as it relates to habitat needs from the egg and larval stage to settlement into nearshore habitats followed by a progressive offshore movement with increasing size and maturation.

Egg and Larval Planktonic Stage

Fertilized eggs are pelagic, measure about 1 mm in diameter, and have a single oil droplet about 0.22 mm in diameter (Guitart-Manday and Juárez-Fernandez, 1966). Data from eggs produced in an aquarium (Guitart-Manday and Juarez-Fernandez, 1966) and artificially fertilized in the laboratory (Powell and Tucker, 1992; Colin, 1992) indicate that spherical, buoyant eggs hatch 23–40 hours following fertilization. Eggs of groupers that spawn at sea require a salinity of about 30 parts per thousand (ppt) or higher for maximum survivorship and for them to float (Tucker, 1999). Both buoyancy and survivorship decrease as salinity declines below optimum levels, resulting in less than 50% hatching rates at salinities of 24 ppt (Ellis *et al.,* 1997).

The pelagic larvae begin feeding on zooplankton approximately 2–4 days after hatching (Tucker and Woodward, 1994). Newly hatched larvae in the laboratory measured 1.8 mm notochord length and were slightly curved around the yolk sac (Powell and Tucker, 1992). Nassau grouper larvae are rarely reported from offshore waters (Leis, 1987) and little is known of their movements or distribution. The pelagic larval period has been reported to range from 37 to 45 days based on otolith analysis of newly settled juveniles in the Bahamas (Colin *et al.,* 1997) with a mean of 41.6 days calculated from net-

caught samples (Colin, 1992; Colin *et al.,* 1997). Collections of pelagic larvae were made 0.8 to 16 km off Lee Stocking Island, Bahamas, at 2 to 50 m depths and from tidal channels leading onto the Exuma Bank (Greenwood, 1991). Larvae were widely dispersed or distributed in patches of various sizes (Greenwood, 1991). Larvae collected 10 days after back-calculated probable spawning date measure 6–10 mm standard length (SL) and attain a maximum size of 30 mm SL (Shenker *et al.,* 1993).

Larval Settlement

After spending about 40 days in the plankton, in the Bahamas Nassau grouper larvae have been found to recruit from the oceanic environment into demersal, bank habitats through tidal channels (Colin, 1992). This recruitment process can be brief and intense, occurring in short pulses during highly limited periods (often several days) each year, and has been found to be associated with prevailing winds, currents, and lunar phase (Shenker *et al.,* 1993). These late larvae/early juvenile Nassau grouper (18–30 mm total length (TL)) moved inshore from pelagic environments to shallower nursery habitats (Shenker *et al.,* 1993).

Most of what is known about the earliest cryptic life stages is known from research in the Bahamas where recently settled Nassau grouper were found to be on average 32 mm TL when they recruit into the nearshore habitat and settle out of the plankton (Eggleston, 1995). Newly settled or post-settlement fish found by Eggleston (1995) ranged in size from 25–35 mm TL and were patchily distributed at 2–3 m depth in substrates characterized by numerous sponges and stony corals with some holes and ledges residing exclusively within coral clumps (*e.g., Porites* spp.) covered by masses of macroalgae (primarily the red alga *Laurencia* spp.). Stony corals provided attachment sites for red algae since direct holdfast attachment was probably inhibited by heavy layers of coarse calcareous sand. This algal and coral matrix also supported high densities and a diverse group of xanthid crabs, hippolytid shrimp, bivalve, gastropods and other small potential prey items. In the USVI, Beets and Hixon (1994) observed groupers on a series of nearshore artificial reefs constructed of cement blocks with small and large openings and found the smallest Nassau groupers (30–80 mm TL) were closely associated with the substrate, usually in small burrows under the concrete blocks. Growth during this period was about 10 mm/month (Eggleston, 1995).

Juveniles

After settlement, Nassau grouper grow through three juvenile stages, defined by size, as they progressively move from nearshore areas adjacent to the coastline to shallow hardbottom areas and seagrass habitat. The size ranges for the three juvenile stages, which we discuss in more detail below, are approximations and are not always collected the same way between studies. Juvenile Nassau grouper reside within nearshore areas for about 1 to 2 years, where they are found associated with structure in both seagrass (Eggleston, 1995; Camp *et al.,* 2013; Claydon and Kroetz, 2008; Claydon *et al.,* 2009, 2010; Green, 2017) and hardbottom areas (Bardach, 1958; Beets and Hixon, 1994; Eggleston, 1995; Camp *et al.,* 2013; Green, 2017). Juvenile Nassau grouper leave these refuges to forage and when they transition to new habitats (Eggleston, 1995; Eggleston *et al.,* 1998).

Newly Settled (Post-Settlement) Juveniles (~2.5–5 cm TL)

Most of what is known about the earliest demersal life stages of Nassau grouper comes from a series of studies conducted from 1987–1994 near Lee Stocking Island in the Exuma Cays, Bahamas as reported by Eggleston (1995). These surveys and experiments in mangrove-lined lagoons and tidal creeks (1–4 m deep), seagrass beds, and sand or patch reef habitats helped identify the Nassau grouper's early life ontogenetic (*i.e.,* developmental) habitat changes. Benthic habitat of newly settled Nassau grouper (31.7 ± 2.9 mm TL (mean ± standard deviation), n=31) was described as exclusively within coral clumps (*e.g., Porites* spp.) covered by masses of macroalgae (primarily the red alga *Laurencia* spp.). These macroalgal clumps were patchily distributed at 2 to 3 m depths in substrate characterized by numerous sponges and stony corals, with some holes and ledges. The stony corals (primarily *Porites* spp.) provided attachment sites for red algae; direct holdfast attachment to the coral by the red algae was probably inhibited by heavy layers of coarse calcareous sand and minor amounts of silt and detritus. The open lattice of the algal-covered coral clumps provided cover and prey and facilitated the movement of individuals within the interstices of the clumps (Eggleston 1995). Post-settlement Nassau grouper were either solitary or aggregated within isolated coral clumps. Density of the post-settlement fish was greatest in areas with both algal cover and physical structure (Eggleston, 1995). A concurrent survey of the adjacent seagrass beds found abundance of nearly settled Nassau grouper was substantially higher in *Laurencia* spp. Habitats than in neighboring seagrass (Eggleston, 1995).

Eggleston (1995) found the functional relationship between percent algal cover and post-settlement density of Nassau grouper was linear and positive compared to other habitat characteristics such as algal displacement volume, and the numbers of holes, ledges, and corals. Recently-settled Nassau grouper have also been collected from tilefish (*Malacanthus plumieri*) rubble mounds, with as many as three fish together (Colin *et al.,* 1997). They have been reported as associated with discarded queen conch (*Strombus gigas*) shells and other debris within *Thalassia* beds (Claydon *et al.,* 2009, 2010) in the Turks and Caicos Islands, although the exact fish sizes observed are not clear. Post-settlement survival in macroalgal habitats is higher than in seagrass beds, showing a likely adaptive advantage for the demonstrated habitat selection (Dahlgren and Eggleston, 2000). Nassau grouper remain in the shallow nearshore habitat for about 3 to 5 months following settlement and grow at about 10 mm/month (Randall, 1983; Eggleston, 1995).

Early Juveniles (~4.5–15 cm TL)

Band transects performed near Lee Stocking Island, Bahamas, 4–5 months after the settlement period (June 1991–93) showed that early juveniles (8.5 ± 11.7 cm TL, n=65) demonstrated a subtle change in microhabitat; 88 percent were solitary within or adjacent to algal-covered coral clumps (Eggleston, 1991). As the early juveniles grew, reef habitats, including solution holes and ledges, took on comparatively greater importance as habitats (Eggleston, 1991). Low habitat complexity was associated with increased predation rates and lowered the survival of recruits (Dahlgren and Eggleston, 2000).

Early juveniles in the Bahamas have a disproportionately high association with the macroalgae *Laurencia* spp.; whereas other microhabitats (*e.g.,* seagrass, corals) are used in proportion to their availability (Dahlgren and Eggleston, 2001). Reports from Mona Island, Puerto Rico (Aguilar-Perera *et al.,* 2006) indicate that early juveniles (60–120 mm TL) were found at the edge of a seagrass patch, under rocks surrounded by seagrass, in a tire, and in a dissolution hole in shallow bedrock.

A conspicuous change in habitat occurs about 4–5 months post-settlement when Nassau grouper move

from nearshore macroalgae habitat to adjacent patch reefs located within either seagrass or hardbottom areas, between the nearshore environment and the offshore reefs. In the Bahamas, early juvenile Nassau grouper (12–15 cm TL) exhibited an ontogenetic movement from macroalgal clumps to patch reef habitats in the late summer and early fall after settlement in the winter as demonstrated by a significant decrease in juvenile density within the macroalgal habitat and concomitant increase in the seagrass meadows (Eggleston, 1995). Similarly in the Turks and Caicos, 87 percent of early juvenile Nassau grouper (identified as less than 12 cm TL, n=181) were found in seagrass and 10 percent were found in rock or rubble habitat (Claydon and Kroetz, 2008). Within the Turks and Caicos seagrass habitat, 44 percent of the early juveniles were found in discarded conch shells and 33 percent were found along blowout ledges (Claydon and Kroetz, 2008). Individuals were rarely seen in open areas; instead they were usually seen in close proximity to a structure or sheltering within structure (*i.e.,* discarded conch shell or blowout ledge). Density of Nassau grouper (>12 cm TL) was found to increase when discarded conch shells were placed in seagrass habitat (Claydon *et al.,* 2009), perhaps due to reduced mortality as the structure limited access of larger predators (Claydon *et al,.* 2010). On shallow constructed block reefs in the USVI, newly settled and early juveniles (3–8 cm TL) occupied small separate burrows beneath the reef while larger juveniles occupied holes in the reefs (Beets and Hixon, 1994).

Juvenile fish are vulnerable to predation (large fish, eels, other groupers and sharks) and utilize refuges to protect themselves (Beets and Hixon, 1994; Eggleston 1995; Claydon and Kroetz, 2008) and to forage for crustaceans using ambush predation techniques (Eggleston *et al.,* 1998; Claydon and Kroetz, 2008). Juveniles often associate with refuges proportional to their body size (Beets and Hixon, 1994) and seek new shelter as they grow (Eggleston, 1995). Suitable refuges provide some protection from predation; however, juveniles may leave their refuges to forage for food and during ontogenetic shifts in habitat (Eggleston, 1995).

Late Juveniles (~15–50cm TL)

Camp *et al.* (2013) conducted a broad-scale survey in the shallow nearshore lagoons of Little Cayman and found Nassau grouper (12–26 cm TL) on hardbottom areas more frequently than other more available habitats (sand, seagrass and algae). Eighty-two percent of juvenile Nassau grouper (18.4 ± 3.4 cm TL, n=142) were found at depths from 1.0–2.3 m in hardbottom habitat that provided crevices, holes, ledges and other shelter, with 10–66 percent of the holes with grouper also containing one or more cleaning organisms (*i.e.,* banded coral shrimp; *Elacatinus* gobies; or bluehead wrasse, *Thalasoma bifasciatum*). A small percentage of Nassau grouper (3 percent) were found in other habitat sheltered in holes (*i.e.,* concrete blocks or conch shells). Overall, the vast majority of juvenile Nassau grouper were associated with some form of shelter, suggesting that shelter represents a primary determinant of microhabitat use (Camp *et al.,* 2013).

As late juveniles, Nassau grouper may occupy seagrass habitats for food and protection from predators (Claydon and Kroetz, 2008); they forage for crustaceans in seagrass beds (Eggleston *et al.,* 1998). In a survey of seagrass bays in the USVI, Green (2017) found that juvenile Nassau grouper (n=46, 6–30 cm TL) were more abundant in areas with taller canopy and less dense native seagrasses compared to higher density of the same seagrasses and low canopy height. Differences in abundance were attributed to the taller canopy providing better cover from predators (Beets and Hixon, 1994). Tall seagrass also increases hiding places for their prey (Eggleston, 1995), and the less dense seagrass habitats permit better movement by Nassau grouper to forage (Green, 2017).

Juvenile Nassau grouper also rely on hardbottom structure for refuge from predation and ambush of potential prey. Nassau grouper residing on patch reefs use short bursts of speed that allow them to ambush crabs located up to 7 m away from a patch reef and return to a reef within 5 seconds (D. Eggleston pers. comm. as cited in Eggleston *et al.,* 1999). Suitable refuges provide cover for juvenile Nassau grouper with crevices, holes, and ledges proportionate to their body size (Beets and Hixon, 1994).

As juveniles grow, they move progressively to deeper banks and offshore reefs (Tucker *et al.,* 1993; Colin *et al.* 1997). In Bermuda, Bardach (1958) noted that few small Nassau grouper (less than 4 inches or 10 cm TL) were found on outer reefs, and few mature fish were found on inshore reefs. The weights of mature individuals trapped in deep areas were about double that of Nassau grouper captured in the shallow areas. While there can be an overlap of adults and juveniles in hardbottom habitat areas, size segregation generally occurs by depth, with smaller fish typically occurring in shallow inshore waters (3 to 17 m), and larger individuals more commonly occurring on deeper (18 to 55 m), offshore banks (Bardach *et al.,* 1958; Cervigón, 1966; Silva Lee, 1974; Radakov *et al.,* 1975; Thompson and Munro, 1978).

Adults

Both male and female Nassau grouper typically mature between 40 and 45 cm SL (44 and 50 cm TL), with most individuals attaining sexual maturity by about 50 cm SL (55 cm TL) and about 4–5 years of age (see Table 1 and additional details in Hill and Sadovy de Mitcheson, 2013) and with most fish spawning by age 7+ years (Bush *et al.,* 2006).

Adults are found near shallow, high-relief coral reefs and rocky bottoms to a depth of at least 90 m (Bannerot, 1984; Heemstra and Randall, 1993). Reports from fishing activities in the Leeward Islands show that although Nassau grouper were fished to 130 m, the greatest trap catches were from 52–60 m (Brownell and Rainey, 1971). In Venezuela, Nassau grouper were cited as common to 40 m in the Archipelago Los Roques (Cervigón, 1966). Nassau groupers tagged with depth sensors in Belize exhibited marked changes in depth at specific times throughout the year: 15–34 m from May through December, followed by movement to very deep areas averaging 72 m with a maximum of 255 m for a few months during spawning periods, then returning to depths of about 20 m in April (Starr *et al.,* 2007).

Adults lead solitary lives outside of spawning periods and tend to be secretive, often seeking shelter in reef crevices, ledges, and caves; rarely venturing far from cover (Bardach, 1958; Starck and Davis, 1966; Bohlke and Chaplin, 1968; Smith, 1961, 1971; Carter, 1988, 1989). Although they tend to be solitary, individuals will crowd peacefully in caves or fish traps with some proclivity to re-enter fish traps resulting in multiple recaptures (Randall, 1962; Sadovy and Eklund, 1999; Bolden, 2001). Nassau grouper have the ability to home (Bardach *et al.,* 1958; Bolden, 2000) and remain within a highly circumscribed area for extended periods (Randall, 1962 1963; Carter *et al.,* 1994; Bolden, 2001). In the Florida Keys, adult Nassau grouper (n=12) were found more often in high- and moderate-relief habitats compared to low-relief reefs (Sluka *et al.,* 1998). Habitat complexity has been found to influence home range size of adult Nassau grouper, with larger home ranges at less structurally-complex reefs (Bolden, 2001). Nassau grouper are

diurnal or crepuscular in their movements (Collette and Talbot, 1972). Bolden (2001) investigated diel activity patterns via continuous acoustic telemetry and found Nassau groupers are more active diurnally and less active nocturnally, with activity peaks at 1000 and 2000 hours.

Importance of Shelter

For many reef fishes, access to multiple, high-quality habitats and microhabitats represents a critical factor determining settlement rates, post-settlement abundances, mortality rates, and growth rates, because suitably sized refuges provide protection from predators and access to appropriate food (Shulman, 1984; Hixon and Beets, 1989; Eggleston *et al.,* 1997, 1998; Grover *et al.,* 1998; Lindeman *et al.,* 2000; Dahlgren and Eggleston, 2000, 2001; Dahlgren and Marr, 2004; Eggleston *et al.,* 2004). Many reef fish and invertebrates use hardbottom areas located between the nearshore environment and the outer reefs as juveniles.

As Nassau grouper move from their nearshore settlement habitat, through hardbottom and seagrass mosaic habitats, to the offshore reefs they occupy as adults, shelter provides an essential life history function by reducing risk of predation and promoting successful ambush hunting. Availability of suitably sized shelters may be a key factor limiting successful settlement and survival for juvenile Nassau grouper and related species that settle and recruit to shallow, off-reef habitats (Hixon and Beets, 1989; Eggleston, 1995; Lindeman *et al.,* 2000; Dahlgren and Eggleston, 2001). In addition, shelters of different sizes may govern the timing and success of ontogenetic movements to adult habitats (Caddy, 1986; Moran and Reaka, 1988; Eggleston, 1995). Camp *et al.* (2013) found juvenile Nassau grouper use shelters of varying sizes and degrees of complexity. Suitably-sized refuge from predators is expected to be a key characteristic supporting the survival and growth of juvenile Nassau grouper and other species, with access to food resources likely representing another key, and sometimes opposing, characteristic (Shulman, 1984; Hixon and Beets, 1989; Eggleston *et al.,* 1997, 1998; Grover *et al.,* 1998; Dahlgren and Eggleston, 2001). The transition to these new habitats, however, heightens predation risk if habitats are far apart (Sogard, 1997; Tupper and Boutilier, 1997; Almany and Webster, 2006) and there is minimal cover between them (Dahlgren and Eggleston, 2000; Caddy, 2008). Nassau grouper rely on shelter to safely move between these interconnected habitats. Benthic juvenile fish rely on complex structure to protect themselves from predation and the simplification of habitats can lead to declines in recruitment (Caddy, 2008). Stock replenishment is threatened by degradation of the habitats of successive life stages. Nassau grouper must often risk predation by crossing seascapes where cover connectivity is limited. Loss of cover therefore increases mortality, reduces foraging success, and affects other life-history activities.

Diet

In the planktonic stage, the yolk and oil in the egg sac nourish the early yolk-sac larva as it develops prior to hatching. The pelagic larvae begin feeding on zooplankton approximately 2–4 days after hatching when a small mouth develops (Tucker and Woodward, 1994). In the laboratory, grouper larvae eat small rotifers, copepods, and other zooplankton, including brine shrimp (Tucker and Woodward, 1994). Diet information for newly settled Nassau grouper is based on visual observations indicating that young fish (20.2–27.2 mm SL) feed on a variety of plankton, including pteropods, ostracods, amphipods, and copepods (Greenwood, 1991; Grover *et al.,* 1998). Similarly, in the Bahamas, recently settled and post-settlement stage (25–35 mm TL) Nassau grouper living within the macroalgae and seagrass blades have a primarily invertebrate diet of xanthid crabs, hippolytid shrimp, bivalves, and gastropods (Eggleston, 1995).

More detailed diet information is available for juveniles and adults. Stomach contents of juvenile Nassau grouper (5–19 cm TL) collected from seagrass beds near Panama contained primarily porcellanid and xanthid crabs with minor amounts of fish (Heck and Weinstein, 1989). Four dominant prey were ingested by small (< 20 cm TL) Nassau grouper in the Bahamas: stomatopods, palaemonid shrimp, and spider and portunid crabs (Eggleston et al., 1998). Fish and spider crabs made up the bulk of the diet for both mid-size (20.0–29.9 cm TL) and large (>30 cm TL) Nassau grouper in opposite proportion: spider crabs dominated the diet of the mid-size fish, while fish were the most important prey for large Nassau grouper (Eggleston *et al.,* 1998). Juveniles generally engulfed their prey whole (Eggleston *et al.* 1998). Smaller juveniles ate greater numbers of prey than larger grouper, but the individual prey items ingested by larger grouper weighed more (Eggleston *et al.,* 1998). Similar ontogenetic changes in the Nassau grouper diet were reported by Randall (1965) and Eggleston *et al.* (1998) who analyzed stomach contents and determined that juveniles fed mostly on crustaceans, while adults foraged mainly on fishes.

As adults, Nassau grouper are unspecialized-ambush-suction predators (Randall, 1965; Thompson and Munro, 1978) that lie under shelter, wait for prey, and then quickly expand their gill covers to create a current to engulf prey by suction (Thompson and Munro, 1978; Carter, 1986) and swallow their prey whole (Werner, 1974, 1977). Numerous studies describe adult Nassau groupers as piscivores, with their diet dominated by reef fishes: parrotfish (Scaridae), wrasses (Labridae), damselfishes (Pomacentridae), squirrelfishes (Holocentridae), snappers (Lutjanidae), groupers (Epinephelidae) and grunts (Haemulidae) (Randall and Brock, 1960; Randall, 1965, 1967; Parrish, 1987; Carter *et al,* 1994; Eggleston *et al.,* 1998). The propensity for adult Nassau grouper to consume primarily fish (Randall, 1965; Eggleston *et al.,* 1998) may be due to increased visual perception and swimming-burst speed with increasing body size (*e.g.,* Kao *et al.,* 1985; Ryer, 1988). Large Nassau grouper are probably foraging on reef-fish prey that are either associated with a reef (Eggleston *et al.,* 1997) or adjacent seagrass meadows. In general, groupers have been characterized from gut content studies as generalist opportunistic carnivores that forage throughout the day (Randall, 1965, 1967; Goldman and Talbot, 1976; Parrish, 1987), and perhaps being more active near dawn and dusk (Parrish, 1987; Carter *et al.,* 1994). Comparison of Nassau grouper stomach contents from natural and artificial reefs were found to be generally similar (Eggleston *et al.,* 1999). While Smith and Tyler (1972) classified Nassau grouper as nocturnally active residents, Randall (1967) investigated Nassau grouper gut contents and determined that although feeding can take place around the clock, most fresh food is found in stomachs collected in the early morning and at dusk. Silva Lee (1974) reported Nassau grouper with empty stomachs throughout daylight hours.

Spawning

The most recognized Nassau grouper habitats are the sites where adult males and females assemble briefly at predictable times during winter full moons for the sole purpose of reproduction. These spawning aggregation sites are occupied by Nassau grouper during winter full moon

periods, from about November and extending to May (USVI) (Nemeth *et al.,* 2006). Aggregations consist of hundreds, thousands, or, historically, tens of thousands of individuals. Some aggregations have consistently formed at the same locations for 90 years or more (see references in Hill and Sadovy de Mitcheson 2013). All known reproductive activity for Nassau grouper occurs in aggregations; pair spawning has not been observed. About 50 spawning aggregation sites have been recorded, mostly from insular areas in the Bahamas, Belize, Bermuda, British Virgin Islands, Cayman Islands, Cuba, Honduras, Jamaica, Mexico, Puerto Rico, Turks and Caicos, and the USVI; however, Nassau grouper may no longer form spawning aggregations at many of these sites (Figure 10 in Hill and Sadovy de Mitcheson, 2013). While both the size and number of spawning aggregations has diminished, spawning is still occurring in some locations (NMFS, 2013).

Spawning aggregation sites typically occur near the edge of insular platforms in a wide (6–50 m) depth range, as close as 350 m to the shore, and close to a drop-off into deep water. These sites are characteristically small, highly circumscribed areas, measuring several hundred meters in diameter, with a diversity of bottom types, including soft corals, sponges, stony coral outcrops, and sandy depressions (Craig, 1966; Smith 1990; Beets and Friedlander, 1992; Colin, 1992; Aguilar-Perera, 1994). Adults are known to travel hundreds of kilometers (Bolden, 2000) to gather at specific spawning aggregation sites. While aggregated, the Nassau grouper are extremely vulnerable to overfishing (Sadovy de Mitcheson *et al.,* 2008).

It is not known how Nassau grouper select and locate aggregation sites or why they aggregate to spawn. Variables that are considered to influence spawning site suitability include geomorphological characteristics of the seabed, hydrodynamics including current speed and prevailing direction of flow to disperse eggs and larvae, seawater temperature, and proximity to suitable benthic habitats for settlement (Kobara and Heyman, 2008). The link between spawning sites and settlement sites is not well understood. The geomorphology of spawning sites has led researchers to assume that offshore transport was a desirable property of selected sites. However, currents in the vicinity of aggregation sites do not necessarily favor offshore egg transport, leaving open the possibility that some stocks are at least partially self-recruiting. Additional research is needed to understand these spatial dynamics.

The biological cues known to be associated with Nassau grouper spawning include photoperiod (*i.e.,* length of day), water temperature, and lunar phase (Colin, 1992). The timing and synchronization of spawning may be to accommodate immigration of widely dispersed adults, facilitate egg dispersal, or reduce predation on adults or eggs.

Movement

''Spawning runs,'' or movements of adult Nassau grouper from coral reefs to spawning aggregation sites, were first described in Cuba in 1884 by Vilaro Diaz, and later by Guitart-Manday and Juarez-Fernandez (1966). Nassau grouper migrate to aggregation sites in groups numbering between 25 and 500, moving parallel to the coast or along shelf edges or inshore reefs (Colin, 1992; Carter *et al.,* 1994; Aguilar-Perera and Aguilar-Davila, 1996; Nemeth *et al.,* 2009). Distance traveled by Nassau grouper to aggregation sites is highly variable; some fish move only a few kilometers, while others move up to several hundred kilometers (Colin, 1992; Carter *et al.,* 1994; Bolden, 2000). Observations suggest that individuals may return to their original home reef following spawning (Semmens *et al.,* 2007).

Larger fish are more likely to return to aggregation sites and spawn in successive months than smaller fish (Semmens *et al.,* 2007). Nassau grouper have been shown to have high site fidelity to an aggregation site, with 80 percent of tagged Nassau grouper returning to the same aggregation site, Bajo de Sico, each year over the 2014–2016 tracking period in Puerto Rico (Tuohy *et al.,* 2016). The area occupied during spawning by Nassau grouper is smaller at Bajo de Sico compared to Grammanik Bank off St. Thomas. Acoustic detections of tagged Nassau grouper revealed a southwesterly movement from the Puerto Rican shelf to the Bajo de Sico in a narrow corridor (Tuohy *et al.,* 2017).

Spawning Activity and Behavior

Spawning occurs for up to 1.5 hours around sunset for several days (Whaylen *et al.,* 2007). All spawning events have been recorded within 20 minutes of sunset, with most within 10 minutes of sunset (Colin, 1992). At spawning aggregation sites, Nassau grouper tend to mill around for a day or two in a ''staging area'' adjacent to the core area where spawning activity later occurs (Colin, 1992; Kadison *et al.,* 2010; Nemeth, 2012). Courtship is indicated by two behaviors that occur late in the afternoon: ''following'' and ''circling'' (Colin, 1992). The aggregation then moves into deeper water shortly before spawning (Colin, 1992; Tucker *et al.,* 1993; Carter *et al.,* 1994). Progression from courtship to spawning may depend on aggregation size, but generally fish move up in the water column, with an increasing number of the fish exhibiting the bicolor phase (*i.e.* when spawning animals change to solid dark and white colors, temporarily losing their characteristic stripes) (Colin, 1992; Carter *et al.,* 1994). Following the release of sperm and eggs, there is a rapid return of the spawning individuals to the bottom.

Repeated spawning occurs at the same site for up to three consecutive months generally around the full moon or between the full and new moons (Smith, 1971; Colin, 1992; Tucker *et al.,* 1993; Aguilar-Perera, 1994; Carter *et al.,* 1994; Tucker and Woodward, 1994). Examination of female reproductive tissue suggests multiple spawning events across several days at a single aggregation (Smith, 1972). A video recording shows a single female in repeated spawning rushes during a single night, repeatedly releasing eggs (Colin, 1992).

Spawning Aggregations in U.S. Waters

The best available information suggests that spawning in U.S. waters occurs at three sites: Bajo de Sico in waters off the coast of Puerto Rico (Scharer et al., 2012), Grammanik Bank in waters off the coast of the USVI (Nemeth et al., 2006), and Riley's Hump within the Tortugas South Ecological Reserve in Florida (Locascio and Burton 2015; J. McCawley, Pers. comm., December 9, 2022). These three sites are all at least partially protected under existing fishery regulations, as discussed below. For all three sites, it is unclear whether they are reconstituted (*i.e.,* reestablished after depletion) or novel spawning sites. Nassau grouper spawning has been positively confirmed at Bajo de Sico (Scharer et al. 2012; Scharer et al. 2017; Tuohy et al. 2017) and Grammanik Bank (Nemeth et al. 2006; Nemeth et al. 2009; Nemeth et al. 2023). At Riley's Hump, visual and acoustic evidence suggests that spawning is occurring there (Locascio and Burton 2015; J. McCawley, Pers. comm., December 9, 2022). A spawning aggregation site historically existed on the eastern tip of Lang Bank, USVI that was extirpated in the early 1980s; however, we have insufficient information regarding its continued existence or its current value to Nassau grouper spawning.

Bajo de Sico

Bajo de Sico, in waters off the coast of Puerto Rico, is a submerged offshore seamount located in the Mona Passage off the insular platform of western Puerto Rico approximately 29 km west of Mayaguez (Scharer-Umpierre *et al.,* 2014). Reef bathymetry is characterized by a ridge of highly rugose rock promontories ranging in depths from 25 to 45 m, which rise from a mostly flat, gradually sloping shelf that extends to 100 m deep. Below this depth, the shelf ends in a vertical wall that reaches depths of 200–300 m to the southeast and over 1,000 m to the north (Tuohy *et al.,* 2015). Most of the shallow (<180 m depth) areas of this 11 km² seamount are located in the U.S. exclusive economic zone (EEZ). Bajo de Sico is considered a mesophotic coral ecosystem due to the range of depths and coral/algae development. Where water depths are less than 50 m, this area is characterized by a reef top, vertical reef wall and rock promontories, colonized hardbottom with sand channels, uncolonized gravel, and substantial areas of rhodolith reef habitat (Garcia-Sais *et al.,* 2007).

In 1996, NMFS approved a 3-month seasonal fishing closure (December 1 through February 28) in Federal waters at Bajo de Sico to protect spawning aggregations of red hind (61 FR 64485, December 5, 1996); the closure also partially protects Nassau grouper spawning aggregations (Scharer *et al.,* 2012). During the closure period, all fishing was prohibited (61 FR 64485). A later rule prohibited the use of bottom-tending gear, including traps, pots, gillnets, trammel nets, and bottom longlines, in Bajo de Sico year-round (70 FR 62073, October 28, 2005). In 2010, NMFS approved a modification to the Bajo de Sico seasonal closure, extending the closure period to 6-months (October 1 through March 31), altering the restriction to prohibit fishing for and possessing Caribbean reef fish in or from Federal waters at Bajo de Sico during the closure period, and prohibiting anchoring by fishing vessels year-round in the area (75 FR 67247, November 2, 2010). The 2010 rule is still in place.

In February 2012, a Nassau grouper spawning aggregation was identified at Bajo de Sico when at least 60 individuals were observed via video and audio recordings exhibiting reproductive behaviors (Scharer *et al.,* 2012). While actual spawning was not observed on the 2012 video recordings, all four Nassau grouper spawning coloration patterns and phases (Smith, 1972; Colin, 1992; Archer *et al.,* 2012) were observed, including the bi-color phase associated with peak spawning activity (Scharer *et al.,* 2012). Subsequent diver surveys conducted from January 25 to April 5, 2016, indicated between 5–107 individuals at the site, with the greatest number occurring in February (Scharer *et al.,* 2017). The highest detection rate of tagged Nassau grouper (n=29) occurred in February and March, with other detections in January and April, all peaking following the full moon (Scharer *et al.,* 2017). The depth range (40 to 155 m) being used by Nassau grouper at the Bajo de Sico exceeds other locations (Scharer *et al.,* 2017).

Grammanik Bank, USVI

Grammanik Bank, USVI is located approximately 4 km east of the Hind Bank Marine Conservation District (MCD), on the southern edge of the Puerto Rican Shelf. Grammanik Bank is a narrow deep coral reef bank (35–40 m) about 1.69 km long and 100 m wide at the widest point located on the shelf edge about 14 miles south of St. Thomas. It is bordered to the north by extensive mesophotic reef and to the south by a steep drop-off and a deep *Agaricea* reef at 200–220 ft (60–70 m) (Nemeth *et al.,* 2006; Scharer *et al.,* 2012). The benthic habitat is primarily composed of a mesophotic reef at depths between 30–60 m, which includes a combination of *Montastrea* and *Orbicella* coral and hardbottom interspersed with gorgonians and sponges (Smith *et al.,* 2008). Corals are present on Grammanik Bank at depths between 35 and 40 m and the coral bank is bordered to the east and west by shallower (25 to 30 m) hardbottom ridges along the shelf edge, which is sparsely colonized by corals, gorgonians, and sponges (Nemeth *et al.,* 2006). When Hind Bank MCD was established in 1999 as the first no-take fishery reserve in the USVI to protect coral reef resources, reef fish stocks, including red hind (*E. guttatus*), and their habitats (64 FR 60132, November 4, 1999), fishing pressure is thought to have moved to the adjacent Grammanik Bank (Nemeth *et al.,* 2006). Fishing is prohibited for all species at Hind Bank MCD year-round. At Grammanik Bank, all fishing for species other than highly migratory species is prohibited from February 1 to April 30 of each year. The initial intent of the spatial closure was to protect yellowfin grouper (*Mycteroperca venenosa*) when they aggregate to spawn (70 FR 62073, October 28, 2005; Scharer *et al.,* 2012), but this closure has also proven beneficial for the protection of spawning aggregations of tiger grouper (*M. venenosa*), yellowmouth grouper (*M. interstitialis*), cubera snapper (*Lutjanus cyanopterus*) and Nassau grouper (Nemeth et al. 2006).

Approximately 100 Nassau grouper were observed aggregating at the Grammanik Bank in 2004 between January and March (Nemeth *et al.,* 2006). This discovery marked the first documented appearance of a Nassau grouper spawning aggregation site within U.S. waters since the mid-1970s (Kadison *et al.,* 2009); however, commercial fishers were quick to target this new aggregation site and began to harvest both yellowfin (*Mycteroperca venenosa*) and Nassau groupers (Nemeth *et al.,* 2006). In 2005, NMFS approved a measure developed by the Caribbean Fisheries Management Council (70 FR 62073, October 10, 2005) that closed the Grammanik Bank to fishing for all species, with an exception for highly migratory species, from February 1 through April 30 each year. Diver surveys and collection of fish in traps recorded 668 Nassau grouper at Grammanik Bank between 2004 and 2009 (Kadison *et al.,* 2010). The fish were of reproductive size and condition and arrived on and around the full moon in February, March, and April and then departed 10 to 12 days after the full moon. The number of Nassau grouper observed in diver visual surveys suggests that Nassau grouper spawning biomass has increased at the aggregation site from a maximum abundance of 30 individuals sighted per day in 2005, to 100 per day in 2009 (Kadison *et al.,* 2009). By 2013, a maximum abundance of 214 individuals was recorded per day (Scharer-Umpierre *et al.,* 2014). Since then the maximum number of Nassau grouper counted per day during spawning periods has continued to increase, reaching over 500 in 2020, 750 in February 2021, and at least 800 in January 2022 (R. S. Nemeth, unpublished data).

The behavior of Nassau grouper in the aggregation has also changed dramatically in the past few years. From 2004 to 2019, Nassau grouper were found aggregating in small groups of 10, 20, or maybe as high as 40 individuals, resting close to the bottom among the coral heads. Nassau grouper were also observed to swim down the slope to 60 to 80 m, presumably to spawn, to an extensive *Agaricia larmarki* reef that Nassau grouper also use for shelter (R. S. Nemeth, unpublished data). These deep movements were later verified with acoustic telemetry data, and Nassau grouper were suspected of spawning near this deep reef area. Since 2020, Nassau grouper have been observed in groups of 100 to 300 fish

aggregated 5 to 10 m above the bottom. On January 24, 2022 (7 days after full moon), researchers captured the first ever observation of Nassau grouper spawning at the Grammanik Bank at 17:40 and a second spawning rush at 18:10 (R.S. Nemeth, pers. comm., February 13, 2022). Spawning occurred well above the bottom in 30 to 40 m depth. Vocalization by Nassau grouper has suggested that abundance and spawning of Nassau grouper peaked at Grammanik Bank after the full moons in January through May (Rowell *et al.,* 2013).

Nemeth *et al.* (2009) first reported synchronous movement of Nassau grouper during the spawning period between Hind Bank MCD and Grammanik Bank using acoustic telemetry. Both Nassau and yellowfin groupers primarily used two of three deep (50 m) parallel linear reefs that link Grammanik Bank with the Hind Bank MCD and lie in an east-west orientation parallel to the shelf edge. The linear reef about 300 to 500 m north of the shelf edge was used mostly by Nassau grouper. Acoustic telemetry and bioacoustic recordings were later integrated by Rowell *et al.* (2015) to identify a synchronized pathway taken by pre- and post -spawning Nassau grouper to the Grammanik Bank spawning site from the nearby Hind Bank MCD. While not every Nassau grouper was found to use this spawning route, the majority (64 percent) of the tagged fish followed this specific route on a regular or often daily basis during the week when spawning was occurring at Grammanik Bank. Because 56 percent of the tagged Nassau grouper (n=10) traversed between Hind Bank MCD and Grammanik Bank during spawning, it was suggested by Nemeth *et al.* (2009) and by Nemeth *et al.* (2023), that the boundary of the Grammanik Bank fishing closure area be expanded to the south, north, and west to protect the moving fish.

It remains unknown whether the increasing abundance at the Nassau grouper aggregation at Grammanik Bank is a result of: (1) Remnant adults from the nearby overfished aggregation site (the historical Grouper Bank, now located within the Hind Bank Marine Conservation District) shifting spawning locations to the Grammanik Bank, a distance of about 5 km; (2) Larvae dispersed from distant spawning aggregations elsewhere in the Eastern Caribbean that have settled on the St. Thomas/St. John shelf, matured, and migrated to the Grammanik Bank spawning site; or (3) Self-recruitment by local reproduction from the remnant population. Each of these recovery scenarios is supported by various researchers who have observed these same phenomena in separate locations. The first scenario is supported by Heppel *et al.* (2013), who found that Nassau grouper visit multiple aggregation sites during the spawning season, yet all fish aggregate and spawn at a single location. The second scenario is supported by Jackson *et al.* (2014), who found strong genetic mixing of Nassau grouper populations among the Lesser and Greater Antilles, including Turks and Caicos. Bernard *et al.* (2015) also found that external recruitment is an important driver of the Grammanik Bank spawning aggregation recovery. The third scenario relies on self-recruitment, a popular strategy of recruitment among marine species.

Riley's Hump, Florida

Riley's Hump, Florida, is located approximately 16 km to the southwest of the Dry Tortugas National Park and is within the boundaries of the Tortugas South Ecological Reserve. The larger area of the Dry Tortugas—which encompasses the Dry Tortugas National Park, the Tortugas Bank, the Tortugas South Ecological Reserve, and the Tortugas North Ecological Reserve—includes a series of carbonate banks and sand shoals located southwest of the Florida continental margin. Riley's Hump is one of these carbonate banks, separated from the Tortugas Bank to the north by a deep trough, which is filled with thick sedimentary deposits. The bank crests at about 30 m, and has a 20 m escarpment at the shelf break on the south side of the bank (Mallinson *et al.,* 2003). While coral cover on Riley's Hump is relatively low, fish diversity is high and is characterized by species that are rare in other locations (Dahlgreen *et al.,* 2001).

Riley's Hump is located within the boundaries of the Tortugas South Ecological Reserve, which has been closed to fishing since 2001, when both the North and South Ecological Reserves were established, adjacent to the Dry Tortugas National Park. The Tortugas South Ecological Reserve hosts several known annual spawning aggregations, including aggregations of mutton snapper, and likely black grouper, red grouper, red hind, and Nassau grouper (Locascio and Burton, 2015). The location and depth of Riley's Hump make it particularly difficult to conduct annual monitoring projects. However, visual surveys have documented higher densities of Nassau groupers at Riley's Hump than anywhere in Florida, and are estimated at roughly 1 adult per 0.04 acres (D. Morley, Pers. comm., September 6, 2023). Some observations have included individuals displaying colorations and producing sounds associated with spawning (Locascio and Burton, 2015, J. Locascio, Pers. comm., September 6, 2023).

The mechanism behind the spawning aggregation at Riley's Hump remains unclear. The southern Florida reef tract is near the northern extent of the range of Nassau grouper, and the species is extremely rare in this location. However, historical accounts suggest that the species was once more common in the area; this aggregation could be a remnant of a depleted historical aggregation, or a new aggregation that is being formed by individuals which have settled and matured in the area.

Summary of Changes From the Proposed Critical Habitat Designation

We evaluated the comments and new information received from the public during the public comment period. Based on our consideration of these comments and the best scientific information available (as noted below in the Summary of Comments and Responses section), we made the following substantive changes to the final rule:

1. Based on new information received during the public comment period, coupled with additional local ecological knowledge and baseline ecological studies we obtained following publication of the proposed rule, and as described above (see *Natural History and Habitat Use*), Riley's Hump, Florida, is considered a third spawning aggregation area in U.S. waters, and we are including this area in the critical habitat designation. To reflect this change in the critical habitat designation, we added the following textual description of the Riley's Hump spawning unit to read as follows: Spawning Site Unit 3—Riley's Hump—All waters encompassing Riley's Hump located southwest of the Dry Tortugas out to the 35 m isobath on the north, west, and east side of the hump and out to the 50 m isobath on the south side of the hump. See comment 10 and our response to the comment for further explanation of this change.

2. We extended the offshore boundary of Puerto Rico Unit 1 out to the 50 m isobaths off the islands of Mona and Monito and modified the associated description to read as follows: Puerto Rico Unit 1—Isla de Mona and Monito—All waters surrounding the islands of Mona and Monito from the shoreline to the 50 m isobaths. This change was driven by years of monitoring data and scientific observations we received during the public comment period from an

internationally-recognized researcher, whose work includes in-depth studies of habitat use by Nassau grouper at these locations. Comment 8 and our response to the comment provides further explanation of this change.

3. We extended the offshore boundary for Puerto Rico Unit 2 out to the 50 m isobaths off the island of Desecheo and revised the associated textual description to read as follows: Puerto Rico Unit 2—Desecheo Island—All waters surrounding the island of Desecheo from the shoreline to the 50 m isobath. This change was driven by years of monitoring data and scientific observations we received from the same researcher regarding this specific habitat unit. See comment 8 and our response to the comment for a more detailed explanation of this change.

We updated the maps of Puerto Rico Units 1 and 2 to reflect the extension of these units' boundaries and have included a new map of Spawning Site Unit 3—Riley's Hump. As a result of these changes, the total area encompassed by this final designation has increased by 32.4 sq. km (12.51 sq. miles), compared to the proposed designation.

Other Changes

In addition to substantive changes in the final rule described above, we also made clarifying changes to the final rule, and to the Critical Habitat Report, in response to public comments and new information. Specifically, the economic values are updated and detailed in both the final rule and the Critical Habitat Report. We considered whether the extended boundaries for Puerto Rico Units 1 and 2 and the addition of Spawning Site Unit 3—Riley's Hump would alter the number and nature of ESA section 7 consultations included in the analysis and whether any additional economic, national security, other relevant impacts that were not previously considered could be identified. We confirmed that no additional section 7 consultations relevant to the expansion of Puerto Rico Units 1 and 2 or the addition of Spawning Site Unit 3—Riley's Hump are expected or should be incorporated into the economic analysis, and we received no additional information regarding future planned or expected federal activities within these areas. Therefore, we project no additional economic impacts as a result of these changes. Further, the added areas are already located within reserve areas and are not used for military purposes. For this reason, the newly added areas pose no impacts to national security. No other relevant impacts were identified as a result of these changes in the specific areas of the critical habitat. Therefore, while the specific areas under consideration changed slightly to include an additional 32.4 sq. km (12.51 sq. miles), no changes were made to the conclusions of our ESA section 4(b)(2) analysis.

Summary of Public Comments and Responses

We solicited comments on the proposed rule and the supporting Critical Habitat Report during a 60-day comment period (87 FR 62930, October 17, 2022). To facilitate public participation, the proposed rule was made available on our website and comments were accepted via both standard mail and through the Federal eRulemaking portal, *https://www.regulations.gov*.

We received 18 comments; of these, 16 comments were generally supportive of the proposed rule. One comment opposed the proposed designation, but it provided no rationale or additional information to controvert our analysis or conclusions. Another comment was not relevant to the subject of Nassau grouper critical habitat and was likely submitted to the wrong comment docket. All public comments are posted on the Federal eRulemaking Portal (docket number: NOAA–NMFS–2022–0073). We reviewed and fully considered all relevant public comments and significant new information received in developing the final critical habitat designation. Where appropriate, we have combined similar comments from multiple commenters and addressed them together.

General Comments in Support of the Proposed Rule

Comment 1: The majority (89 percent) of the comments we received were supportive of the proposed rule and did not include substantive content or suggest any changes to the proposed critical habitat designations. Many of these comments noted that critical habitat designation is a crucial aspect of population recovery while also noting benefits to the surrounding ecosystem. Other comments pointed to the decline in habitat quality throughout the range of the Nassau grouper and the consequent need to preserve and protect habitat that is deemed critical to the species. Many of the comments also acknowledged human-induced reduction of the species via overfishing, specifically at spawning aggregation sites.

Response: We appreciate these comments. We look forward to working with stakeholders throughout the range of the Nassau grouper to promote the recovery of the species, and acknowledge that the critical habitat designation is one step in that process. As described in the final listing determination (81 FR42268), we concur that overfishing, particularly at spawning aggregations, is the primary threat to the species.

Comments on Need for Special Management Considerations or Protection

Comment 2: One commenter requested that we expand the *Need for special management considerations or protection* section.

Response: The commenter did not provide any additional detail as to what aspect of the section needed further expansion or explain why the commenter thought our analysis was insufficient. In response to this comment, we reviewed our discussion and explanation of how the identified physical and biological features essential to the conservation of Nassau grouper meet the ''may require special management considerations or protections'' aspect of the statutory definition of ''critical habitat.'' As described in the proposed rule (87 FR 62930), we found that the essential feature components that support settlement, development, refuge, and foraging (essential feature 1, components a through d) are particularly susceptible to impacts from human activity because of the relatively shallow water depth range where these features occur as well as their proximity to the coast. As a result, these features may be directly and indirectly impacted by activities such as coastal and in-water construction, dredging and disposal activities, beach nourishment, stormwater run-off, wastewater and sewage outflow discharges, point and non-point source pollutant discharges, fishing activities, and anthropogenically-induced climate change. The spawning aggregation sites essential feature (essential feature 2) is affected by activities that may make the sites unsuitable for reproductive activity, such as activities that inhibit fish movement to and from the sites or within the sites during the period the fish are expected to spawn, or create conditions that deter the fish from selecting the site for reproduction. Further, because the spawning aggregation sites are so discrete and rare and the species' reproduction depends on their use of aggregation sites, the species is highly vulnerable at these locations and loss of an aggregation site could lead to significant population impacts. By identifying and discussing

these various sources and types of impacts on the essential features of the critical habitat we provide sufficient demonstration that the essential features meet the ''may require special management or protections'' prong of the definition of critical habitat. We note that we are not obligated to identify all possible management concerns or protections that may be relevant, nor does the ESA require that we do so. However, in response to this comment, we note that activities that inhibit fish movement to and from spawning sites or create conditions that deter the fish from selecting the site for reproduction by altering the essential features described in this rule, might include the placement of in-water barriers, direct physical destruction of benthic habitats both at the site and within migratory corridors, and pollution (*e.g.,* chemical or noise) that renders the site less biologically suitable.

Comments on Economic Analysis

Comment 3: One commenter asked whether private landowners were contacted regarding the economic impact of the proposed critical habitat designation.

Response: Private landowners as well as all other stakeholders were given an opportunity to provide comments during the 60-day public comment period on the proposed rule. In addition, a thorough economic analysis was conducted as an integral part of the critical habitat proposed rule (81 FR 42268, October 17, 2022). All publicly available resources were used to identify economic impacts that would result from the designation of critical habitat. As explained in the economic analysis, the only types of activities for which private landowners might incur costs stemming from the critical habitat are those related to in-water and coastal construction (*e.g.,* docks, boat ramps, marina). Further, the economic analysis concludes that the designation would not result in the need for changes to such projects beyond those already required due to existing (''baseline'') regulations, such as the presence of the ESA-listed Nassau grouper and corals and existing designated critical habitat for seven species of listed corals. The only incremental costs potentially incurred by private landowners are the administrative costs of addressing effects to Nassau grouper critical habitat through informal and formal section 7 consultations, and most of these costs would be borne by the responsible federal action agency (*e.g.,* U.S. Army Corps of Engineers). Due to the presence of ESA-listed species and designated critical habitat for other species, these section 7 consultations would occur absent the designation of critical habitat for Nassau grouper. The analysis projects that fewer than two section 7 formal consultations and fewer than 80 informal consultations on construction-related projects would consider effects to Nassau grouper critical habitat over the next 10 years. This equates to less than 0.2 formal consultations and fewer than eight informal consultations per year. Based on the best available information, third party administrative section 7 costs directly attributable to Nassau grouper critical habitat would be approximately $510 per informal consultation (2022 dollars). It is highly unlikely that these costs would deter a private landowner from completing a construction project. As there would be no incremental costs to or restrictions placed on private landowners conducting activities that do not involve a federal agency, there is no basis for concluding there would be any loss in property values or impact on the scope or volume of non-federally regulated activities.

Comments on Exclusion of Managed Areas

Comment 4: One commenter asked why managed areas, as defined in the proposed rule, are not considered for critical habitat designation. A separate commenter referred to the proposed treatment of navigation channels as managed areas and requested that NMFS include navigation channels and their immediate surroundings within the critical habitat designation. This commenter also stated that federal activities that adversely affect critical habitat should be mitigated under ESA section 7 and not excluded from critical habitat designation.

Response: The proposed rule specified that an area would not be included in critical habitat if it is a managed area where the substrate is continually disturbed by planned management activities authorized by local, state, or Federal governmental entities at the time of critical habitat designation and will continue to be disturbed by such management. Examples of managed areas included dredged navigation channels, shipping basins, vessel berths, and active anchorages. Due to the ongoing use and maintenance of these managed areas and the persistent disturbance of the bottom, the areas are poor habitat with little to no ability to support the long-term conservation of Nassau grouper. Therefore, we did not include managed areas within the proposed critical habitat designation. We also explained in the proposed rule that channel dredging may result in sedimentation impacts beyond the actual channel edge, and to the extent these impacts are persistent, they are expected to recur whenever the channel is dredged and are of such a level that the areas in question are currently unsuitable to support the essential features of critical habitat. As a result, we consider such areas as part of the managed areas that are not included in the final designation. We note that ESA section 7 consultations on actions that propose new or modified navigation channels will consider impacts to the essential features of Nassau grouper critical habitat outside of pre-existing managed areas.

Comments on Predation Threats to the Species

Comment 5: One commenter questioned why impacts from invasive lionfish were not included in the critical habitat proposed rule and provided a reference that observed Nassau grouper in direct competition with the red lionfish in high quality habitats, as well as predation by lionfish on juvenile Nassau grouper.

Response: The final listing determination for Nassau grouper (81 FR42268; June 29, 2016) considered the factors for listing as outlined in section 4(a)(1). One of these factors (factor C) identifies predation as a potential basis for listing a species. Based on the extinction risk analysis and supporting documentation in the biological report, it was determined that Nassau grouper is at a ''very low risk'' of extinction due to predation. Any additional threats from invasive species could be considered under risk factor E (*i.e.,* other natural or manmade factors affecting its continued existence), however, competition with invasive lionfish was not considered as a threat to the existence of the species, nor were any other invasive species considered as direct threats to the existence of Nassau grouper. Nassau grouper occupy a niche as a large-bodied predator within coral reef fish communities throughout its range. As an integral part of the fish community, they are subjected to competition with a variety of other species, including the red lionfish (*Pterois volitans*), but we have no information to undermine our previous conclusion that Nassau grouper is at low risk of extinction due to predation. Additionally, there is no indication that red lionfish alter the essential features of the critical habitat designation. We reviewed and considered the comment, as well as the referenced paper, and did not find a basis to alter the areas designated as critical habitat, nor the

essential features of critical habitat, as a result. The referenced paper specifically mentions that red lionfish do not prey on Nassau grouper, and therefore that effect was considered negligible.

Comments on the Essential Features

Comment 6: One commenter requested that the phrase ''close proximity'' in the description of the recruitment and developmental habitat essential feature be expanded upon in the final rule to increase public and federal agency awareness. The commenter also provided a copy of a peer-reviewed publication (Blincow *et al.,* 2020) that could be used to inform movement and range estimates.

Response: In our description of the essential features, we proposed to describe the intermediate hardbottom and seagrass areas in ''close proximity'' to the nearshore shallow subtidal marine nursery areas, and the offshore linear and patch reefs in ''close proximity'' to intermediate hardbottom and seagrass areas. We use the term ''close proximity'' to account for the high variability in habitat configurations, oceanographic conditions, and the movement patterns of individual Nassau grouper, which also vary across developmental stages, rather than prescribe a particular distance. We find that this term allows us to appropriately describe and include habitat components that are needed and accessible to maturing individual groupers as they recruit and progress to successive developmental stages and the bottom types that support each stage of development and to exclude areas that may have the prescribed bottom characteristics, but which are isolated from areas that support other developmental stages. As per the regulations for designating critical habitat (50 CFR 424.12) the description outlined above is the appropriate level of specificity for the essential feature based on the available information for this species.

The peer-reviewed publication (Blincow *et al.,* 2020) referenced by the commenter demonstrates a clear variability in depth use by Nassau grouper depending on the condition of the individual (*i.e.,* the relative health of the individual), but does not attempt to quantify the extent of daily movements. In addition, the referenced publication discusses movement patterns of Nassau grouper adults and does not include the juveniles that were discussed in the recruitment and developmental habitat essential feature. We therefore have retained the term ''close proximity'' in the description of the recruitment and development habitat essential feature as appropriate to prioritize the proximity of progressive ontogenetic habitats rather than the range movements of individual adults.

Comments on Critical Habitat Units

Comment 7: One commenter suggested that Florida Unit 1 be expanded farther north, while Florida Units 3 and 4 be expanded to include areas off of Boca Chica and Key West.

Response: The commenter did not provide any new supporting evidence as to why the Florida units should be expanded beyond a slightly different interpretation of the same maps that we considered. The areas identified as critical habitat include the benthic types listed in the recruitment and developmental habitat essential feature, as determined by an analysis of the best available benthic maps, and the areas suggested by the commenter do not include the necessary features. Specifically, the areas included in Florida Units 1, 3, and 4 comprise hard bottom habitat with a mosaic of benthic habitats including pavement, seagrass, and carbonate sand and rubble. The areas adjacent to these units that are suggested by the commenter do not include the benthic types we specified for this essential feature, as the sites had clear breaks of contiguous habitats (*e.g.,* seagrass, colonized hardbottom) that were discontinued at the specified critical habitat boundaries and are therefore not designated as critical habitat.

Comment 8: One commenter requested the expansion of the critical habitat designations around the oceanic islands of Desecheo, Mona, and Monito, off the west coast of Puerto Rico, to include all platform areas up to the 50 m (164 ft) depth contour. They provided peer-reviewed scientific literature to support the assertion that the unique characteristics of these islands require special consideration with regards to habitat use by Nassau grouper.

Response: We agree with the commenter that these habitats should be included in the critical habitat designation and as mentioned above in the summary of changes, we have incorporated the suggestions into the final rule, specifically in Puerto Rico Units 1 and 2. The commenter provided ample scientific data, including years of monitoring data as well as scientific observation, to indicate that Nassau grouper use the platforms of these isolated islands differently than other insular shelf areas. Oceanographic conditions in the Mona Passage cause a biogeographic barrier that limits genetic connectivity on either side of the barrier (Baums *et al.,* 2006, Beltran *et al.,* 2017, Taylor and Hellberg, 2003), while promoting self-recruiting populations on the islands within the channel (Olson *et al.,* 2019). Due to the unique nature of these oceanic islands (*i.e.,* Mona, Monito, and Desecheo), including the extreme bathymetric slope and limited availability of shallow and nearshore habitats, the essential physical and biological features associated with recruitment and developmental habitat are found and used by all Nassau grouper life stages in benthic habitats from the shoreline up to depths of 50 m (Aguilar-Perera *et al.,* 2006, Scharer, 2009, Garcia-Sais *et al.,* 2017). We therefore determined that the recruitment and developmental habitat essential feature was present throughout these oceanic island shelf areas from the shoreline out to depths of 50 m.

Comment 9: One commenter suggested that information was missing from the Florida data analyses in that data from NOAA's National Coral Reef Monitoring Program (NCRMP) diver surveys regarding the density of Nassau grouper and their habitat use was not evaluated.

Response: The NCRMP dataset on fish communities, which is a subset of the Coral Reef Information System, is a stationary point count method to quantify fish diversity and abundance in coral reef environments under U.S. jurisdictions. The dataset is extremely useful to determine the presence or absence of a species, and therefore can be extrapolated to answer questions about the range of a species and habitat use. Evaluations of 23 years of NCRMP data (1999–2022) indicated Nassau grouper utilize the following habitat types: contiguous hardbottom, isolated patch reefs, spur and groove reef and rubble. Nassau grouper densities were extremely low throughout their range; however, the NCRMP data is consistent with the known range of the species, and is therefore consistent with the critical habitat designation. The dataset was therefore considered, but not incorporated into the rule nor the supporting documentation, due to the limitations of the data for the specific application of designating critical habitat for an extremely rare species.

Comment 10: One commenter requested expanding the critical habitat designation near the Dry Tortugas in Florida to include a feature known as ''Riley's Hump'' as a potential spawning aggregation site, citing the geomorphological features of the seamount as well as years of continuous monitoring at the site where individuals were observed to exhibit courting behavior, spawning color patterns, and

sounds associated with spawning activity.

Response: We agree with the commenter regarding the inclusion of Riley's Hump into the final ruling and have done so in the form of a new unit in the final rule, titled ''Spawning Site Unit 3—Riley's Hump.'' As the commenter points out, Riley's Hump is an extremely productive multi-species spawning aggregation site. The Florida Fish and Wildlife Research Institute has documented several grouper and snapper species aggregating and spawning at Riley's Hump. Nassau grouper have been observed among the fishes at these aggregation sites, and these individuals have displayed spawning coloration, behaviors, and sound production (Locascio and Burton, 2015). In addition, limited surveys at Riley's Hump have documented substantially higher Nassau grouper encounter rates (>66 percent of sample sites) as compared to the rest of the Florida reef tract (<1 percent of sample sites). We have concluded that Riley's Hump contains the spawning habitat essential feature and consequently warrants inclusion in the critical habitat designation due to the relatively higher density of Nassau grouper at the site, multiple observations of individuals exhibiting spawning behavior (including courtship coloration and sound production associated with spawning activity), the presence of these individuals at known spawning times, and the yearly reoccurrence of their presence.

Critical Habitat Identification and Designation

In the following sections, we describe the application of relevant definitions and requirements in the ESA and implementing regulations at 50 CFR part 424 and the key information and criteria used to prepare this critical habitat designation. In accordance with section 4(b)(2) of the ESA, this critical habitat designation is based on the best scientific data available and takes into consideration the economic impact, the impact on national security, and any other relevant impact of specifying any particular area as critical habitat. Scientific data used to identify critical habitat includes the information contained in the Biological Report for the Nassau grouper (Hill and Sadovy de Mitcheson, 2013), the proposed and final rules to list the Nassau grouper under the ESA (79 FR 51929, September 2, 2014; 81 FR 42268, June 29, 2016), articles in peer-reviewed journals, other scientific reports and fishery management plans, and relevant Geographic Information System (GIS) data (*e.g.,* shoreline data, U.S. maritime limits and boundaries data) for geographic area calculations and mapping. To identify specific areas that may qualify as critical habitat for Nassau grouper, in accordance with 50 CFR 424.12(b), we undertook the following steps: Identified the geographical area occupied by the species at the time of listing; identified physical or biological habitat features essential to the conservation of the species; identified the specific areas within the geographical area occupied by the species that contain one or more of the physical or biological features essential to the conservation of the species; determined which of these essential features may require special management considerations or protection; and evaluated whether any specific areas outside the geographical area occupied by the species are essential for the species' conservation. Our evaluations and conclusions are described in detail in the following sections.

Geographical Area Occupied by the Species

The phrase ''geographical areas occupied by the species,'' which appears in the statutory definition of critical habitat (16 U.S.C. 1532(5)(A)(i)), is defined by regulation as ''an area that may generally be delineated around species' occurrences, as determined by the Secretary (*i.e.,* range). Such areas may include those areas used throughout all or part of the species' life cycle, even if not used on a regular basis (*e.g.,* migratory corridors, seasonal habitats, and habitats used periodically, but not solely by vagrant individuals) (50 CFR 424.02).

Nassau groupers are found in tropical and subtropical waters of the western North Atlantic. The 2016 listing rule identified the distribution or range of the Nassau grouper as ''Bermuda and Florida (USA), throughout the Bahamas and Caribbean Sea'' (81 FR 42268, 42271; June 29, 2016) based on existing literature (*e.g.,* Heemstra and Randall, 1993). They generally live among shallow reefs but can be found in depths to 130 m (426 feet). Many earlier reports of Nassau grouper up the Atlantic coast of Florida to North Carolina have not been confirmed (Hill and Sadovy de Mitcheson, 2013).

We investigated the distribution of Nassau grouper in the Gulf of Mexico. As summarized in the 2016 listing rule, Nassau grouper is generally replaced ecologically in the eastern Gulf of Mexico, in areas north of Key West or the Tortugas, by red grouper (*E. morio*) (Smith, 1971). Nassau grouper are considered a rare or transient species off Texas in the northwestern Gulf of Mexico (Gunter and Knapp, 1951 in Hoese and Moore, 1998). The only confirmed sighting of Nassau grouper in the Flower Garden Banks National Marine Sanctuary (FGBNMS), which is located in the northwest Gulf of Mexico approximately 180 km southeast of Galveston, Texas, was reported by Foley *et al.* (2007). Since then, no additional Nassau grouper have been reported in the FGBNMS despite an extensive survey by remote operated vehicles (E. Hickerson, FGBNMS, personal communication, 2021). There are two records (1996 and 2006) of Nassau grouper in the Gulf of Mexico from the NMFS Southeast Area Monitoring and Assessment Program (SEAMAP) reef fish video (RFV) survey. This RFV survey of hardbottom habitats in the Gulf of Mexico has been conducted annually since 1992 (with the exception of 1998–2000 and 2020) at approximately 300 sites and targets snappers and groupers at mesophotic reefs out to the 200 m depth contour between the Florida Keys and Texas. Both sightings were presumed adult Nassau grouper and both occurred off the Florida west coast: one off the panhandle and one west of the Dry Tortugas (K. Rademacher, NMFS, personal communication, 2021). We conclude from the paucity of these reports that the Nassau grouper does not regularly occur in the United States portion of the Gulf of Mexico.

The range of the Nassau grouper spans the wider Caribbean, and specifically the east coast of Florida including the Florida Keys, Puerto Rico, and USVI in the United States (Hill and Sadovy de Mitcheson, 2013). Because we cannot designate critical habitat areas outside of U.S. jurisdiction (50 CFR 424.12(g)), the geographical area under consideration for this designation is limited to areas under the jurisdiction of the United States.

Physical and Biological Features Essential to Conservation

Within the geographical area occupied by the species, critical habitat consists of specific areas on which are found physical or biological features essential to the conservation of the species and which may require special management considerations or protection (16 U.S.C. 1532(3). Features essential to the conservation of the species are defined as features that are essential to support the life-history needs of the species, including but not limited to, water characteristics, soil type, geological features, sites, prey, vegetation, symbiotic species, or other

features. A feature may be a single habitat characteristic, or a more complex combination of habitat characteristics. Features may include habitat characteristics that support ephemeral or dynamic habitat conditions. Features may also be expressed in terms relating to principles of conservation biology, such as patch size, distribution distances, and connectivity (50 CFR 424.02).

To assess habitat features that are ''essential to the conservation'' of Nassau grouper, we considered the physical and biological features that are essential to support the life history needs and are essential to the conservation of Nassau grouper within the areas they occupy within U.S. waters. As noted previously, section 3 of the ESA defines the terms ''conserve,'' ''conserving,'' and ''conservation'' to mean: ''to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary'' (16 U.S.C. 1532(3)).

Because the reduction in the number of Nassau grouper through historical harvest and fishing at spawning aggregations was a major factor in the listing determination (81 FR 42286, June 26, 2016), Nassau grouper conservation necessitates increasing the number of individuals, particularly the spawning population. Therefore, we have identified physical and biological features that support reproduction, recruitment, and growth as essential to the species' conservation. For the Nassau grouper, critical habitat includes physical and biological features to support adult reproduction at the spawning aggregations, settlement of larvae, and subsequent growth to maturity. These features are essential to the conservation of the species because long-term population recovery relies on successful recruitment and the existence of individuals across a broad size range. Nassau grouper populations are dependent on settlement of pelagic larvae to coastal locations and rely on a contiguous reef system to accommodate habitat shifts from inshore locations to nearshore patch reefs and hardbottom areas and subsequent movement into offshore reef habitats as the individuals mature. Both natural and artificial reefs are used. While in nursery habitats, juvenile grouper associate with a variety of microhabitats, including macroalgae, seagrass, empty conch shells, coral patches, sponges, rubble mounds produced by sand tilefish (*Malcanthus plumieri*) (Bloch, 1786), artificial structures, and debris (Eggleston, 1995; Colin *et al.,* 1997; Eggleston *et al.,* 1998; Aguilar-Perera *et al.,* 2006; Claydon and Kroetz, 2008; Claydon *et al.,* 2009, 2011). Nassau grouper conservation requires habitat to support growth from larval settlement in the nearshore to maturity, with appropriate inter-habitat connectivity to support movement from nearshore habitat used for larval settlement, to intermediate areas used by juveniles, and finally to offshore areas used by adults. Observations at documented spawning sites indicate that spawning aggregation sites are typically located near the edge of an insular platform, often in areas that are close to shore, yet also close to a deep-water drop-off. These sites are generally small, some measuring several hundred meters in diameter, and can contain a wide diversity of bottom types (Craig, 1966; Smith, 1990; Beets and Friedlander, 1992; Colin, 1992; Aguilar-Perera, 1994). The spawning habitat designated as critical habitat include the specific sites used for spawning (*i.e.,* where the fish aggregate and release gametes into the water column) as well as any documented staging areas (*i.e.,* the areas used by adult Nassau grouper in between spawning events) and known migration corridors between neighboring spawning locations.

Within the habitats used by Nassau grouper as they progress through their life history stages, we have identified the following essential features, which remain unchanged from the proposed rule (87 FR 62930):

1. *Recruitment and developmental habitat.* Areas from nearshore to offshore necessary for recruitment, development, and growth of Nassau grouper containing a variety of benthic types that provide cover from predators and habitat for prey, consisting of the following:

a. Nearshore shallow subtidal marine nursery areas with substrate that consists of unconsolidated calcareous medium to very coarse sediments (>= 0.5 mm grain size, as per Wentworth 1922) and shell and coral fragments and may also include cobble, boulders, whole corals and shells, or rubble mounds, to support larval settlement and provide shelter from predators during growth and habitat for prey.

b. Intermediate hardbottom and seagrass areas in close proximity to the nearshore shallow subtidal marine nursery areas that provide refuge and prey resources for juvenile fish. The areas include seagrass interspersed with areas of rubble, boulders, shell fragments, or other forms of cover; inshore patch and fore reefs that provide crevices and holes; or substrates interspersed with scattered sponges, octocorals, rock and macroalgal patches, or stony corals.

c. Offshore linear and patch reefs in close proximity to intermediate hardbottom and seagrass areas that contain multiple benthic types; for example: coral reef, colonized hardbottom, sponge habitat, coral rubble, rocky outcrops, or ledges, to provide shelter from predation during maturation and habitat for prey.

d. Structures between the subtidal nearshore area and the intermediate hardbottom and seagrass area and the offshore reef area including overhangs, crevices, depressions, blowout ledges, holes, and other types of formations of varying sizes and complexity to support juveniles and adults as movement corridors that include temporary refuge that reduces predation risk as Nassau grouper move from nearshore to offshore habitats.

2. *Spawning Habitat.* Marine sites used for spawning and adjacent waters that support movement and staging associated with spawning.

Special Management Considerations or Protection

Specific areas within the geographical area occupied by a species at the time of listing may be designated as critical habitat only if they contain essential features that ''may require special management considerations or protection'' (16 U.S.C. 1532(5)(A)(i)(II)). Special management considerations or protection are defined as any ''methods or procedures useful in protecting the physical or biological features essential to the conservation of listed species'' (50 CFR 424.02).

The essential feature components that support settlement, development, refuge, and foraging (essential feature 1, components a through d) are particularly susceptible to impacts from human activity because of the relatively shallow water depth range where these features occur as well as their proximity to the coast. As a result, these features may be impacted by activities such as coastal and in-water construction, dredging and disposal activities, beach nourishment, stormwater run-off, wastewater and sewage outflow discharges, point and non-point source pollutant discharges, and fishing activities. Coastal and in-water construction, dredging and disposal, and beach nourishment activities can directly remove the essential feature that supports settlement, development, refuge, and foraging by dredging or by depositing sediments, making habitat unavailable. These same activities can impact the essential feature by creating turbidity during operations. Stormwater

run-off, wastewater and sewage outflow discharges, and point and non-point source pollutant discharges can adversely impact the essential feature by allowing nutrients and sediments from point and non-point sources to alter the natural levels of nutrients or sediments in the water column, which could negatively impact the substrate characteristics or health (*e.g.,* seagrass and corals). In addition to the direct removal of individuals from their preferred habitats, fishing activities can be destructive in nature and alter the essential features of the habitat by physical impacts of weights, nets, lead lines, and other gear types. Further, the global oceans are being impacted by climate change from greenhouse gas emissions. The impacts from all these activities, combined with those from natural factors (*e.g.,* major storm events) affect the habitat, including the components described for this essential feature. We conclude that this essential feature is currently and will likely continue to be negatively impacted by some or all of these factors.

The spawning habitat essential feature (essential feature 2) is affected by activities that may make the sites unsuitable for reproductive activity, such as activities that inhibit fish movement to and from the sites or within the sites during the period the fish are expected to spawn or create conditions that deter the fish from selecting the site for reproduction. Pollution leading to significant declines in water quality may render spawning locations unusable or reduce adult or egg survival. Acoustic disturbances may also inhibit spawning activity due to the acoustic cues used by the animal during courtship and spawning behaviors. Further, because the spawning aggregation sites are so discrete and rare, and the species' reproduction depends on their use of these sites, the species is highly vulnerable at these locations and loss of an aggregation site could lead to significant population impacts.

Based on the above, we determined that the essential features may require special management considerations or protection.

Specific Areas Within the Geographic Area Occupied by the Species Containing the Essential Features

To determine what areas qualify as critical habitat within the geographical area occupied by the species, we are required to identify ''specific areas'' within the geographical area occupied by the species that contain the physical or biological features essential to the conservation of the species (50 CFR 424.12(b)(1)(iii)). Delineation of the specific areas is done ''at a scale determined by the Secretary [of Commerce] to be appropriate'' (50 CFR 424.12(b)(1)). Our regulations also require that each critical habitat area be shown on a map with more-detailed information discussed in the preamble of the rulemaking documents in the **Federal Register**, which will reference each area by the State, county, or other local governmental unit in which it is located (50 CFR 424.12(c)). In determining the appropriate boundaries and mapping the specific areas of critical habitat, we relied on the best available data as further described below and including the Critical Habitat Report. A main goal in determining and mapping the boundaries of the specific areas is to provide a clear description and documentation of the areas containing the identified essential features. This is ultimately crucial to ensuring that Federal action agencies are able to determine whether their particular actions may affect the critical habitat.

Available habitat and bathymetric data layers were examined with the help of databases from Florida Fish and Wildlife Conservation Commission (FWC) Unified Florida Reef Tract, the Nature Conservancy, and NOAA to determine the contiguous areas of appropriate habitat complexity that contain a combination of habitat characteristics relevant to the essential features supporting Nassau grouper development, refuge, and foraging. For example, we used information from the National Centers for Coastal Ocean Science Benthic Habitat Mapping program that provides data and maps at *http://products.coastalscience.noaa.gov/collections/benthic/default.aspx* and the Unified Florida Reef Tract Map found at *https://myfwc.com/research/gis/regional-projects/unified-reef-map/.*

These resources provide maps and information on the location of habitat features important to Nassau grouper such as seagrass; unconsolidated calcareous sediment of medium to very coarse sediments (not fine sand) including shell and coral fragments interspersed with cobble, boulders, corals, and rubble mounds; continuous and discontinuous areas of seagrass and inshore patch and fore reefs; coral reef; and colonized hardbottom. Areas of these habitat types that were not sufficiently close to satisfy the need for contiguous habitat that could support nearshore to offshore movement of the species from larva to adult were excluded. Species presence or absence was also used to inform the decision making. Expert opinion was important to identifying areas that contain the feature. These experts included a NMFS regional GIS lead, a NMFS Nassau Grouper Recovery Coordinator with 30 years of protected species and Nassau grouper conservation research experience, and other Nassau grouper researchers. NMFS staff jointly reviewed all data prior to delineating proposed units, consulting with these experts.

To map these specific areas we reviewed available species occurrence, bathymetric, substrate, and water quality data. The highest resolution bathymetric data available were used for each geographic location. For areas in Florida and the FGBNMS, we used contours created from National Ocean Service Hydrographic Survey Data, NOAA ENCDirect bathymetric point data, National Park Service (NPS) data, and NOAA's Coastal Relief Model. For areas in Puerto Rico, we used contours derived from the National Geophysical Data Center's (NGDC) 2005 U.S. Coastal Relief Model. For areas in USVI, we used contours derived from NOAA's 2004–2015 Bathymetric Compilation. For areas in Navassa, we used contours derived from NOAA's NGDC 2006 bathymetric data. These bathymetric data were used with other geographic or management boundaries to draw the boundaries of each specific area on the maps in the critical habitat designation. Twenty specific areas, or units, were delineated based on these data, and are described later in this document (see *Occupied Critical Habitat Unit Descriptions*).

Within the geographical and depth ranges of the species, certain areas contain the appropriate substrates but, due to their consistently disturbed nature, do not provide the quality of substrate, structure, and often water quality, essential for the conservation of the threatened Nassau grouper. These disturbances are caused by human activities, such as dredging. While these areas may provide substrate for recruitment and growth, the periodic nature of direct human disturbance renders them unsuitable habitat to promote recruitment and growth. In some of these areas, the substrate has been persistently disturbed by planned management activities authorized by local, state, or Federal governmental entities at the time of critical habitat designation. For the purpose of this rule, we refer to the areas disturbed by planned management activities as ''managed areas.'' We expect that these areas will continue to be periodically disturbed by such planned management activities. Examples include dredged navigation channels, vessel berths, and

active anchorages. These managed areas are not designated as critical habitat.

NMFS is aware that dredging may result in sedimentation impacts beyond the actual dredge channel. To the extent that these impacts are persistent, are expected to recur whenever the channel is dredged, and are of such a level that the areas in question have already been made unsuitable, we consider such areas to be included as part of the managed area and therefore are not designated as critical habitat.

GIS data of the locations of some managed areas were available and extracted from the maps of the specific areas considered for critical habitat designation. These data were not available for every managed area. Regardless of whether the managed area is extracted from the maps depicting the specific areas designated as critical habitat, no managed areas as defined above are part of the specific areas within the geographical area occupied by the species that contain the essential feature related to recruitment and development habitat (essential feature 1).

Spawning site locations were identified and mapped based on a review of relevant literature, including existing maps used in Caribbean Fishery Management Council management measures, codified in the Code of Federal Regulations (CFR), and confirmation with species experts to determine the areas relevant to the Nassau grouper spawning habitat essential feature (essential feature 2). The identified marine sites used for spawning and adjacent waters that support movement and staging associated with spawning are: Bajo de Sico (waters encompassed by 100 m isobath bounded in the Bajo de Sico spawning area off the west coast of Puerto Rico); Grammanik Bank and Hind Bank (waters which make up the Grammanik Bank and the Hind Bank, interconnecting waters between these banks, and waters extending out to 366 m directly south from Grammanik Bank, located south of St. Croix); and Riley's Hump (waters encompassing Riley's Hump located southwest of the Dry Tortugas out to the 35 m isobath on the north, west, and east side of the hump and out to the 50 m isobath on the south side of the hump). The species has been known to spawn in the waters of the Grammanik Bank and to use the nearby Hind Bank for staging and movement to and from the spawning area. In addition, continuous monitoring at Riley's Hump, Florida by FWC indicates that Nassau grouper aggregate at the site during winter months and display typical spawning behaviors.

Areas Outside of the Geographical Areas Occupied by the Species at the Time of Listing That Are Essential for Conservation

ESA section 3(5)(A)(ii) defines critical habitat to include specific areas outside the geographical area occupied by the species at the time of listing if the areas are determined by the Secretary to be essential for the conservation of the species. An area must logically be ''habitat'' in order for that area to meet the narrower category of ''critical habitat'' as defined in the ESA. *Weyerhaeuser Co.* v. *U.S. FWS,* 139 S. Ct. 361, 368 (2018) (explaining that an area cannot be designated as critical habitat unless it is also habitat for the species). Our regulations at 50 CFR 424.12(b)(2) further explain that the Secretary will identify, at a scale determined by the Secretary to be appropriate, specific areas outside the geographical area occupied by the species only upon a determination that such areas are essential for the conservation of the species. As noted previously, we considered these current regulatory requirements, as well as those in effect prior to 2019 and the recently proposed revisions to 50 CFR 424.12(b)(2) (see 88 FR 40764, June 22, 2023). Although our analyses would differ with regard to considering whether any unoccupied areas qualify as critical habitat for Nassau grouper, our conclusions would be the same.

While the most serious threats to Nassau grouper are historical overutilization, fishing at spawning aggregations, and inadequate law enforcement (81 FR 42268, 42280–81, June 29, 2016), loss of the habitats used by groupers during various life stages can influence their distribution, abundance, and survival. For example, alterations or destruction of nearshore nursery areas and degradation of hardbottom habitat can affect Nassau grouper's ability to grow and survive. The designated critical habitat will help conservation of spawning areas within U.S. jurisdiction. The critical habitat identified in this final rule identifies key habitat necessary for promoting the recruitment, refuge, forage, and spawning habitat necessary for the conservation of the species. Based on our current understanding of the species' life history, status, and conservation needs, we have not identified any specific areas outside the geographical area occupied by the species that are essential for its conservation. The protection of the specific areas identified in this final rule from destruction and adverse modification stemming from federal actions will help support the species' habitat-based conservation needs.

Application of ESA Section 4(a)(3)(B)(i) (Military Lands)

Section 4(a)(3)(B)(i) of the ESA prohibits designating as critical habitat any lands or other geographical areas owned or controlled by the Department of Defense (DoD), or designated for its use, that are subject to an Integrated Natural Resources Management Plan (INRMP) prepared under section 101 of the Sikes Act (16 U.S.C. 670a), if the Secretary determines in writing that such plan provides a benefit to the species for which critical habitat is designated. Pursuant to our regulations at 50 CFR 424.12(h), we consider the following when determining whether such a benefit is provided:

(1) The extent of the area and features present;

(2) The type and frequency of use of the area by the species;

(3) The relevant elements of the INRMP in terms of management objectives, activities covered, and best management practices, and the certainty that the relevant elements will be implemented; and

(4) The degree to which the relevant elements of the INRMP will protect the habitat from the types of effects that would be addressed through a destruction-or-adverse-modification analysis.

NASKW is the only installation controlled by the DoD, specifically the Department of the Navy (Navy) that coincides with any of the areas under consideration for critical habitat. On July 14, 2022, the Navy requested in writing that the areas covered by the 2020 INRMP for NASKW not be designated as critical habitat, pursuant to ESA section 4(a)(3)(B)(i).

The NASKW INRMP covers the lands and waters (generally out to 50 yards (45.7 m)) adjacent to NASKW, including several designated restricted areas. The total area of the waters covered by the INRMP that overlaps with areas identified as critical habitat is approximately 800 acres (3.2 sq km). Within this area, the species and the recruitment and developmental habitat essential feature are present, specifically young juvenile fish and nearshore shallow subtidal marine nursery and intermediate hardbottom and seagrass areas in close proximity to the nearshore shallow subtidal marine nursery areas. As detailed in the INRMP, the plan provides benefits to the threatened Nassau grouper and areas included in the designated critical habitat through the following NASKW broad programs and activities: wetlands management,

floodplains management, soil conservation and erosion control, stormwater and water quality control, coastal and marine management, threatened species and natural communities management, wetlands protection and shoreline enhancement, federally listed species assessments, community outreach and awareness, fish and wildlife conservation signage, and marine resources surveys. These types of best management practices have been ongoing at NASKW since 1983; thus, they are likely to continue into the future. Further, the plan specifically provides assurances that all NASKW staff have the authority and funding (subject to appropriations) to implement the plan. The plan also provides assurances that the conservation efforts will be effective through annual reviews conducted by state and Federal natural resource agencies. These activities address some of the particular conservation and protection needs that critical habitat would afford. These activities are similar to those that we describe for avoiding or reducing effects to the critical habitat. Further, the INRMP includes provisions for monitoring and evaluating conservation effectiveness, which will ensure continued benefits to the species. Therefore, pursuant to section 4(a)(3)(B)(i) of the ESA, we determined that the INRMP provides a benefit to Nassau grouper, and areas within the boundaries covered by the INRMP are ineligible for designation as critical habitat.

Application of ESA Section 4(b)(2)

Section 4(b)(2) of the ESA requires that we consider the economic impact, impact on national security, and any other relevant impact of designating any particular area as critical habitat. Additionally, the Secretary has the discretion to exclude any area from critical habitat if the Secretary determines the benefits of exclusion (that is, avoiding some or all of the impacts that would result from designation) outweigh the benefits of designation. The Secretary may not exclude an area from designation if the Secretary determines, based upon the best scientific and commercial data available, exclusion will result in the extinction of the species. Because the authority to exclude is discretionary, exclusion is not required for any particular area under any circumstances.

The ESA provides the Secretary broad discretion in how to consider impacts. (See H.R. Rep. No. 95–1625, at 17, reprinted in 1978 U.S.C.C.A.N. 9453, 9467 (1978)). Regulations at 50 CFR 424.19(b) specify that the Secretary will consider the probable impacts of the designation at a scale that the Secretary determines to be appropriate and that such impacts may be qualitatively or quantitatively described. The Secretary is also required to compare impacts with and without the designation (50 CFR 424.19(b)). In other words, we are required to assess the incremental impacts attributable to the critical habitat designation relative to a baseline that reflects existing regulatory impacts in the absence of the critical habitat. The consideration and weight given to any particular impact is determined by the Secretary, and the ESA does not contain requirements for any particular methods or approaches. See, *e.g., Bldg. Indus. Ass'n of the Bay Area et al.* v *U.S. Dept. of Commerce et al.,* 792 F.3d 1027, 1032 (9th Cir. 2015) (holding that the ESA does not require the agency to follow a specific methodology when designating critical habitat under section 4(b)(2)). NMFS and the U.S. Fish and Wildlife Service have adopted a joint policy setting out non-binding guidance explaining generally how we exercise our discretion under section 4(b)(2) of the ESA (see Policy Regarding Implementation of Section 4(b)(2) of the Endangered Species Act (''4(b)(2) Policy,'' 81 FR 7226, February 11, 2016)). For this final rule, we followed the same basic approach to describing and evaluating impacts as we have for several recent critical habitat rulemakings, as informed by our 4(b)(2) Policy.

The following discussion of impacts is summarized from our Critical Habitat Report, which identifies the economic, national security, and other relevant impacts that we project would result from designating each of the specific areas as critical habitat. We considered these impacts when deciding whether to exercise our discretion to exclude particular areas from designation. Both positive and negative impacts were identified and considered (these terms are used interchangeably with benefits and costs, respectively). Impacts were evaluated in quantitative terms where feasible, but qualitative appraisals were used where that is more appropriate to particular impacts.

The primary impacts of a critical habitat designation result from the ESA section 7(a)(2) requirement that Federal agencies ensure their actions are not likely to result in the destruction or adverse modification of critical habitat and that they consult with NMFS in fulfilling this requirement. Determining these impacts is complicated by the fact that section 7(a)(2) also requires that Federal agencies ensure their actions are not likely to jeopardize the species' continued existence. One incremental impact of designation is the extent to which Federal agencies modify their proposed actions to ensure they are not likely to destroy or adversely modify the critical habitat beyond any modifications the agencies would make because of listing and the requirement to avoid jeopardy to the listed Nassau grouper. When the same modification would be required due to impacts to both the species and critical habitat, there would be no additional or incremental impact attributable to the critical habitat designation beyond the administrative impact associated with conducting the critical habitat analysis.

Relevant, existing regulatory protections are referred to as the ''baseline'' for the analysis and are discussed in the Critical Habitat Report. In this case, notable baseline protections include the ESA listing of the species (81 FR 42268, June 29, 2016), and other species listings and critical habitat designations (*e.g.,* Elkhorn and staghorn coral, 73 FR 72209, November 26, 2008).

The Critical Habitat Report describes the projected future Federal activities that would trigger ESA section 7 consultation requirements if they are implemented in the future because the activities may affect the essential features. These activities and the ESA consultation consequently may result in economic costs or negative impacts. The report also identifies the potential national security and other relevant impacts that may arise due to the critical habitat designation, such as positive impacts that may arise from conservation of the species and its habitat, state and local protections that may be triggered as a result of designation, and educating the public about the importance of an area for species conservation.

Economic Impacts

Economic impacts of the critical habitat designations primarily occur through implementation of section 7 of the ESA in consultations with Federal agencies to ensure their proposed actions are not likely to destroy or adversely modify critical habitat. The economic impacts of consultation may include both administrative and project modification costs; economic impacts that may be associated with the conservation benefits resulting from designation are described later.

To identify the types and geographic distribution of activities that may trigger section 7 consultation on Nassau grouper critical habitat, we first reviewed the NMFS Southeast Region's

section 7 consultation history from 2011 to 2021 for:

- Activities consulted on in the areas being designated as critical habitat for the Nassau grouper and
- Activities that take place outside of the designated critical habitat but whose effects extend into the critical habitat and are therefore subject to consultation.

In addition, we conducted outreach to relevant agencies to identify future activities that may affect Nassau grouper critical habitat that may not have been captured by relying on the section 7 consultation history. Through this outreach, we did not identify any additional activities that may affect Nassau grouper critical habitat. Agencies included the U.S. Army Corps of Engineers (USACE), the U.S. Air Force, the Department of the Navy, and the U.S. Coast Guard (USCG). We reviewed the USACE's Jacksonville District permit application database to identify all permit applications for projects located within the designated critical habitat area, including more recent consultation information provided by these or other agencies prior to the publication of this final rule. We determined all categories of the activities identified have potential routes of effects to both the threatened Nassau grouper and the designated Nassau grouper critical habitat, or to other species or designated critical habitat. We did not identify and we do not anticipate Federal actions that have the potential to affect only the Nassau grouper critical habitat.

We identified the following eight categories of activities implemented by seven different Federal entities as having the potential to affect the essential features of the Nassau grouper critical habitat:

- Coastal and in-water construction (*e.g.,* docks, seawalls, piers, marinas, port expansions, anchorages, pipelines/cables, bridge repairs, aids to navigation, *etc.*) conducted or authorized by USACE or USCG;
- Derelict Vessel and Marine Debris Removal (USCG, NOAA);
- Scientific Research and Monitoring (NOAA);
- Water quality management (revision of state water quality standards, issuance of National Pollutant Discharge Elimination System (NPDES) permits and Total Maximum daily load (TMDL) standards under the Clean Water Act and ecological risk assessments associated with pesticide registrations under the Federal Insecticide, Fungicide and Rodenticide Act) authorized by the Environmental Protection Agency (EPA);
- Protected area management (development of management plans for national parks, marine sanctuaries, wildlife refuges, *etc.*) conducted by the National Park Service (NPS) and NOAA National Ocean Service (NOS);
- Fishery management (development of fishery management plans under the Magnuson-Stevens Fishery Conservation and Management Act) conducted or approved by NMFS;
- Aquaculture (development of aquaculture facilities) authorized by EPA and USACE, and funded by NMFS; and
- Military activities (*e.g.,* training exercises) conducted by DoD.

Additionally, we considered the potential for oil and gas and renewable energy development activities to damage the critical habitat through various pathways in the Critical Habitat Report. These pathways include, but are not limited to, physical damage to coral reefs and colonized hardbottom by oil and gas platforms and ships and reduced water quality resulting from increased sedimentation and turbidity generated by oil and gas and renewable energy exploration and development activities. We considered potential effects of oil spills and USCG-led cleanup activities on the critical habitat in the section more broadly discussing derelict vessel and marine debris removal.

There are no active oil and gas leases within the Straits of Florida Planning Area, where the Florida units are located, and the area is excluded from consideration for leasing for purposes of exploration, development, or production through June 30, 2032. In addition, neither Puerto Rico nor the USVI has any crude oil production, refining, or proved reserves.

BOEM currently has no active offshore renewable energy leases in Florida, and the section 7 consultation record revealed no historical consultations related to renewable energy projects in Puerto Rico or the USVI. While the current Administration has announced a goal to deploy 17 gigawatts of offshore wind in the U.S. OCS by 2030, no potential lease sites are located offshore of Florida's Atlantic coast. A 2022 study published by the National Renewable Energy Laboratory found that wind has the potential to lower the cost of energy in Puerto Rico. However, the study excluded from consideration offshore wind energy development in potential use conflict areas, including the majority of waters comprising Nassau grouper critical habitat units around Puerto Rico. In addition, the timing of development of offshore wind energy projects in state and federal waters off of Puerto Rico is uncertain, and no specific offshore wind energy projects or sites have been identified for development. We therefore determined that no oil and gas or renewable energy activity within or affecting Nassau grouper critical habitat is anticipated over the next ten years.

Also, given the nearly complete overlap between Nassau grouper critical habitat and existing critical habitat for acropora and 5 Caribbean corals,* other than the intracoastal zone of Biscayne Bay (much of which is included in Biscayne National Park), any project modifications required to avoid destruction or adverse modification of Nassau grouper critical habitat by activities including, but not limited to, those associated with oil and gas and renewable energy development would likely already be required due to jeopardy/destruction or adverse modification (DAM) determinations for listed species and/or existing critical habitat. Thus, we would expect that any potential incremental costs to oil and gas or renewable energy activities attributable to Nassau grouper critical habitat would be limited to the administrative costs of considering effects to the critical habitat in consultations that would occur absent the designation, and that Nassau grouper critical habitat would have negligible effect on BOEM activities.

Future consultations were projected based on the frequency and distribution of section 7 consultations conducted from 2011 to 2021, review of USACE permit applications over the same time frame, and outreach to Federal stakeholders. In the absence of other relevant information regarding future federal activities, we consider it a reasonable assumption that the breakdown of past consultations by type (into informal, formal, and programmatic consultations) and activity category (*e.g.,* in-water and coastal construction, water quality management) from the previous 10 years coupled with information provided by federal stakeholders likely reflects the breakdown of future consultations. We accordingly assume that the number and type of activities occurring within or affecting Nassau grouper critical habitat will not change in the future.

As discussed in more detail in section 10 of the Critical Habitat Report, all categories of activities identified as having the potential to affect the essential features also have the potential

* The exceptions are the Bajo de Sico spawning site unit and a portion of the Grammanik Bank/Hind Bank spawning site in the U.S. Caribbean, and Biscayne Bay in Florida.

to affect Nassau grouper, which is listed as a threatened species, or other listed species or critical habitat. To estimate the economic impacts of critical habitat designation, our analysis compares the state of the world with and without the designation of critical habitat. The ''without critical habitat'' scenario represents the baseline for the analysis, considering protections already afforded the critical habitat as a result of the listing of Nassau grouper as threatened and as a result of other Federal, state, and local regulations or protections, including other species listings and critical habitat determinations. The ''with critical habitat'' scenario describes the state of the world with the critical habitat designation. The incremental impacts that will be associated specifically with the critical habitat designation are the difference between the two scenarios. Baseline protections exist in large areas of the designation. In particular, areas of Nassau grouper critical habitat overlap to varying degrees with the presence of other threatened or endangered species, including Nassau grouper, green sea turtle, loggerhead sea turtle, hawksbill sea turtle, corals, and smalltooth sawfish; and critical habitat designated for green, loggerhead, and hawksbill sea turtles and coral species. These areas already receive significant protections related to these listings and designations, and these protections may also protect the essential features of the Nassau grouper critical habitat (please refer to Critical Habitat Report, section 10). Therefore, we do not expect designation of critical habitat for the Nassau grouper to result in project modifications for any of the activities that may affect the critical habitat.

Administrative Section 7 Costs

The effort required to address adverse effects to the proposed critical habitat is assumed to be the same, on average, across categories of activities. Informal consultations are expected to require comparatively low levels of administrative effort, while formal and programmatic consultations are expected to require comparatively higher levels of administrative effort. For all formal and informal consultations, we anticipate that incremental administrative costs will be incurred by NMFS, the consulting Federal action agencies, and, potentially, third parties. For programmatic consultations, we anticipate that costs will be incurred by NMFS and the consulting Federal action agencies. Incremental administrative costs per consultation effort are expected on average to be $13,000 for programmatic, $6,400 for formal consultations, and $3,100 for informal consultations (NMFS, 2023).

We estimate the incremental administrative costs of section 7 consultation by applying these per consultation costs to the forecasted number of consultations. We anticipate that there will be approximately 11 programmatic consultations, 11 formal consultations, and 114 informal consultations that will require incremental administrative effort. Incremental costs are expected to total approximately $440,000 over the next 10 years (discounted at 7 percent), at an annualized cost of $62,000. We conservatively assume that there will be approximately eight re-initiations of existing consultations to address effects to Nassau grouper critical habitat. We anticipate the re-initiations to be on consultations related to fishery management, military, construction, and scientific research and monitoring activities.

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Projected Incremental Costs of Nassau Grouper Critical Habitat Designation by Activity Type and Unit, 2024-2033 ($2023; 7 percent Discount Rate)[1]

Unit	Coastal and In-Water Construction	Water Quality Management	Protected Area Management	Fishery Management	Aquaculture	Military	Shipwreck and Marine Debris Removal	Scientific Research and Monitoring	Total
Biscayne/ Key Largo	$43,000	$900	$27,000	$1,800	$0	$2,100	$2,700	$1,800	$79,000
Marathon	$30,000	$900	$0	$1,800	$0	$2,100	$2,700	$0	$38,000
Big Pine Key	$77,000	$900	$0	$1,800	$0	$2,100	$2,700	$0	$84,000
Key West	$1,500	$900	$0	$1,800	$1,800	$7,500	$2,700	$0	$16,000
New Ground Shoal	$1,500	$900	$0	$1,800	$0	$2,100	$2,700	$0	$9,000

Unit	Coastal and In-Water Construction	Water Quality Management	Protected Area Management	Fishery Management	Aquaculture	Military	Shipwreck and Marine Debris Removal	Scientific Research and Monitoring	Total
Halfmoon Shoal	$1,500	$900	$0	$1,800	$0	$2,100	$2,700	$0	$9,000
Dry Tortugas	$1,500	$900	$0	$1,800	$0	$2,100	$2,700	$0	$9,000
Florida, All	**$160,000**	**$6,300**	**$27,000**	**$13,000**	**$1,800**	**$20,000**	**$19,000**	**$1,800**	**$240,000**
Mona Island	$1,500	$3,600	$0	$2,500	$0	$0	$1,400	$5,500	$15,000
Desecheo	$1,500	$3,600	$0	$2,500	$0	$0	$1,400	$0	$9,000
Southwest	$6,800	$3,600	$0	$2,500	$0	$0	$6,800	$3,600	$23,000
Northeast	$14,000	$5,400	$0	$2,500	$0	$5,400	$1,400	$1,800	$30,000
Vieques	$1,500	$3,600	$0	$2,500	$0	$22,000	$1,400	$1,800	$33,000

Unit	Coastal and In-Water Construction	Water Quality Management	Protected Area Management	Fishery Management	Aquaculture	Military	Shipwreck and Marine Debris Removal	Scientific Research and Monitoring	Total
Isla de Culebra/ Culebrita	$1,500	$3,600	$0	$2,500	$0	$0	$1,400	$0	$9,000
Puerto Rico, All	**$27,000**	**$24,000**	**$0**	**$15,000**	**$0**	**$27,000**	**$14,000**	**$13,000**	**$120,000**
Navassa	**$1,500**	**$980**	**$0**	**$770**	**$0**	**$0**	**$1,400**	**$0**	**$4,700**
USVI - STT	$15,000	$6,100	$0	$2,200	$0	$0	$3,000	$0	$27,000
USVI - STJ	$2,700	$6,100	$0	$2,200	$0	$0	$3,000	$0	$14,000
USVI - STX	$8,100	$7,900	$0	$2,200	$0	$0	$3,000	$0	$21,000
USVI, All	**$26,000**	**$20,000**	**$0**	**$6,500**	**$0**	**$0**	**$9,100**	**$0**	**$62,000**

Unit	Coastal and In-Water Construction	Water Quality Management	Protected Area Management	Fishery Management	Aquaculture	Military	Shipwreck and Marine Debris Removal	Scientific Research and Monitoring	Total
Bajo de Sico[2]	**$1,500**	**$980**	**$0**	**$770**	**$0**	**$0**	**$1,400**	**$0**	**$4,700**
Grammanik Bank/Hind Bank[2]	**$1,500**	**$370**	**$0**	**$0**	**$0**	**$0**	**$1,300**	**$0**	**$3,100**
Riley's Hump	**$1,500**	**$980**	**$0**	**$770**	**$0**	**$0**	**$1,400**	**$0**	**$4,700**
Total	**$210,000**	**$53,000**	**$27,000**	**$37,000**	**$1,800**	**$47,000**	**$46,000**	**$14,000**	**$440,000**

[1] The estimates may not sum to totals due to rounding.

[2] We analyzed the incremental costs of consultation on effects to the Bajo de Sico, Grammanik Bank/Hind Bank, and Riley's Hump spawning site feature separately from costs of consultation on effects to the essential feature related to settlement, development, refuge, and foraging.

In summary, significant baseline protections exist in the areas proposed for the Nassau grouper critical habitat. The incremental impacts for the

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proposed designation are projected to reflect the incremental administrative effort required for section 7 consultations to consider effects to the critical habitat. Taking into consideration several assumptions and uncertainties, total projected incremental costs are approximately $440,000 over the next ten years ($62,000 annualized), applying a discount rate of 7 percent. Notwithstanding the uncertainty underlying the projection of incremental costs, the results provide an indication of the potential activities that may be affected and a reasonable projection of future costs.

National Security Impacts

Impacts to national security could occur if a designation triggers future ESA section 7 consultations because a proposed military activity ''may affect'' the physical or biological feature(s) essential to the listed species' conservation. Interference with mission-essential training or testing or unit readiness could result if the DoD or USCG were required to modify or delay their actions to prevent adverse modification of critical habitat or implement Reasonable and Prudent Alternatives. Whether national security impacts result from the designation also depends on whether future consultations and associated project modifications and/or implementation of Reasonable and Prudent Measures and Terms and Conditions would otherwise be required due to potential effects to Nassau grouper or other ESA-listed species or designated critical habitat, regardless of the Nassau grouper critical habitat designation.

As described previously, we identified DoD military operations as a category of activity that has the potential to affect the essential features of the designated critical habitat. However, for the actions that may affect Nassau grouper critical habitat, designating critical habitat for Nassau grouper would not result in incremental impacts beyond administrative costs because the consultations would otherwise be required to address effects to either the Nassau grouper or other listed species or the substrate feature of designated critical habitat for corals. In 2022, we requested descriptions and locations of any geographical areas owned or controlled by the DoD or the USCG that may overlap with the areas under consideration for critical habitat that they would like considered for exclusion due to impacts to national security. The USCG responded that maintenance and replacement of fixed Aids to Navigation (AToNs) may affect the proposed habitat by generating sedimentation of the seafloor surrounding piling or other foundations. USCG further indicated that use of floating AToNs may result in removal of the essential feature related to development, refuge, and foraging through chain scouring and placement of the sinker. However, USCG already implements measures to mitigate the impacts of AToN operations to corals, hardbottom, and seagrass, per the programmatic biological opinion on USCG's AToN program (NMFS, 2023). NMFS developed a conference opinion for USCG's ATON program (NMFS, 2023) that considered proposed Nassau grouper critical habitat. NMFS anticipates adopting that conference opinion as the biological opinion once this rule is finalized. As part of that process, NMFS will consider whether and how changes in the final rule affect the determination in the conference opinion; however, NMFS does not anticipate USCG ATON actions in the additional areas designated in this final rule will result in destruction or adverse modification of Nassau grouper critical habitat in the action areas.

The Navy requested that NMFS exclude areas around Naval Air Station Key West from the critical habitat designation under ESA section 4(b)(2). However, the Navy's concerns have been addressed through the previously described INRMP exclusion. No areas managed by other DoD branches were identified as potentially of concern.

Other Relevant Impacts

We identified three broad categories of other relevant impacts of this critical habitat designation: Conservation benefits, both to the species and to the ecosystem; impacts on governmental or private entities that are implementing existing management plans that provide benefits to the listed species; and educational and awareness benefits. Our Impacts Analysis discusses conservation benefits of designating the areas, and the benefits of conserving the species to society.

Conservation Benefits

The primary benefit of critical habitat designation is the contribution to conservation and recovery. That is, in protecting the features essential to the conservation of the species, critical habitat directly contributes to the conservation and recovery of the species. This analysis contemplates two broad categories of conservation benefits of critical habitat designation:

(1) Increased probability of conservation and recovery of the species, and

(2) Ecosystem service benefits.

The most direct benefits of the critical habitat designations stem from the enhanced probability of conservation and recovery of the species. From an economic perspective, the appropriate measure of the value of this benefit is people's ''willingness-to-pay'' for the incremental change. While the existing economics literature is insufficient to provide a quantitative estimate of the extent to which people value incremental changes in recovery potential, the literature does provide evidence that people have a positive preference for listed species conservation, even beyond any direct (*e.g.,* recreation, such as viewing the species while snorkeling or diving) or indirect (*e.g.,* fishing that is supported by the presence of healthy ecosystems) use for the species.

In addition, designating critical habitat can benefit the ecosystem. Overall, coral reef and benthic ecosystems, including those comprising Nassau grouper critical habitat, provide important ecosystem services of value to individuals, communities, and economies. These include recreational opportunities (and associated tourism spending in the regional economy), habitat and nursery functions for recreationally and commercially valuable fish species, shoreline protection in the form of wave attenuation and reduced beach erosion, and climate stabilization via carbon sequestration. Critical habitat most directly influences the recovery potential of the species and protects ecosystem services through its implementation under section 7 of the ESA. Our analysis finds that the final rule is not anticipated to result in incremental project modifications. However, the inclusion of reefs and seagrasses as subcomponents of an essential feature of Nassau grouper critical habitat could increase awareness of the importance of these habitat features, which in turn could lead to additional conservation efforts.

In addition, critical habitat designation may generate ancillary environmental improvements and associated ecosystem service benefits (*i.e.,* to commercial fishing and recreational activities). While neither benefit can be directly monetized, existing information on the value of coral reefs provides an indication of the value placed on those ecosystems. For example, it is estimated that the top 1 meter of U.S. coral reefs prevents $2.6 billion in indirect economic effects (Reguero *et al.,* 2021) per year, while the total value of direct economic effects has been estimated at roughly $1.7

billion per year for reefs across Florida, Puerto Rico, and the U.S. Virgin Islands (Brander and Van Beukering, 2013).

Impacts to Governmental and Private Entities With Existing Management Plans Benefitting the Listed Species

Among other relevant impacts of the critical habitat designations that we considered under section 4(b)(2) of the ESA are impacts on the efforts of private and public entities involved in management or conservation efforts benefiting listed species. In cases where there is a federal nexus (*e.g.,* a federal grant or permit), critical habitat designation could necessitate consultation with NMFS to incrementally address the effects of the management or conservation activities on critical habitat. In such cases, these entities may have to allocate resources to fulfill their section 7 consultation obligations as third parties to the consultation—including the administrative effort of consultation and, potentially, modification of projects or conservation measures to avoid adverse modification to the critical habitat—that, absent critical habitat designation, would be applied to management or conservation efforts benefiting listed species. Thus, the potential for reallocation of these private and public entities' resources would be limited to the incremental administrative costs of section 7 consultations that would occur absent Nassau grouper critical habitat. Therefore, we do not expect that designating critical habitat for the Nassau grouper would diminish private and public entities' ability to provide for the conservation of the Nassau grouper.

Education and Awareness Benefits

The critical habitat designation could potentially have benefits associated with education and awareness. The potential for such benefits stems from three sources: (1) entities that engage in section 7 consultation, including Federal action agencies and, in some cases, third party applicants; (2) members of the general public interested in conservation; and (3) state and local governments that take action to complement the critical habitat designation. Certain entities, such as applicants for particular permits, may alter their activities to benefit the essential features of the critical habitat because they were made aware of the critical habitat designation through the section 7 consultation process. Similarly, Federal action agencies that undertake activities that affect the critical habitat may alter their activities to benefit the critical habitat. Members of the public interested in conservation also may adjust their behavior to benefit critical habitat because they learned of the critical habitat designation through outreach materials or the regulatory process. In our experience, designation raises the public's awareness that there are special considerations to be taken within the area identified as critical habitat. Similarly, state and local governments may be prompted to enact laws or rules to complement the critical habitat designations and benefit the listed species. Those laws would likely result in additional impacts of the designations. However, it is not possible to quantify the beneficial effects of the awareness gained through, or the impacts from state and local regulations resulting from, the critical habitat designation.

Exclusions Under Section 4(b)(2)

We are not exercising our discretion to exclude any particular areas from designation based on economic, national security, and other relevant impacts. There are significant baseline protections that exist in the areas we are designating as the Nassau grouper critical habitat, and as a result, the incremental impacts of the designation are low and reflect the incremental administrative effort required for section 7 consultations to consider the critical habitat. Taking into consideration several assumptions and uncertainties, the total projected incremental costs are approximately $440,000 over the next 10 years ($62,000 annualized), applying a discount rate of 7 percent. Further, the analysis indicates that there is no particular area within the designated critical habitat units where these costs would be highly concentrated. Moreover, we anticipate that no particular industry would be disproportionately impacted. We are not excluding any areas on the basis of national security impacts as no national security concerns exist related to the critical habitat designation. We are not excluding any particular area based on other relevant impacts. Other relevant impacts include conservation benefits of the designation, both to the species and to the ecosystem. We expect that designation of critical habitat will support conservation and recovery of the species. Future section 7 consultations on some of the activities that may affect Nassau grouper will also consider effects to the critical habitat. While we do not expect these consultations to result in additional conservation measures, the additional consideration of effects to the critical habitat will increase overall awareness of the importance of Nassau grouper and its habitat. For these reasons, we are not excluding any areas as a result of these other relevant impacts.

Critical Habitat Designation

Our critical habitat regulations state that we will show critical habitat on a map with more detailed information discussed in the preamble of the critical habitat rulemaking and made available from NMFS (50 CFR 424.12(c)). When several habitats, each satisfying the requirements for designation as critical habitat, are located in proximity to one another, an inclusive area may be designated as critical habitat (50 CFR 424.12(d)). The habitat containing the essential features and that may require special management considerations or protection is marine habitat of particular benthic composition and structure in the Atlantic Ocean and Caribbean Sea. The boundaries of each specific area were determined by the presence of the essential features and Nassau grouper, as described earlier within this document. Because the quality of the available GIS data varies based on collection method, resolution, and processing, the critical habitat boundaries are defined by the maps in combination with the textual information included in the regulation. This textual information clarifies and refines the location and boundaries of each specific area.

Occupied Critical Habitat Unit Descriptions

Based on the available data, we identified specific areas that contain the essential features. The specific areas or ''units'' can generally be grouped as the: Navassa Island unit, Puerto Rico units, USVI units, Florida units, and spawning units. The units and their general location are listed here (refer to the maps and regulation text for more details).

Navassa Island Unit. Waters surrounding Navassa Island. Area = 2.468 sq. km.

Puerto Rico Unit 1—Mona Island and Monito. Waters between the shoreline out to the 50 m isobaths around Mona and Monito Islands. Area = 30.65 sq. km.

Puerto Rico Unit 2—Desecheo Island. All waters between the shoreline out to the 50 m isobaths around Desecheo Island. Area = 4.28 sq. km.

Puerto Rico Unit 3—Southwest. Waters off the southwest coast of the Puerto Rico main island. Area = 112.39 sq. km.

Puerto Rico Unit 4—Northeast. Waters off the northeast coast of the Puerto Rico main island. Area = 48.75 sq. km.

Puerto Rico Unit 5—Vieques Island. Waters off the west and northeast, east, and southeast coasts of the island. Area = 9.49 sq. km.

Puerto Rico Unit 6—Culebra/Culebrita Islands. The Culebra area consists of waters off the southeastern Culebra coastline. The Culebrita area consists of waters off the western and southern coasts of Culebrita Island. Area = 4.15 sq. km.

United States Virgin Island Unit 1—St Thomas. Waters off the east coast of St. Thomas Island and waters off the southwest, south, and southeast coasts of Water Island. Area = 9.18 sq. km.

United States Virgin Island Unit 2—St. John. Waters off the east coast of St. John Island. Area = 6.55 sq. km.

United States Virgin Island Unit 3—St. Croix. Waters off the east end of St. Croix Island and waters off the north coast of Buck Island. Area = 50.35 sq. km.

Florida Unit 1—Biscayne Bay/Key Largo. Waters south of Rickenbacker Causeway, including portions of waters from the coastline into Biscayne Bay, and waters off the eastern coastline to 80°29′21″ W, 25°01′59″ N. Area = 1279.7 sq. km.

Florida Unit 2—Marathon. Waters off the southern shoreline approximately between Knights Key to 80°55′51″W, 24°46′26″ N. Area = 172.38 sq. km.

Florida Unit 3—Big Pine Key to Geiger Key. Waters off the south side of coastline and US 1 from approximately Geiger Key to Big Pine Key. Area = 372.37 sq. km.

Florida Unit 4—Key West. Shoal waters south of Woman Key. Area = 127.09 sq. km.

Florida Unit 5—New Ground Shoal. New Ground Shoal waters. Area = 31.04 sq. km.

Florida Unit 6—Halfmoon Shoal. Halfmoon Shoal waters. Area = 33.62 sq. km.

Florida Unit 7—Dry Tortugas. Waters encompassing Loggerhead Key and waters surrounding Garden Key and Bush Key. Area = 4.43 sq. km.

Spawning Site Unit 1—Bajo de Sico (Puerto Rico). All waters encompassed by the 100 m isobath within the Bajo de Sico spawning area, which we define here as being bounded by the following coordinates: A) 67°26′13″ W, 18°15′26″ N, B) 67°23′08″ W, 18°15′26″ N, C) 67°23′08″ W, 18°12′56″ N, and D) 67°26′13″ W, 18°12′56″ N. Area = 10.74 sq. km.

Spawning Site Unit 2—Grammanik Bank and Hind Bank (St. Thomas, USVI). All waters which make up the Hind Bank and the Grammanik Bank, interconnecting waters between these banks, and waters extending out to the 200 fathom line directly south from Grammanik Bank. Area = 59.69 sq. km.

Spawning Site Unit 3—Riley's Hump (Dry Tortugas, Florida). All waters encompassing Riley's Hump at 83°6′31″ W, 24°29′42″ N out to the 35 m isobath on the north, west, and east side of the hump, extending out to the 50 m isobath on the south side of the hump to include the escarpment on the southern face of the bank. Area = 15.35 sq. km.

Effects of Critical Habitat Designations

Section 7(a)(2) of the ESA requires Federal agencies, including NMFS, to ensure that any action authorized, funded, or carried out by the agency is not likely to jeopardize the continued existence of any threatened or endangered species or destroy or adversely modify designated critical habitat. Federal agencies are also required to confer with NMFS regarding any actions likely to jeopardize the continued existence of any species for listing under the ESA, or likely to destroy or adversely modify critical habitat, pursuant to section 7(a)(4).

A conference involves informal discussions in which NMFS may recommend conservation measures to minimize or avoid adverse effects (50 CFR 402.02). The discussions and conservation recommendations are documented in a conference report provided to the Federal agency (50 CFR 402.10(e)). If requested by the Federal agency and deemed appropriate by NMFS, the conference may be conducted following the procedures for formal consultation in 50 CFR 402.14, and NMFS may issue an opinion at the conclusion of the conference. This opinion may be adopted as the biological opinion when the species is listed or critical habitat designated if no significant new information or changes to the action alter the content of the opinion (50 CFR 402.10(d)).

When a species is listed or critical habitat is designated, Federal agencies must consult with NMFS on any agency actions that may affect a listed species or its critical habitat. During the consultation, we evaluate the agency action to determine whether the action may adversely affect listed species or critical habitat and issue our findings in a letter of concurrence or in a biological opinion. If we conclude in the biological opinion that the action would likely result in the destruction or adverse modification of critical habitat, we would also identify any reasonable and prudent alternatives to the action. Reasonable and prudent alternatives are defined in 50 CFR 402.02 as alternative actions identified during formal consultation that can be implemented in a manner consistent with the intended purpose of the action, that can be implemented consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that we believe would avoid the likelihood of destruction or adverse modification of critical habitat.

Regulations at 50 CFR 402.16 require Federal agencies that have retained discretionary involvement or control over an action, or where such discretionary involvement or control is authorized by law, to reinitiate consultation on previously reviewed actions in instances where:

(1) Critical habitat is subsequently designated that may be affected by the identified action; or

(2) New information or changes to the action may result in effects to critical habitat in a manner or to an extent not previously considered.

Consequently, some Federal agencies may request re-initiation of consultation or conference with NMFS on actions for which formal consultation has been completed, if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities subject to the ESA section 7 consultation process are those activities authorized, funded, or carried out by Federal action agencies, whether on Federal, state, or private lands or waters. ESA section 7 consultation would not be required for Federal actions that do not affect listed species or critical habitat and for actions that are not federally funded, authorized, or carried out.

Activities That May Be Affected

Section 4(b)(8) of the ESA requires that we describe briefly and evaluate in any proposed or final regulation to designate critical habitat those activities, whether public or private, that may adversely modify such habitat or that may be affected by such designation. As described in our Critical Habitat Report, a wide variety of Federal activities may require ESA section 7 consultation because they may affect the essential features of Nassau grouper critical habitat. Specific future activities will need to be evaluated with respect to their potential to destroy or adversely modify critical habitat, in addition to their potential to affect and jeopardize the continued existence of listed species. For example, activities may adversely modify the substrate portion of the development essential feature by removing or altering the substrate. These activities, whether public or private, would require ESA section 7

consultation when they are authorized, funded, or carried out by a Federal agency. A private entity may also be affected by these critical habitat designations if it is a proponent of a project that requires a Federal permit or receives Federal funding. Categories of activities that may be affected through section 7 consultation by designating Nassau grouper critical habitat include coastal and in-water construction, protected area management, fishery management, scientific research and monitoring, derelict vessel and marine debris removal, aquaculture, water quality management, and military activities.

Questions regarding whether specific activities may constitute destruction or adverse modification of critical habitat should be directed to us (see **ADDRESSES** and **FOR FURTHER INFORMATION CONTACT**).

Identifying the extent or severity of an impact on the essential features at which the conservation value of habitat for the listed species may be affected is inherently complex. Consequently, the actual responses of the critical habitat to effects to the essential features resulting from future Federal actions will be case and site-specific, and predicting such responses will require case and site-specific data and analyses.

Information Quality Act and Peer Review

The data and analyses supporting this action have undergone a pre-dissemination review and have been determined to be in compliance with applicable information quality guidelines implementing the Information Quality Act (Section 515 of Pub. L. 106–554). On December 16, 2004, OMB issued its Final Information Quality Bulletin for Peer Review (Bulletin). The Bulletin was published in the **Federal Register** on January 14, 2005 (70 FR 2664), and all of the requirements were effective by June 16, 2005. The primary purpose of the Bulletin is to improve the quality and credibility of scientific information disseminated by the Federal government by requiring peer review of ''influential scientific information'' and ''highly influential scientific assessments'' prior to public dissemination. ''Influential scientific information'' is defined as information that the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions. The Bulletin provides agencies broad discretion in determining the appropriate process and level of peer review of influential scientific information. Stricter standards were established for the peer review of highly influential scientific assessments, defined as information whose dissemination could have a potential impact of more than $500 million in any one year on either the public or private sector or for which the dissemination is novel, controversial, or precedent-setting, or has significant interagency interest.

The information in the Critical Habitat Report supporting this final critical habitat rule is considered influential scientific information and subject to peer review. To satisfy our requirements under the OMB Bulletin, we obtained independent peer review of the information used to draft this report and incorporated the peer review comments into the draft Critical Habitat Report prior to dissemination of the Final Critical Habitat Report and completion of this rule. Comments received from peer reviewers are available on our website at *http://www.cio.noaa.gov/services_programs/prplans/ID346.html.*

Classification

Takings (Executive Order 12630)

Under E.O. 12630, Federal agencies must consider the effects of their actions on constitutionally protected private property rights and avoid unnecessary takings of private property. A taking of property includes actions that result in physical invasion or occupancy of private property and regulations imposed on private property that substantially affect its value or use. In accordance with E.O. 12630, this final rule would not have significant takings implications. A takings implication assessment is not required. These designations would affect only Federal agency actions (*i.e.,* those actions authorized, funded, or carried out by Federal agencies). Therefore, the critical habitat designations do not affect landowner actions that do not require Federal funding or permits. We anticipate that the designation of critical habitat for the Nassau grouper will result in no section 7 consultations and no restrictions on federally permitted landowner actions beyond those that would already be required due to pre-existing protections to ESA-listed species and designated critical habitat. The only incremental costs incurred by landowners would be minor administrative costs associated with considering effects of the action on Nassau grouper critical habitat in section 7 consultations that would be required absent the designation. Thus, Nassau grouper critical habitat is not expected to affect land values or use.

Regulatory Planning and Review (Executive Order 12866)

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

Based on the economic impacts evaluation in the Critical Habitat Report, total incremental costs resulting from the critical habitat are approximately $440,000 over the next 10 years ($62,000 annualized), applying a discount rate of 7 percent. These total impacts include the additional administrative efforts necessary to consider critical habitat in section 7 consultations. Overall, economic impacts are expected to be small and to be largely associated with the administrative costs borne by Federal agencies.

Federalism (Executive Order 13132)

Pursuant to the Executive Order on Federalism, E.O. 13132, we determined that this final rule does not have significant federalism effects and that a federalism assessment is not required. The designation of critical habitat directly affects only the responsibilities of Federal agencies. As a result, this rule does not have substantial direct effects on the States or territories, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in E.O. 13132. State or local governments may be indirectly affected by this critical habitat designation if they require Federal funds or formal approval or authorization from a Federal agency as a prerequisite to conducting an action. In these cases, the State or local government agency may participate in the ESA section 7

consultation as a third party. One of the key conclusions of the economic impact analysis is that the incremental impacts of the critical habitat designation will likely be limited to additional administrative costs to NMFS and Federal agencies stemming from the need to consider impacts to critical habitat as part of the forecasted section 7 consultations. The designation of critical habitat is not expected to have substantial indirect impacts on State or local governments.

Energy Supply, Distribution, and Use (Executive Order 13211)

Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking an action expected to lead to the promulgation of a final rule or regulation that is a significant regulatory action under E.O. 12866 and is likely to have a significant adverse effect on the supply, distribution, or use of energy. OMB Guidance on Implementing E.O. 13211 (July 13, 2001) states that significant adverse effects could include any of the following outcomes compared to a world without the regulatory action under consideration: (1) reductions in crude oil supply in excess of 10,000 barrels per day; (2) reductions in fuel production in excess of 4,000 barrels per day; (3) reductions in coal production in excess of 5 million tons per year; (4) reductions in natural gas production in excess of 25 million cubic feet per year; (5) reductions in electricity production in excess of 1 billion kilowatt-hours per year or in excess of 500 megawatts of installed capacity; (6) increases in energy use required by the regulatory action that exceed any of the thresholds above; (7) increases in the cost of energy production in excess of 1 percent; (8) increases in the cost of energy distribution in excess of 1 percent; or (9) other similarly adverse outcomes. A regulatory action could also have significant adverse effects if it: (1) adversely affects in a material way the productivity, competition, or prices in the energy sector; (2) adversely affects in a material way productivity, competition or prices within a region; (3) creates a serious inconsistency or otherwise interferes with an action taken or planned by another agency regarding energy; or (4) raises novel legal or policy issues adversely affecting the supply, distribution or use of energy arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866 and 13211.

As discussed above and in the Critical Habitat Report, the critical habitat designations are not expected to affect oil and gas or renewable energy production. Therefore, this rule will not have a significant adverse effect on the supply, distribution, or use of energy. Therefore, we have not prepared a Statement of Energy Effects.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

We prepared a final regulatory flexibility analysis (FRFA) pursuant to section 603 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996. The FRFA analyzes the impacts to small entities that may be affected by the critical habitat designations, and is included as Appendix B of the Critical Habitat Report (*https://www.fisheries.noaa.gov/s3/2023-12/Nassau-grouper-critical-habitat-final-report.pdf*). We received no comments on our initial regulatory flexibility analysis (IRFA). Results of the FRFA are summarized below.

Our FRFA uses the best available information to identify the potential impacts of designating critical habitat on small entities. However, a number of uncertainties complicate quantification of these impacts. These include (1) the fact that the manner in which these potential impacts will be allocated between large and small entities is unknown; and (2) uncertainty regarding the potential effects of critical habitat designation, which requires some categories of potential impacts be described qualitatively. Absent specific knowledge regarding which small entities may be involved in consultations with NMFS over the next 10 years, this analysis relies on industry- and location-specific information on small businesses with North American Industry Classification System codes that were identified as relevant to the major activity categories considered in the economic analysis and which operate within counties or territories that share a coastline with the critical habitat. Activities considered in the economic analysis and the FRFA include in-water and coastal construction, water quality management, protected area management, fishery management, aquaculture, military, scientific research and monitoring, and derelict vessel and marine debris removal. Based on the relevant consultation history and forecast of future activities that may affect the determined critical habitat, only in-water and coastal construction activities are anticipated to involve third parties that qualify as small entities. Given the uncertainty regarding the proportion of consultations on construction activities that will involve third parties, the analysis conservatively assumes that all future consultations on these activities will involve third parties and that all of these third parties will be small entities. All of the counties and territories that share a coastline with the designated critical habitat have populations of more than 50,000, so no impacts to small governmental jurisdictions are expected as a result of the critical habitat designation.

The maximum total annualized impacts to small entities are estimated to be $4,221, which represents approximately 7 percent of the total quantified incremental impacts forecasted to result from the final rule. This estimate reflects incremental administrative costs, such as written and verbal communication with NMFS and other Federal action agencies, at a rate of $100/hour and ranging from approximately 1.5 hours providing technical assistance to approximately 10.25 hours engaging in formal consultation (see Exhibit C.1 and accompanying text, Summary of Estimated Impacts to Small Entities by Activity Type, in Appendix C of the Critical Habitat Report, *https://www.fisheries.noaa.gov/s3/2023-12/Nassau-grouper-critical-habitat-final-report.pdf*). These impacts are anticipated to be borne by the small entities in the construction industry that obtain funds or permits from Federal agencies that will consult with NMFS regarding Nassau grouper critical habitat in the next 10 years.

Given the uncertainty regarding which small entities in a given industry will need to consult with NMFS, the analysis estimates impacts to small entities under two different scenarios. These scenarios are intended to reflect the range of uncertainty regarding the number of small entities that may be affected by the designation and the potential impacts of critical habitat designation on their annual revenues. Under both scenarios, the FRFA assumes that entities conducting in-water and coastal construction activities in the Florida units are limited to those entities located in Miami-Dade and Monroe Counties, entities conducting in-water and coastal construction activities in the Puerto Rico units are limited to those entities located in Puerto Rico, and entities conducting in-water and coastal construction activities in the USVI units are limited to those entities located in the USVI. Estimated annualized impacts for both scenarios are calculated by multiplying the forecasted number of annual consultations involving third parties by the administrative costs per

consultation estimated to be borne by small entities. Absent specific knowledge regarding the timing of future consultations involving third parties, the FRFA further assumes under both scenarios that an equal number of such consultations will occur each year over the next ten years.

Under Scenario 1, the analysis assumes that all third parties involved in future consultations are small and that incremental impacts are distributed evenly across all of these entities. For the Florida units, where we estimate approximately 400 small entities participate in the in-water and coastal construction industry (see Exhibit B–1 in Appendix B of the Critical Habitat Report, *https://www.fisheries.noaa.gov/s3/2023-12/Nassau-grouper-critical-habitat-final-report.pdf*), Scenario 1 accordingly reflects a high estimate of the number of potentially affected small entities (6.4) and a low estimate of the potential effect in terms of percent of revenue. The assumption under Scenario 1 that 6.4 small entities will be subject to consultation annually reflects the forecast that 6.4 consultations will occur annually on in-water and coastal construction activities involving third parties. This assumes that each consultation within the in-water and coastal construction industry involves a unique small entity. This scenario, therefore, may overstate the number of small entities based in Miami-Dade and Monroe counties that are likely to be affected by the rule and understate the revenue effect. Scenario 1 also assumes that each consultation within the in-water and coastal construction industry in the Puerto Rico and USVI units involves a unique small entity. For the Puerto Rico units, because section 7 consultation on construction activities is anticipated to occur at a rate of 0.8 per year, or eight consultations over 10 years, we assume that 0.8 small entities will be impacted per year. Similarly, because section 7 consultation on construction activities affecting the USVI units is anticipated to occur at a rate of 0.8 per year, or eight consultations over 10 years, we assume that 0.8 USVI-based small entities will be impacted per year. Therefore, Scenario 1 does not yield the same overstatement of the number of small entities likely to be affected (unless the third party entities involved in the consultations on the construction activities in Puerto Rico and USVI are not small entities) or the same understatement of the revenue effect for these jurisdictions. The analysis anticipates that, across the three jurisdictions where there are small entities that are assumed to conduct in-water and coastal construction, approximately eight small entities will incur $4,221 in annualized costs under Scenario 1, including $527 in costs to Florida-based small entities, $513 in costs to Puerto Rico-based small entities, and $549 in costs to USVI-based small entities. Annualized impacts of the rule are estimated to make up less than 1 percent of average annual revenues of approximately $1.31 million for each affected small entity (see Exhibit B–1 in Appendix B of the Critical Habitat Report, *https://www.fisheries.noaa.gov/s3/2023-12/Nassau-grouper-critical-habitat-final-report.pdf*). This percentage would be higher for a small entity with annual revenues lower than the average of annual revenues of all potentially impacted small entities, and lower for a small entity with annual revenues higher than the average of annual revenues of all potentially impacted small entities.

Under Scenario 2, the analysis assumes that all third parties participating in future consultations are small and that costs associated with each consultation action are borne each year by a single small entity within an industry. This method likely understates the number of small entities affected and overstates the likely impacts on an entity for the Florida units. As such, this method arrives at a low estimate of potentially affected entities in Florida units and a high estimate of potential effects on revenue, assuming that quantified costs represent a complete accounting of the costs likely to be borne by private entities. Under Scenario 2, $3,379 in annualized impacts would be borne by a single small entity in Florida. We maintain the assumption in Scenario 1 that 0.8 small entities per year bear the third party costs of consultation in Puerto Rico and 0.8 small entities per year bear the third party costs of consultation in USVI. This assumption reflects our forecast of eight consultations on construction projects over 10 years in both Puerto Rico and USVI. This scenario forecasts that annualized impacts to single entities in both Puerto Rico and USVI would be $513 and $549, respectively. Though this scenario almost certainly overstates the costs borne by a single small entity in Florida, the impact is nonetheless expected to represent less than 1 percent of the average annual revenues for the single entity. Impacts to single small entities in Puerto Rico and USVI are also anticipated to be less than 1 percent of average annual revenues. As with Scenario 1, this percentage would be higher for a small entity with annual revenues lower than the average of annual revenues of all potentially impacted small entities, and lower for a small entity with annual revenues higher than the average of annual revenues of all potentially impacted small entities.

While these scenarios present a range of potentially affected entities and the associated revenue effects in Florida, our analysis demonstrates that the greatest potential revenue effect is less than 1 percent across scenarios and jurisdictions. Moreover, although we cannot definitively determine the numbers of small and large entities that may be affected by this final rule, there is no indication that affected project applicants would be only small entities or mostly small entities. It is unclear whether small entities would be placed at a competitive disadvantage compared to large entities.

No Federal laws or regulations duplicate or conflict with this final rule. However, other aspects of the ESA may overlap with the critical habitat designations. For instance, listing of the Nassau grouper under the ESA requires Federal agencies to consult with NMFS to ensure against jeopardy to the species. Overlap of the presence of other ESA-listed species, including listed corals, and coral critical habitat with the areas designated as critical habitat protects the essential features of the critical habitat to the extent that projects or activities that may adversely affect the critical habitat also pose a threat to the listed species or to coral critical habitat. Several fishery management plans, developed under the authority of the Magnuson-Stevens Fishery Conservation and Management Act, serve to prevent overfishing of Nassau grouper prey and promote the spawning, breeding, feeding, and growth to maturity of reef fish such as the Nassau grouper. Overlap of the final Nassau grouper critical habitat with several Federal protected areas affords the critical habitat extensive protections against potentially damaging activities. Some of these consultations on activities associated with these protections will need to be reviewed to consider potential effects to Nassau grouper critical habitat.

The RFA requires consideration of alternatives to the final rule that would minimize significant economic impacts to small entities. We considered the following alternatives when developing the final critical habitat rule.

Alternative 1: No Action Alternative

Under this status quo alternative, we would not designate critical habitat for

the Nassau grouper. Conservation and recovery of the listed species would depend exclusively upon the protection provided under the ''jeopardy'' provisions of section 7 of the ESA. Under the status quo, there would be no increase in the number of ESA consultations in the future that would not otherwise be required due to the listing of the Nassau grouper. However, we have determined that the physical and biological features forming the basis for our critical habitat designation are essential to the Nassau grouper's conservation, and conservation of the species will not succeed without these features being available. Thus, the lack of protection of the critical habitat features from adverse modification could result in continued declines in abundance of Nassau grouper, and loss of associated economic and other values the species provides to society, such as commercial diving services. Small entities engaged in industries that depend on the presence of Nassau grouper or elements of the species' critical habitat, particularly coral reefs, would be adversely affected by continued declines in the Nassau grouper. Thus, the no action alternative is not necessarily a ''no cost'' alternative for small entities. Moreover, because the ESA requires designation of critical habitat to the maximum extent prudent and determinable, and in this case critical habitat is both prudent and determinable, this option would not be legally viable under the ESA.

Alternative 2: Preferred Alternative

Under this alternative, the areas designated are waters from the shoreline to depths ranging from 2 m to 30 m in seven units in Florida, six units in Puerto Rico, three units in USVI, and one unit at Navassa Island; and in deeper, offshore waters up to 200 fathoms (366 m) deep off the Riley's Hump, Bajo de Sico, Grammanik, and Hind Banks spawning sites. An analysis of the costs and benefits of the preferred alternative designation is presented in Section 10.1 of the Critical Habitat Report. Relative to the no action alternative, this alternative will likely result in an increase in administrative costs of section 7 consultations that would already occur absent designation. We have determined that no categories of activities would require consultation, and no project modifications would be required, in the future solely due to this rule and the need to prevent adverse modification of the designated critical habitat. However, due to the protections afforded the essential features of the designated critical habitat under this alternative, it is likely that consultations on future Federal actions within those categories of activities will require additional administrative effort to address specific impacts to Nassau grouper critical habitat. This additional administrative effort would be an incremental impact of this rule. Consultation costs associated with those projects with larger or more diffuse action areas, *i.e.,* projects that may affect a wider range of listed species or critical habitats, would likely be largely coextensive with listings or other regulatory requirements.

The preferred alternative was selected because it best implements the critical habitat provisions of the ESA by including the well-defined environmental features that we can clearly state are essential to the species' conservation, and because this alternative would reduce the economic impacts on entities relative to an alternative that encompasses a larger geographical area (see Alternative 3). Also, as noted above, Alternative 1, would fail to meet statutory requirements for designation of critical habitat; and, as described below, Alternative 3, would not adequately reflect the best available science and our consideration of economic impacts.

Alternative 3: Different Geographic Boundaries

We considered a third alternative that would have delineated the designation for all nearshore units containing the development, refuge, and foraging essential feature based a single depth contour of 30 m. We evaluated this alternative based on our experience with the 2008 *Acropora* critical habitat designation, which created a single designation for both acroporid corals species from 0 to 30 m depth, generally, and to ensure inclusion across units of areas where the growth and development essential feature is abundant. However, the areas in which the development, refuge, and foraging essential feature is sufficiently abundant and contiguously located to appreciably promote conservation of the species comprise variable depth swaths across units. Under Alternative 3, a larger number of future Federal activities could affect the Nassau grouper critical habitat and trigger the need for ESA section 7 consultation, resulting in higher incremental administrative costs compared to the preferred alternative. Thus, we rejected this alternative because, relative to the preferred alternative, it would likely increase incremental costs of the final rule to small entities without incrementally promoting conservation of the species.

In the final rule, we selected Alternative 2 because it provides for the conservation of the species while reducing the economic, national security, and other relevant impacts on affected entities.

Coastal Zone Management Act

We have determined that this action will have no reasonably foreseeable effects on the enforceable policies of approved coastal zone management plans in Florida, Puerto Rico, and USVI.

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any new or revised collection of information requirements. This rule will not impose recordkeeping or reporting requirements on State or local governments, individuals, businesses, or organizations. Therefore, the Paperwork Reduction Act does not apply.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

This rule will not produce a Federal mandate. The designation of critical habitat does not impose a legally-binding duty on non-Federal government entities or private parties. The only regulatory effect is that Federal agencies must ensure that their actions are not likely to destroy or adversely modify critical habitat under section 7 of the ESA. Non-Federal entities that receive Federal funding, assistance, permits or otherwise require approval or authorization from a Federal agency for an action may be indirectly impacted by the designation of critical habitat, but the Federal agency has the legally binding duty to avoid destruction or adverse modification of critical habitat. We do not anticipate that this rule will significantly or uniquely affect small governments. Therefore, a Small Government Action Plan is not required.

Consultation and Coordination With Indian Tribal Governments (Executive Order 13175)

The longstanding and distinctive relationship between the Federal and tribal governments is defined by treaties, statutes, executive orders, judicial decisions, and agreements, which differentiate tribal governments from the other entities that deal with, or are affected by, the Federal government.

This relationship has given rise to a special Federal trust responsibility involving the legal responsibilities and obligations of the United States toward Indian Tribes and with respect to Indian lands, tribal trust resources, and the exercise of tribal rights. Pursuant to these authorities, lands have been

retained by Indian Tribes or have been set aside for tribal use. These lands are managed by Indian Tribes in accordance with tribal goals and objectives within the framework of applicable treaties and laws. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, outlines the responsibilities of the Federal government in matters affecting tribal interests.

In developing this rule, we reviewed maps and did not identify any areas designated as critical habitat that overlap with tribal lands, nor do we anticipate impacts on tribal fisheries as a result of these critical habitat designations. Based on this, we found the critical habitat designations for Nassau grouper do not have tribal implications.

Environmental Justice and Racial Equity (E.O.s 12898, 14096, 14019, 13985)

The designation of critical habitat is not expected to have a disproportionately high effect on minority populations or low-income populations. The purpose of this rule is to protect and conserve ESA-listed species through the designation of critical habitat and is expected to help promote a healthy environment; thus, we do not anticipate minority populations or low-income populations to experience disproportionate and adverse human health or environmental burdens. The designation of critical habitat is not expected to disproportionately affect minority populations, low-income populations, or populations otherwise adversely affected by persistent poverty or inequality. Further, it is not expected to create any barriers to opportunity for underserved communities. The proposed rule was widely distrusted, including to the affected States and territorial governments. We did not receive any public comment suggesting the designation would result in effects these communities.

References Cited

A complete list of all references cited in this rulemaking can be found on our Website at *https://www.fisheries.noaa.gov/species/nassau-grouper#conservation-management* and is available upon request from NMFS (see **ADDRESSES**).

List of Subjects

50 CFR Part 223

Endangered and threatened species, Exports, Imports, Transportation.

50 CFR Part 226

Endangered and threatened species.

Samuel D. Rauch, III,

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

For the reasons set out in the preamble, NOAA amends 50 CFR parts 223 and 226 as follows:

PART 223—THREATENED MARINE AND ANADROMOUS SPECIES

■ 1. The authority citation for part 223 continues to read as follows:

Authority: 16 U.S.C. 1531–1543; subpart B, § 223.201–202 also issued under 16 U.S.C. 1361 *et seq.;* 16 U.S.C. 5503(d) for § 223.206(d)(9).

■ 2. In § 223.102, amend the table in paragraph (e) by revising the entry under the ''Fishes'' subheading for ''Grouper, Nassau'' to read as follows:

§ 223.102 Enumeration of threatened marine and anadromous species.

* * * * *

(e) * * *

Species[1]			Citation(s) for listing determination(s)	Critical habitat	ESA rules
Common name	Scientific name	Description of listed entity			
*	*	*	*	*	*
Fishes					
*	*	*	*	*	*
Grouper, Nassau	*Epinephelus striatus*	Entire species	81 FR 42268, June 29, 2016.	[*Insert* 226.231]	NA
*	*	*	*	*	*

[1] Species includes taxonomic species, subspecies, distinct population segments (DPSs) (for a policy statement, see 61 FR 4722, February 7, 1996), and evolutionarily significant units (ESUs) (for a policy statement, see 56 FR 58612, November 20, 1991).

* * * * *

PART 226—DESIGNATED CRITICAL HABITAT

■ 3. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

■ 4. Add § 226.231 to read as follows:

§ 226.231 Critical habitat for the Nassau grouper.

Critical habitat is designated in the following state and territories as depicted in the maps below and described in paragraphs (a) through (d) of this section. The maps as clarified by the textual descriptions in this section are the definitive sources for determining the critical habitat boundaries.

(a) *Critical habitat boundaries.* Except as noted in paragraph (c) of this section, critical habitat is defined as:

(1) Navassa Island—All waters surrounding Navassa Island, from the shoreline to the 30 m isobath.

(2) Puerto Rico Unit 1—Isla de Mona and Monito—All waters surrounding the islands of Mona and Monito from the shoreline to the 50 m isobath.

(3) Puerto Rico Unit 2—Desecheo Island—All waters surrounding the island of Desecheo from the shoreline to the 50 m isobath.

(4) Puerto Rico Unit 3—Southwest—All waters from the southwestern shoreline of Puerto Rico, between Playa Tres Tubos just south Mayaguez and Punta Ballena in Guanica, extending offshore to depths of about 10 m and, near La Parguera, to depths of about 15 m.

(5) Puerto Rico Unit 4—Northeast—All waters from the northeastern shoreline of Puerto Rico out to depths

of about 10 m between Cabeza Chiquita and Punta Lima.

(6) Puerto Rico Unit 5—Vieques Island—There are two areas that make up this unit. First, all waters from the southwestern shoreline out to the inner reef in depths of about 2 m between Punta Boca Quebrada and Punta Vaca. Second, all waters from the southeastern and northeastern shorelines out to the inner reef in depths of about 2 m between Punta Mulas and Ensenada Honda near Cayo Jalovita.

(7) Puerto Rico Unit 6—Isla de Culebra—There are two areas that make up this unit. First, all waters from the southeastern shoreline of Isla de Culebra out to the reef ledge in depths of about 15 m between Punta del Soldado and Cabeza de Perro, excluding the bays of Puerto del Manglar and Ensenada Honda. Second, all waters from the southern shoreline of Isla Culebrita out to the nearshore reef in depths of about 5 m between the western point of the island and Punta del Este.

(8) United State Virgin Islands Unit 1—St. Thomas—There are two areas that make up this unit. First, all waters off the southeast end of St. Thomas between Stalley Bay and Cabrita Point out to the reef ledge in depths of about 15 m and surrounding Great St. James, Little St. James, and Dog Islands. Second, all waters on the south side of Water Island from the shoreline out to the coral reef in depths of about 5 m between Druif Point and the south end of Sand Bay.

(9) United States Virgin Islands Unit 2—St. John—All waters on the east end of St. John from the shoreline out to the inner coral reef in depths of about 2 m between White Point on the south coast and Leinster Point on the north coast.

(10) United States Virgin Islands Unit 3—St. Croix—There are two areas that make up this unit. First, all waters on the east end of St. Croix from the shoreline to the outer coral reef edge in depths of about 10 m on the north coast and 15 m on the eastern point and south coast between Batiste Point and Pelican Cove Beach, excluding the Christiansted navigation channel. Second, all waters on the north side of Buck Island between the shoreline and the coral reef in depths of about 5 m.

(11) Florida Unit 1—Biscayne Bay/Key Largo—All waters of Biscayne Bay (bounded on the north by the Rickenbacker Causeway), Card Sound (bounded on the south by Card Sound Road), and the Atlantic Ocean out to the coral reef and hardbottom in depths of about 20 m between Stiltsville, south of Cape Florida, and Harry Harris Beach Park near the south end of Key Largo, excluding the Intracoastal Waterway; unit overlaps areas of Miami-Dade and Monroe County.

(12) Florida Unit 2—Marathon—All waters from the southern shoreline of the City of Marathon in Monroe County out to the 15 m isobath between Knights Key and Grassy Key, excluding the Boot Key navigation channel.

(13) Florida Unit 3—Big Pine Key to Geiger Key—All waters south of U.S. Highway 1 out to the 15 m isobath between the eastern point of Big Pine Key and Geiger Key in Monroe County.

(14) Florida Unit 4—Key West—All shoal waters south of Woman Key between 5 and 30 m depth that contain coral reef and hardbottom and seagrass habitat in Monroe County.

(15) Florida Unit 5—New Ground Shoal—All New Ground Shoal waters shown in the map below for this unit in Monroe County.

(16) Florida Unit 6—Halfmoon Shoal—All Halfmoon Shoal Waters shown in the map below for this unit in Monroe County.

(17) Florida Unit 7—Dry Tortugas—There are three areas which make up this unit located in Monroe County. First, all waters surrounding Loggerhead Key to depths of about 2 m. Second, all waters surrounding Garden Key to depths out to about 3.5 m. Third, all waters surrounding Bush Key to depths out to about 5.5 m.

(18) Spawning Site Unit 1—Bajo de Sico—All waters encompassed by the 100 m isobath in the Bajo de Sico area.

(19) Spawning Site Unit 2—Grammanik Bank/Hind Bank—All waters which make up the Hind Bank and the Grammanik Bank, interconnecting waters between these banks, and waters extending out to the 200 fathom line directly south from Grammanik Bank.

(20) Spawning Site Unit 3—Riley's Hump—All waters encompassing Riley's Hump located southwest of the Dry Tortugas out to the 35 m isobath on the north, west, and east side of the hump and out to the 50 m isobath on the south side of the hump.

(b) *Essential features.* The features essential to the conservation of Nassau grouper are:

(1) *Recruitment and developmental habitat.* Areas from nearshore to offshore necessary for recruitment, development, and growth of Nassau grouper containing a variety of benthic types that provide cover from predators and habitat for prey, consisting of the following:

(i) *Nearshore shallow subtidal marine nursery areas* with substrate that consists of unconsolidated calcareous medium to very coarse sediments (not fine sand) and shell and coral fragments and may also include cobble, boulders, whole corals and shells, or rubble mounds, to support larval settlement and provide shelter from predators during growth and habitat for prey.

(ii) *Intermediate hardbottom and seagrass areas* in close proximity to the nearshore shallow subtidal marine nursery areas that protect growing fish from predation as they move from nearshore nursery areas into deeper waters and provide habitat for prey. The areas include seagrass interspersed with areas of rubble, boulders, shell fragments, or other forms of cover; inshore patch and fore reefs that provide crevices and holes; or substrates interspersed with scattered sponges, octocorals, rock and macroalgal patches, or stony corals.

(iii) *Offshore linear and patch reefs* in close proximity to intermediate hardbottom and seagrass areas that contain multiple benthic types, for example, coral reef, colonized hardbottom, sponge habitat, coral rubble, rocky outcrops, or ledges, to provide shelter from predation during maturation and habitat for prey.

(iv) *Structures* between the subtidal nearshore area and the intermediate hardbottom and seagrass area and the offshore reef area including overhangs, crevices, depressions, blowout ledges, holes, and other types of formations of varying sizes and complexity to support juveniles and adults as movement corridors that include temporary refuge that reduce predation risk as Nassau grouper move from nearshore to offshore habitats.

(2) *Spawning habitat.* Marine sites used for spawning and adjacent waters that support movement and staging associated with spawning.

(c) *Areas not included in critical habitat.* Critical habitat does not include:

(1) Managed areas where the substrate is continually disturbed by planned management activities authorized by local, state, or Federal governmental entities at the time of critical habitat designation, and that will continue to be disturbed by such management. Examples include, but are not necessarily limited to, dredged navigation channels, shipping basins, vessel berths, and active anchorages.

(2) Pursuant to ESA section 4(a)(3)(B), all area subject to the Naval Air Station Key West Integrated Natural Resources Management Plan.

(d) *Maps of Nassau grouper critical habitat.* (1) Spatial data for these critical habitats and mapping tools are maintained on our website and are available for public use (*www.fisheries.noaa.gov/national/*

endangered-species-conservation/critical-habitat).

(2) Overview maps of each final critical habitat unit follow.

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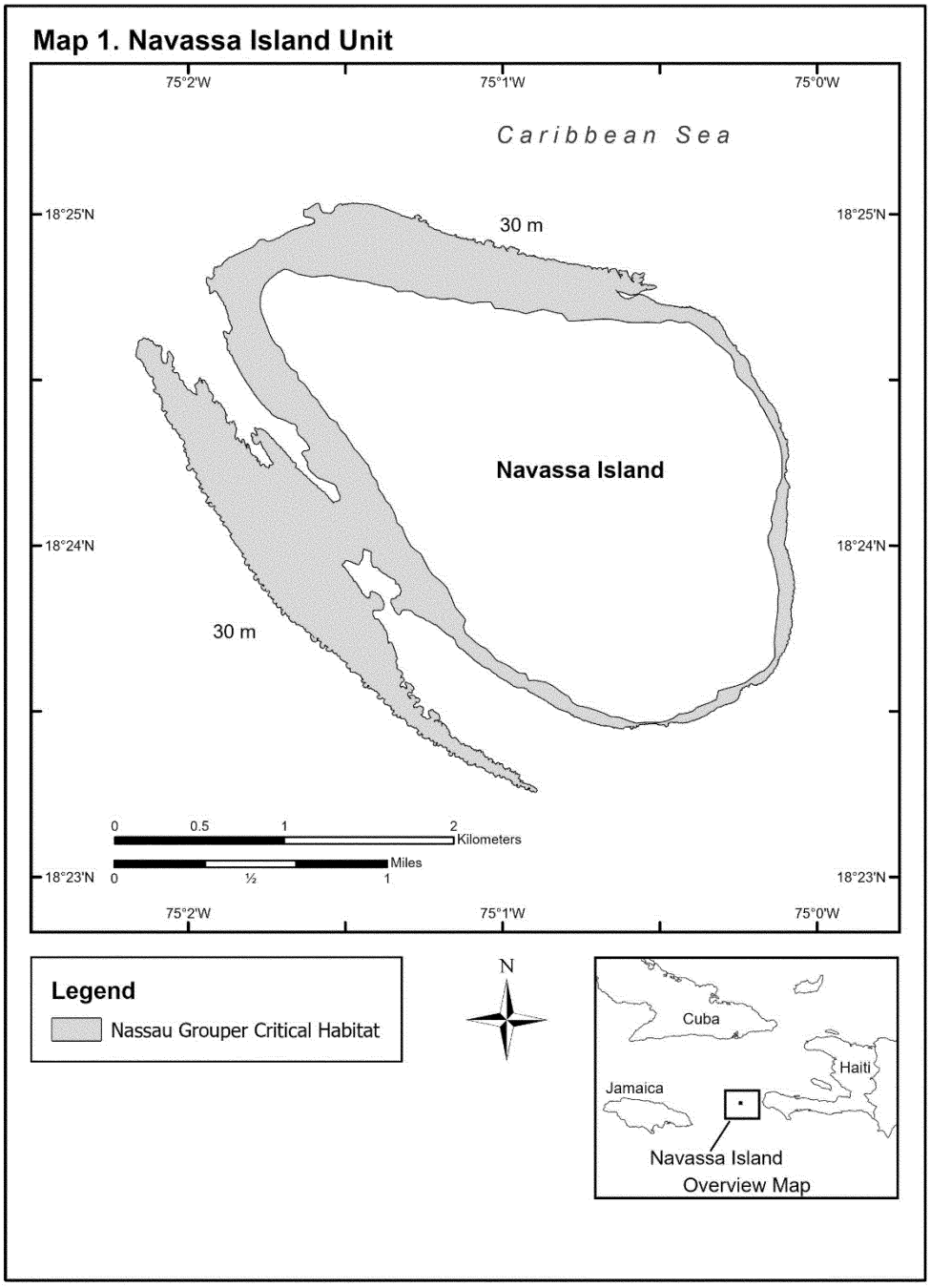
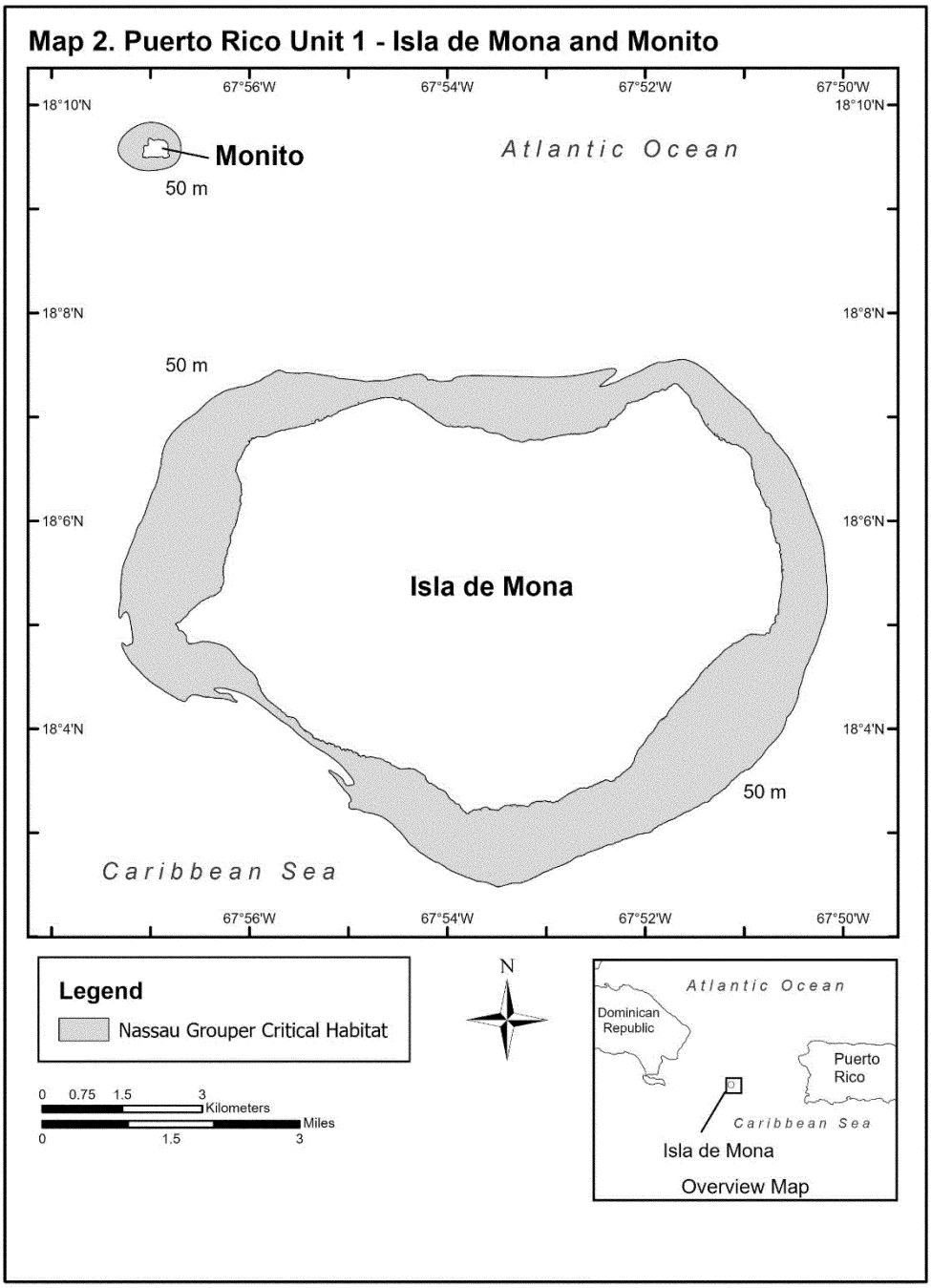
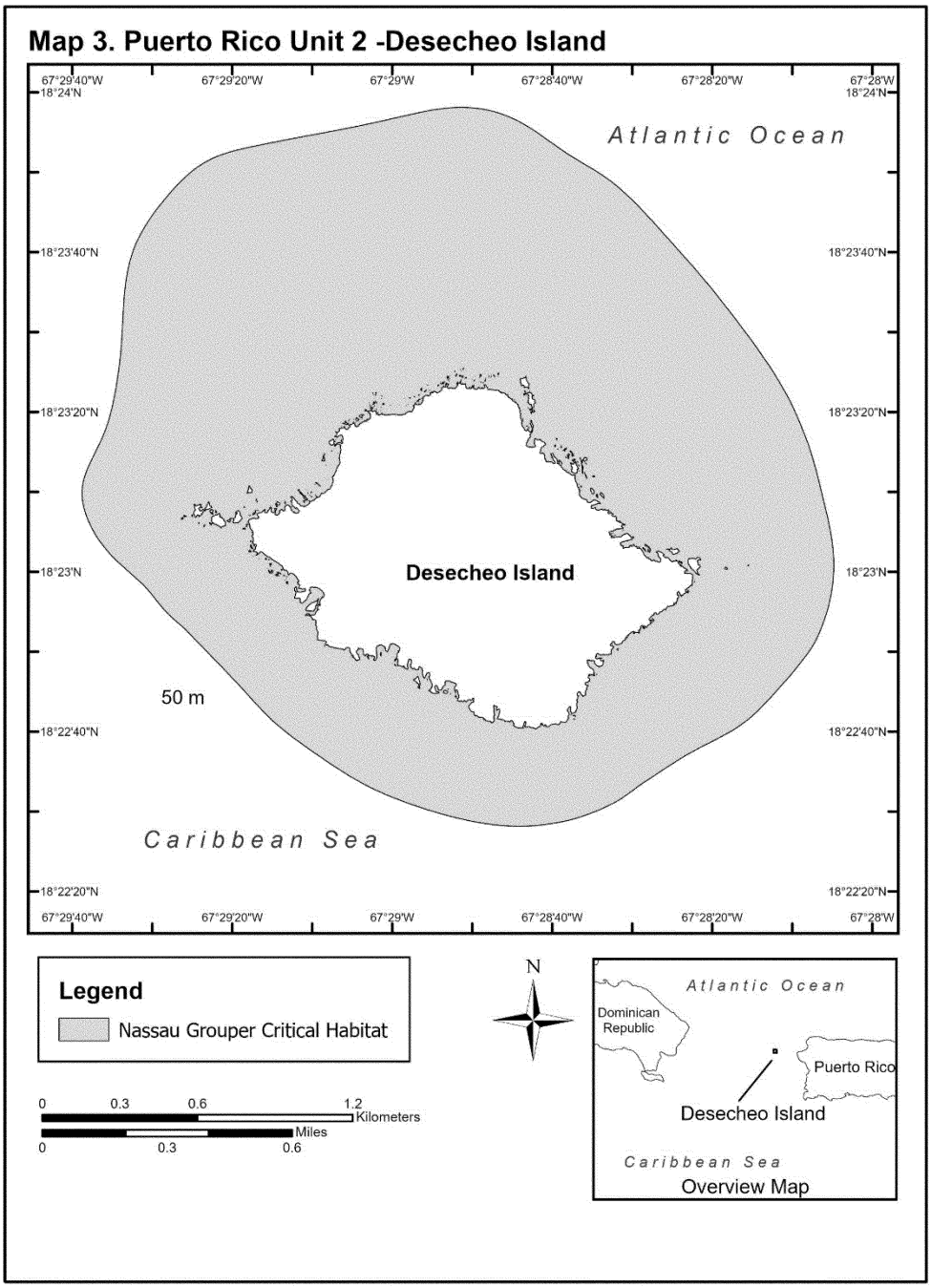
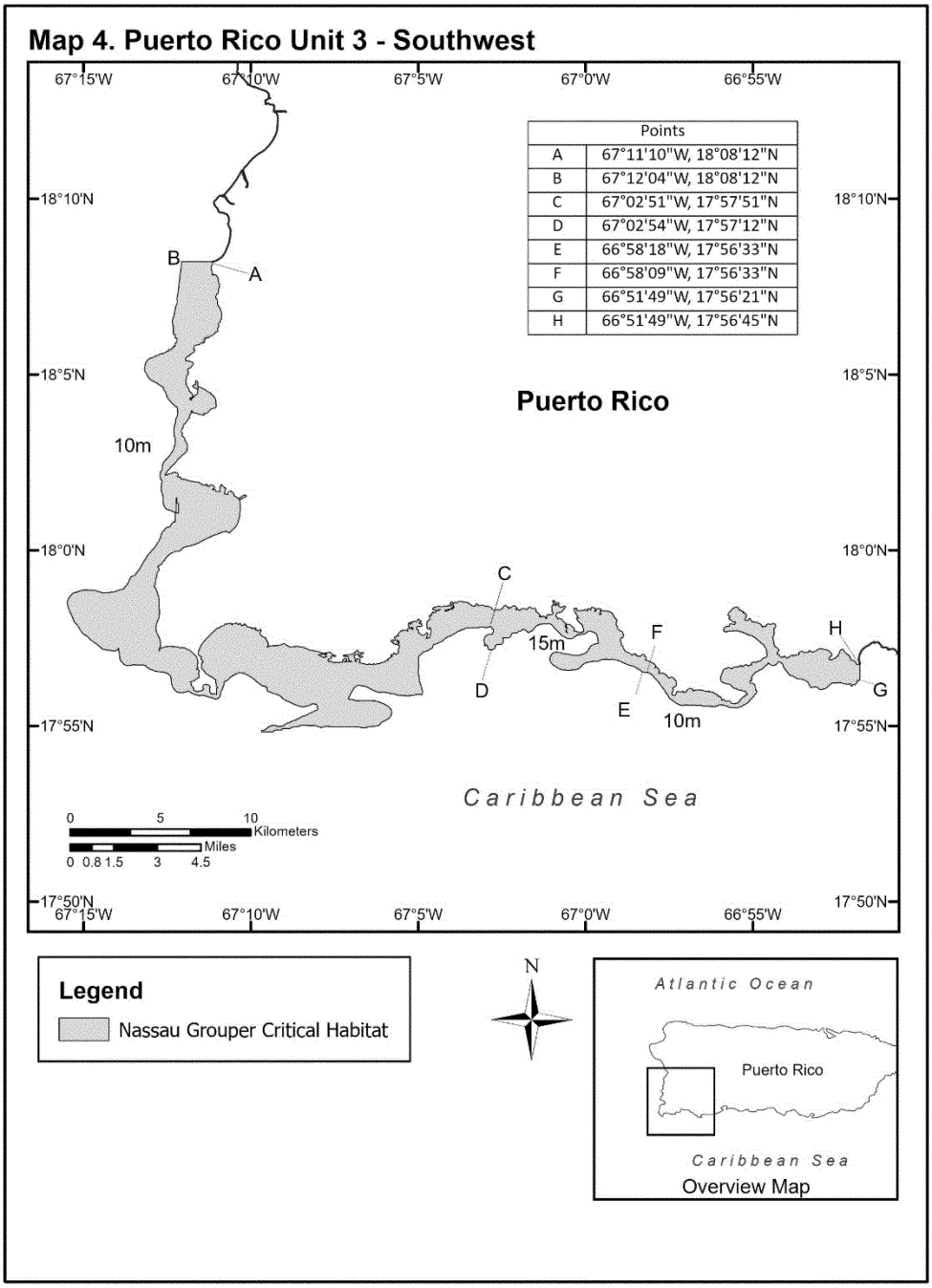
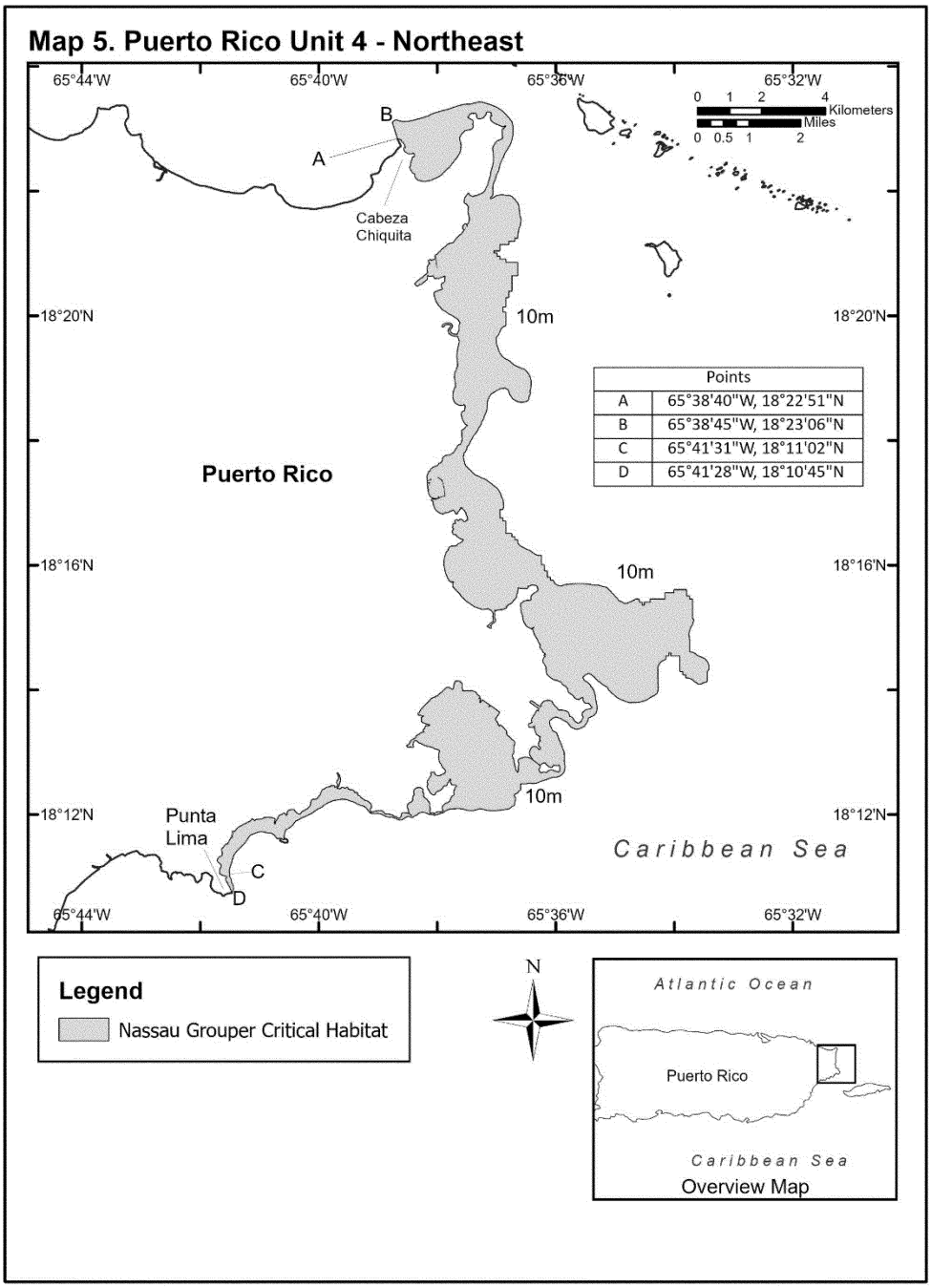


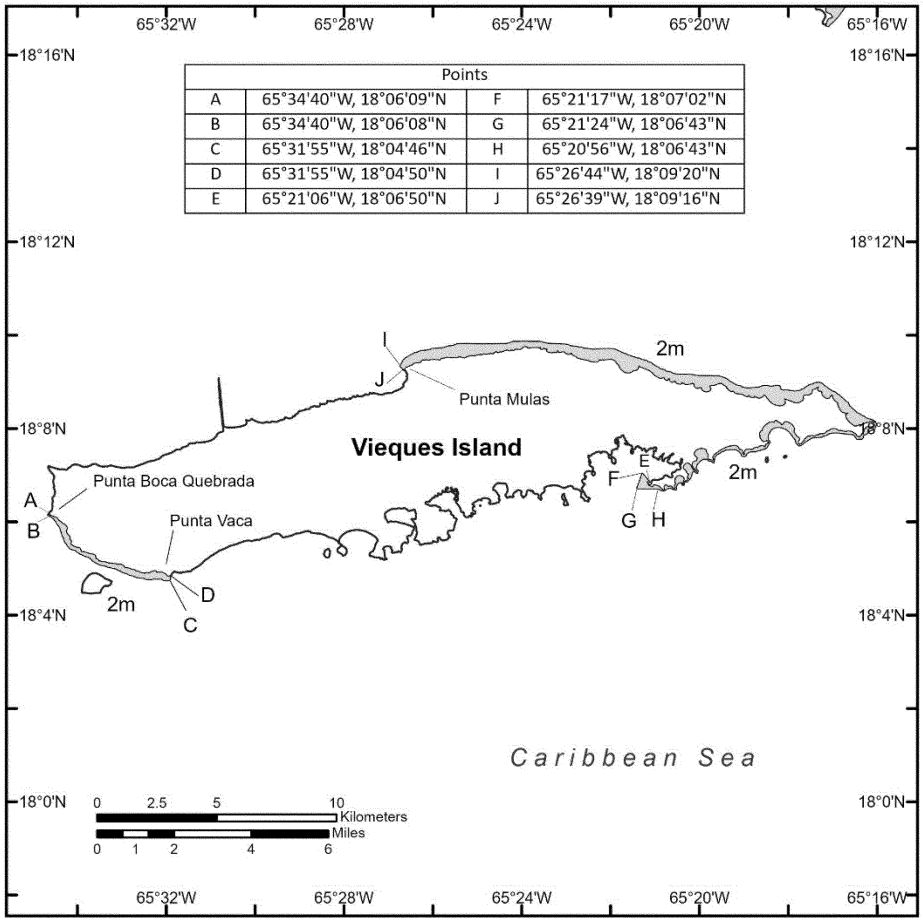

Map 2. Puerto Rico Unit 1 - Isla de Mona and Monito
67°56'W
67°54'W
67°52'W
67°50'W
18°10'N
18°8'N
18°6'N
18°4'N
Monito
50 m
Atlantic Ocean
50 m
Isla de Mona
50 m
Caribbean Sea
Legend
Nassau Grouper Critical Habitat
N
0 0.75 1.5 3
Kilometers
Miles
0 1.5 3
Atlantic Ocean
Dominican Republic
Puerto Rico
Caribbean Sea
Isla de Mona
Overview Map

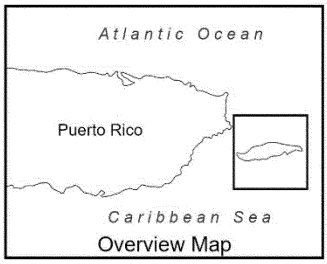

Map 3. Puerto Rico Unit 2 -Desecheo Island
67°29'40"W
67°29'20"W
67°29'W
67°28'40"W
67°28'20"W
67°28'W
18°24'N
Atlantic Ocean
18°23'40"N
18°23'20"N
18°23'N
18°22'40"N
18°22'20"N
Desecheo Island
50 m
Caribbean Sea
Legend
Nassau Grouper Critical Habitat
0 0.3 0.6 1.2 Kilometers
0 0.3 0.6 Miles
N
Atlantic Ocean
Dominican Republic
Puerto Rico
Desecheo Island
Caribbean Sea
Overview Map

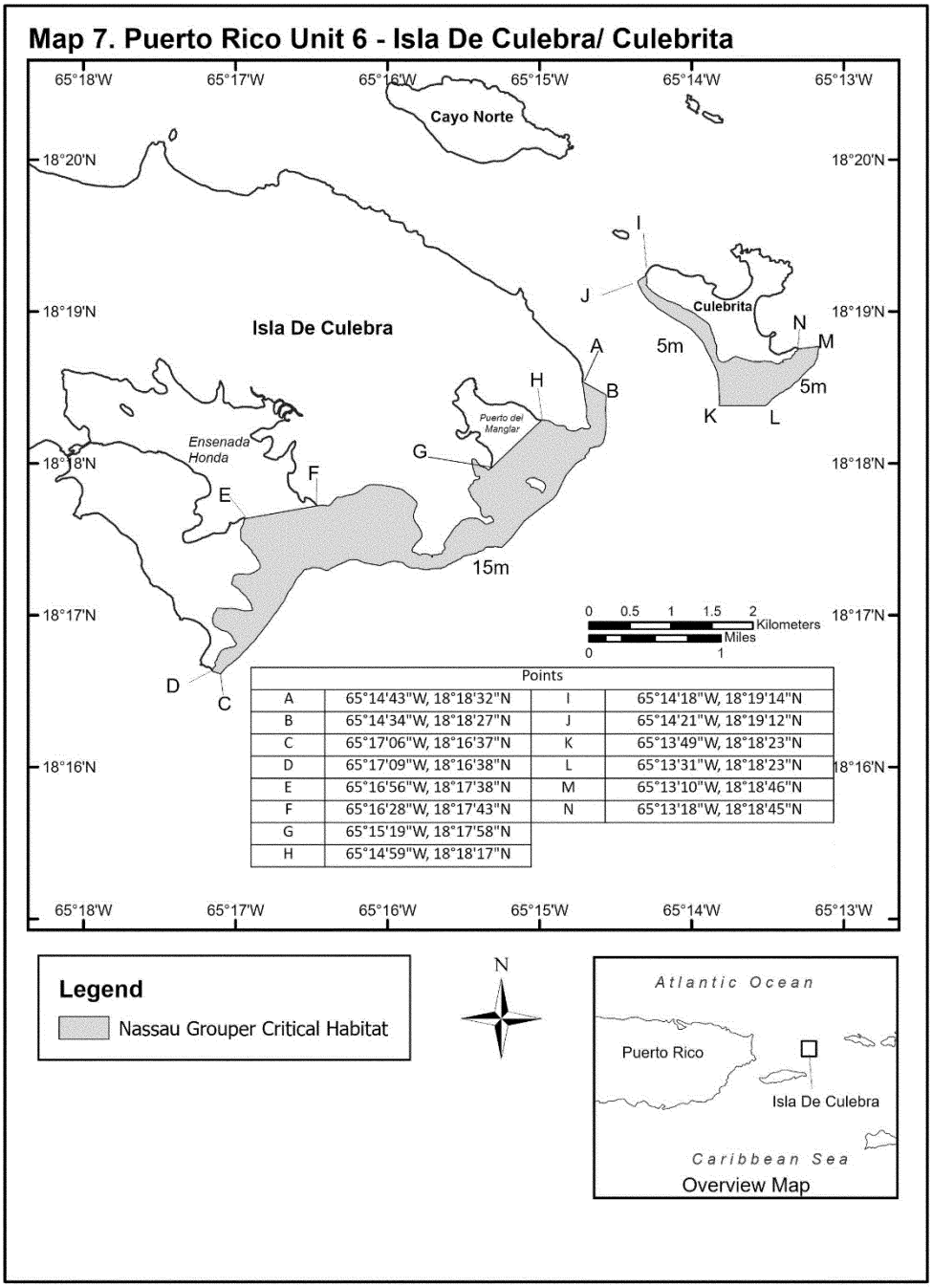

Map 4. Puerto Rico Unit 3 - Southwest
67°15'W
67°10'W
67°5'W
67°0'W
66°55'W
18°10'N
18°5'N
18°0'N
17°55'N
17°50'N
Points
A 67°11'10"W, 18°08'12"N
B 67°12'04"W, 18°08'12"N
C 67°02'51"W, 17°57'51"N
D 67°02'54"W, 17°57'12"N
E 66°58'18"W, 17°56'33"N
F 66°58'09"W, 17°56'33"N
G 66°51'49"W, 17°56'21"N
H 66°51'49"W, 17°56'45"N
Puerto Rico
10m
15m
10m
Caribbean Sea
0 5 10 Kilometers
0 0.8 1.5 3 4.5 Miles
Legend
Nassau Grouper Critical Habitat
N
Atlantic Ocean
Puerto Rico
Caribbean Sea
Overview Map

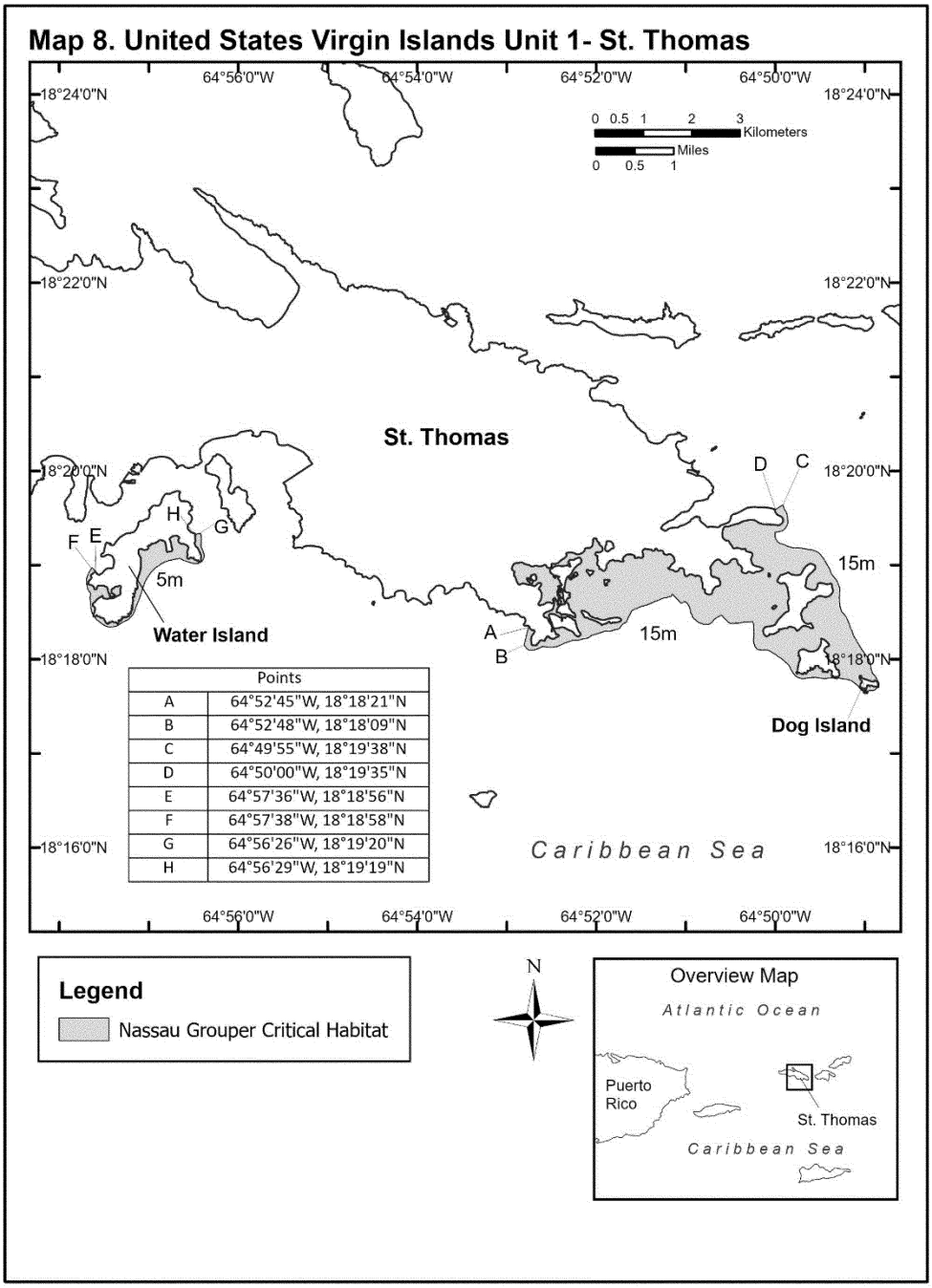

Map 5. Puerto Rico Unit 4 - Northeast
65°44'W
65°40'W
65°36'W
65°32'W
0 1 2 4
Kilometers
Miles
0 0.5 1 2
B
A
Cabeza
Chiquita
18°20'N
10m
Points
A 65°38'40"W, 18°22'51"N
B 65°38'45"W, 18°23'06"N
C 65°41'31"W, 18°11'02"N
D 65°41'28"W, 18°10'45"N
Puerto Rico
18°16'N
10m
10m
18°12'N
Punta
Lima
C
D
Caribbean Sea
Legend
Nassau Grouper Critical Habitat
N
Atlantic Ocean
Puerto Rico
Caribbean Sea
Overview Map

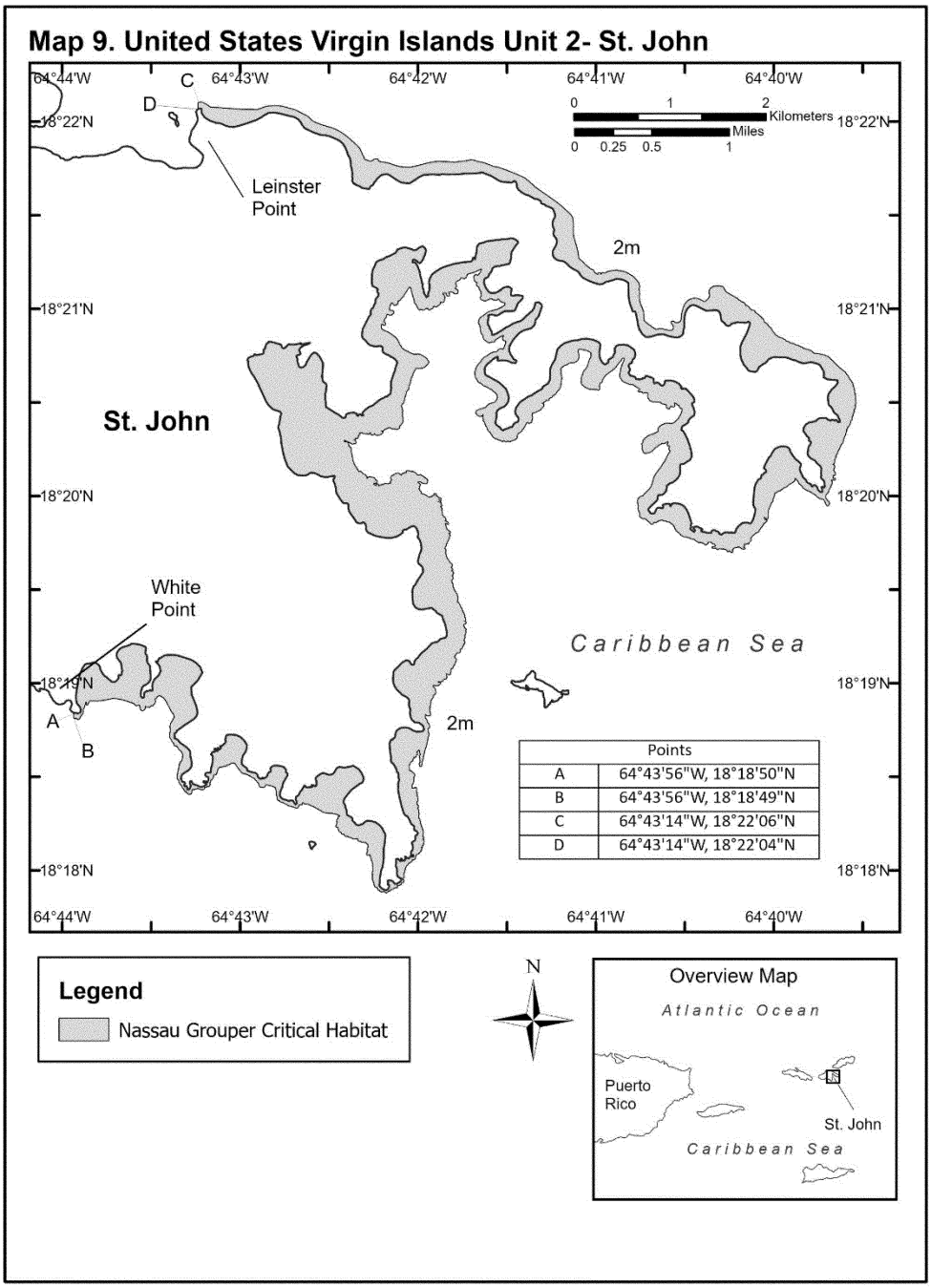
Map 6. Puerto Rico Unit 5 - Vieques Island



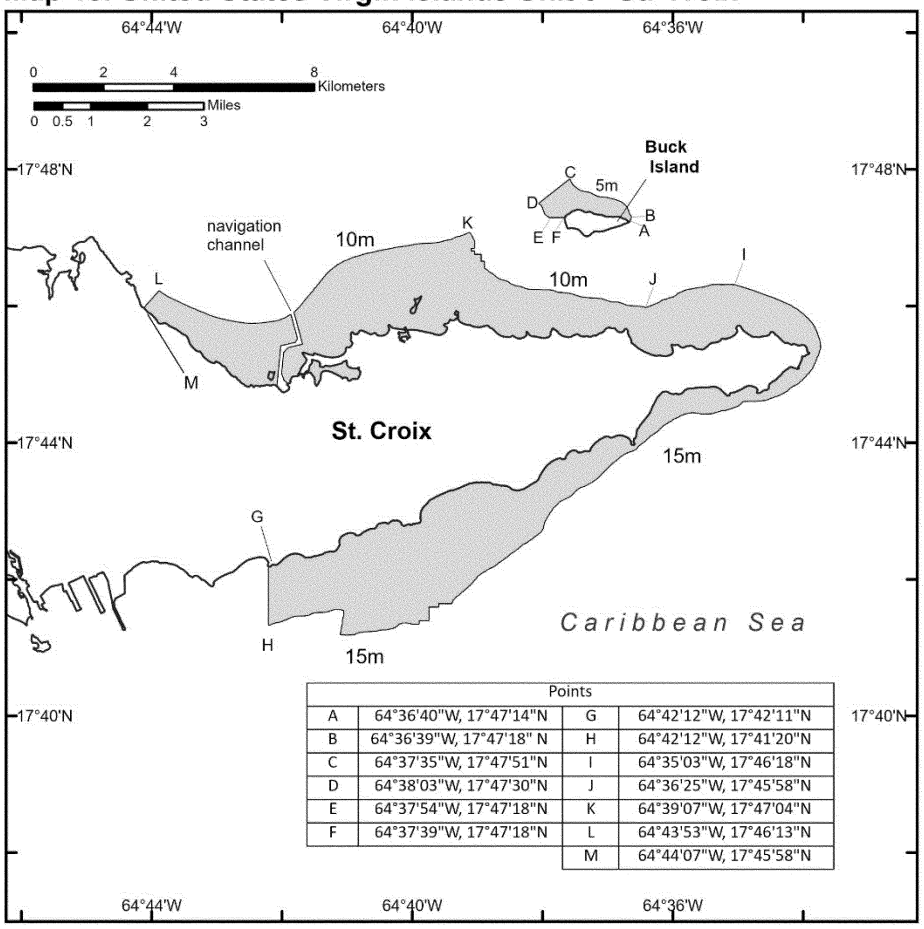



Map 7. Puerto Rico Unit 6 - Isla De Culebra/ Culebrita
65°18'W
65°17'W
65°16'W
65°15'W
65°14'W
65°13'W
18°20'N
18°19'N
18°18'N
18°17'N
18°16'N
Cayo Norte
Isla De Culebra
Culebrita
Ensenada Honda
Puerto del Manglar
5m
15m
0 0.5 1 1.5 2 Kilometers
0 1 Miles
Points
A 65°14'43"W, 18°18'32"N
B 65°14'34"W, 18°18'27"N
C 65°17'06"W, 18°16'37"N
D 65°17'09"W, 18°16'38"N
E 65°16'56"W, 18°17'38"N
F 65°16'28"W, 18°17'43"N
G 65°15'19"W, 18°17'58"N
H 65°14'59"W, 18°18'17"N
I 65°14'18"W, 18°19'14"N
J 65°14'21"W, 18°19'12"N
K 65°13'49"W, 18°18'23"N
L 65°13'31"W, 18°18'23"N
M 65°13'10"W, 18°18'46"N
N 65°13'18"W, 18°18'45"N
Legend
Nassau Grouper Critical Habitat
N
Atlantic Ocean
Puerto Rico
Isla De Culebra
Caribbean Sea
Overview Map


Map 8. United States Virgin Islands Unit 1- St. Thomas
64°56'0"W
64°54'0"W
64°52'0"W
64°50'0"W
18°24'0"N
18°22'0"N
18°20'0"N
18°18'0"N
18°16'0"N
0 0.5 1 2 3 Kilometers
0 0.5 1 Miles
St. Thomas
Water Island
Dog Island
5m
15m
15m
A
B
C
D
E
F
G
H
Caribbean Sea
Points
A 64°52'45"W, 18°18'21"N
B 64°52'48"W, 18°18'09"N
C 64°49'55"W, 18°19'38"N
D 64°50'00"W, 18°19'35"N
E 64°57'36"W, 18°18'56"N
F 64°57'38"W, 18°18'58"N
G 64°56'26"W, 18°19'20"N
H 64°56'29"W, 18°19'19"N
Legend
Nassau Grouper Critical Habitat
N
Overview Map
Atlantic Ocean
Puerto Rico
St. Thomas
Caribbean Sea


Map 9. United States Virgin Islands Unit 2- St. John
64°44'W
64°43'W
64°42'W
64°41'W
64°40'W
18°22'N
18°21'N
18°20'N
18°19'N
18°18'N
C
D
0 1 2 Kilometers
0 0.25 0.5 1 Miles
Leinster Point
2m
St. John
White Point
Caribbean Sea
A
B
2m
Points
A 64°43'56"W, 18°18'50"N
B 64°43'56"W, 18°18'49"N
C 64°43'14"W, 18°22'06"N
D 64°43'14"W, 18°22'04"N
Legend
Nassau Grouper Critical Habitat
N
Overview Map
Atlantic Ocean
Puerto Rico
St. John
Caribbean Sea

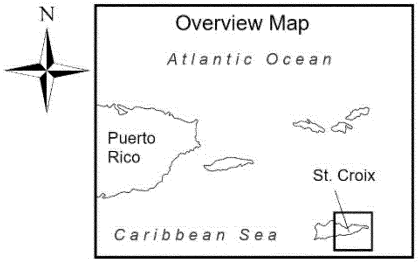
Map 10. United States Virgin Islands Unit 3- St. Croix

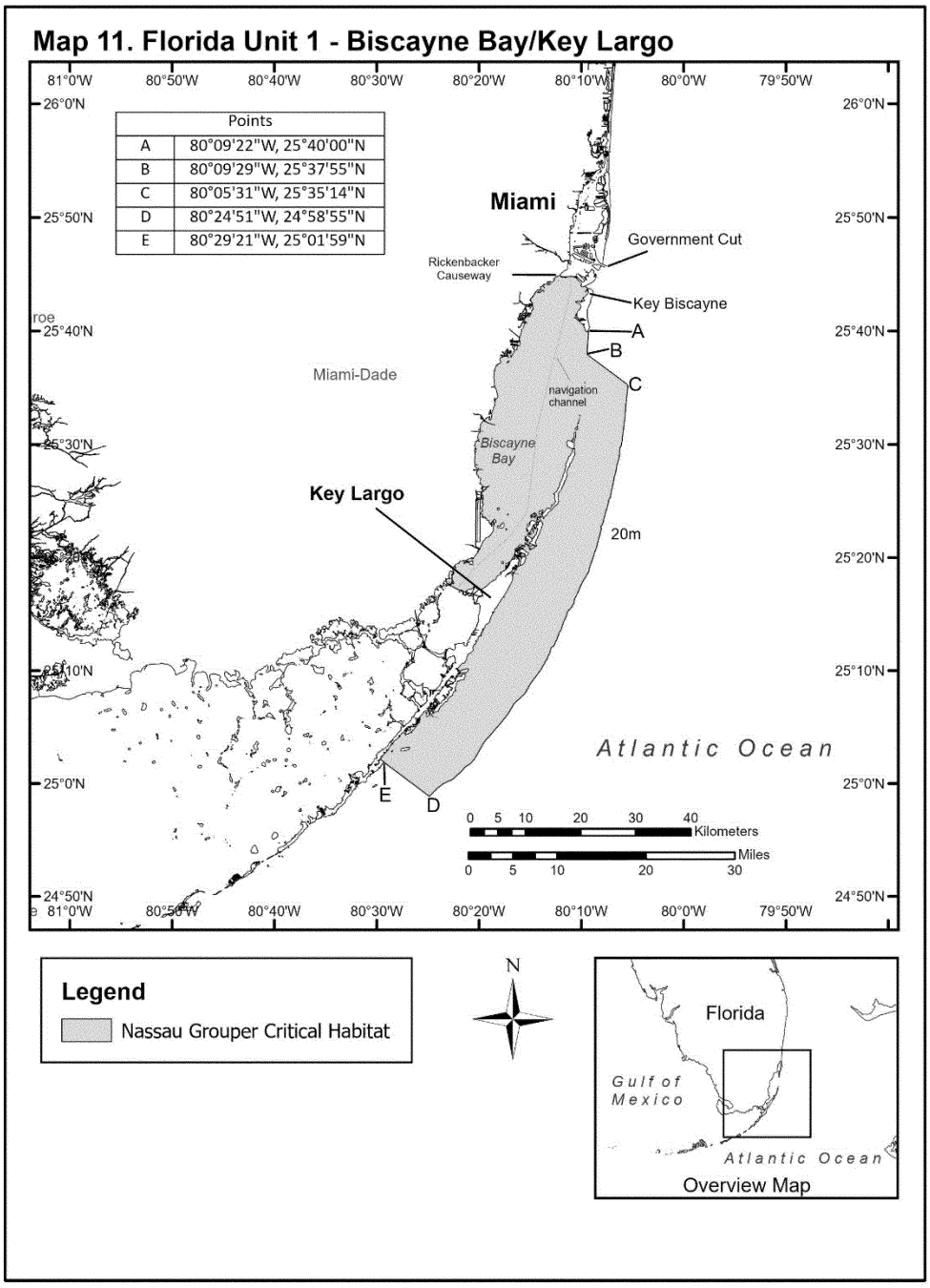


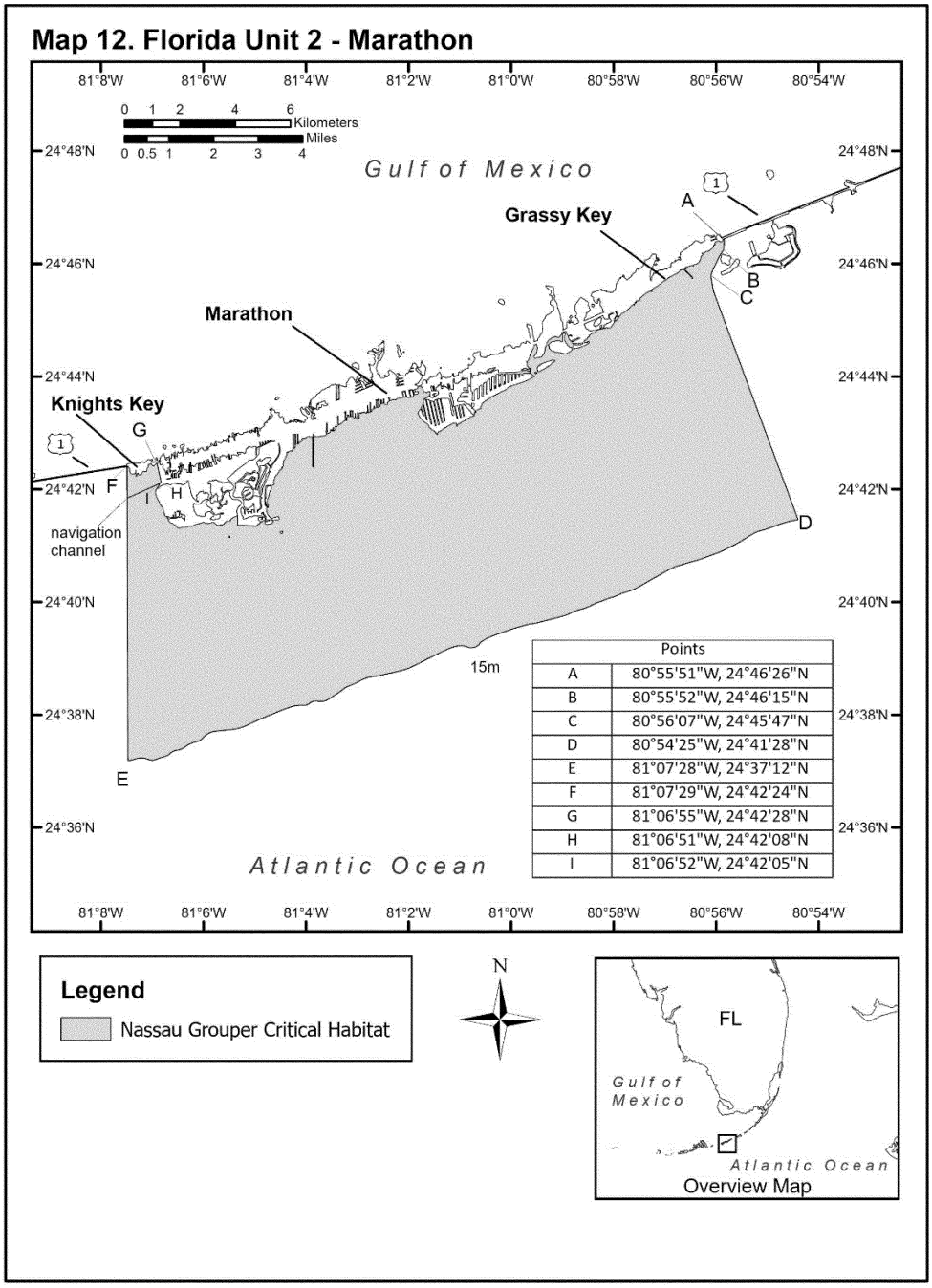
Points			
A	64°36'40"W, 17°47'14"N	G	64°42'12"W, 17°42'11"N
B	64°36'39"W, 17°47'18" N	H	64°42'12"W, 17°41'20"N
C	64°37'35"W, 17°47'51"N	I	64°35'03"W, 17°46'18"N
D	64°38'03"W, 17°47'30"N	J	64°36'25"W, 17°45'58"N
E	64°37'54"W, 17°47'18"N	K	64°39'07"W, 17°47'04"N
F	64°37'39"W, 17°47'18"N	L	64°43'53"W, 17°46'13"N
		M	64°44'07"W, 17°45'58"N

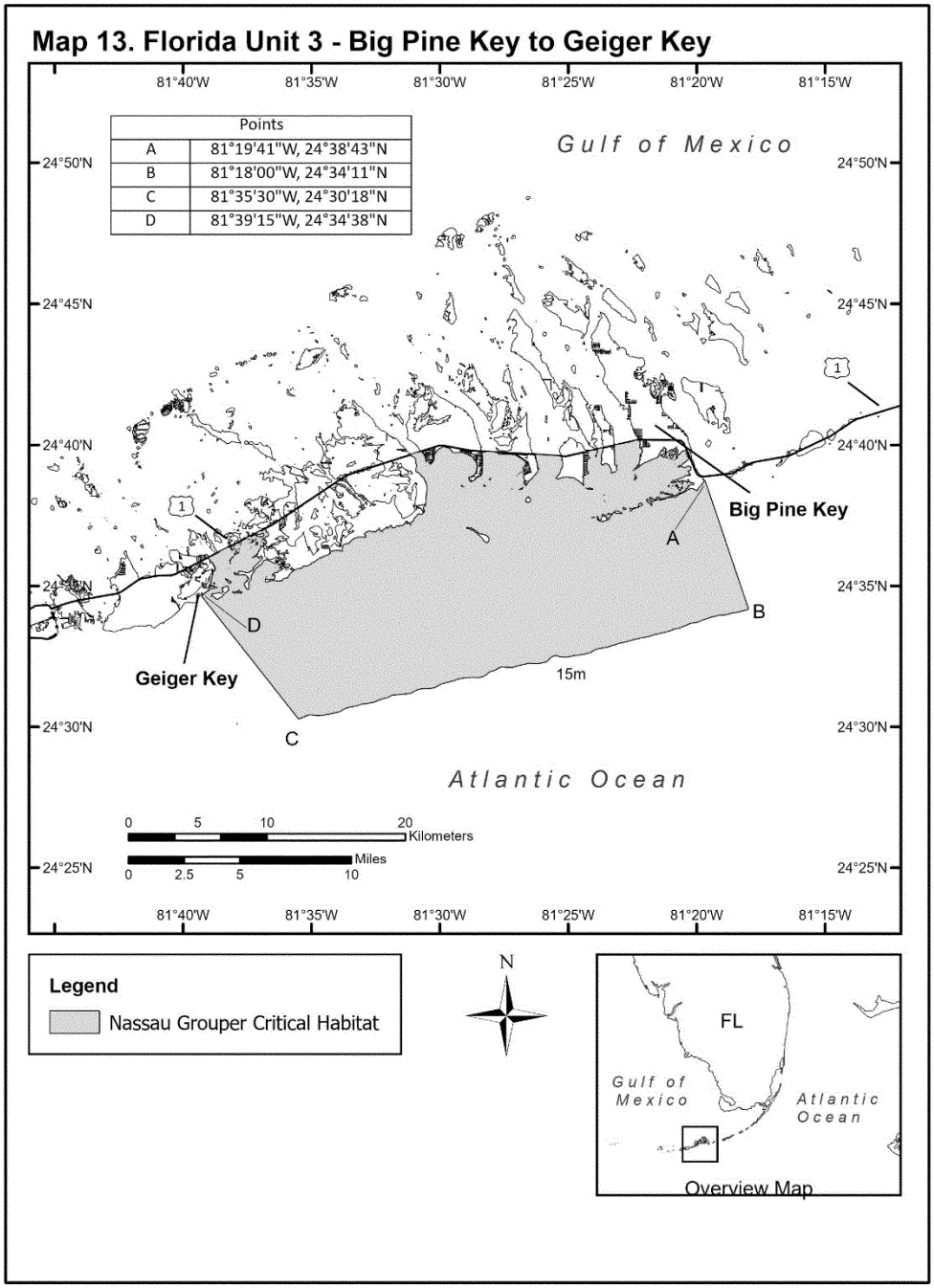
Legend

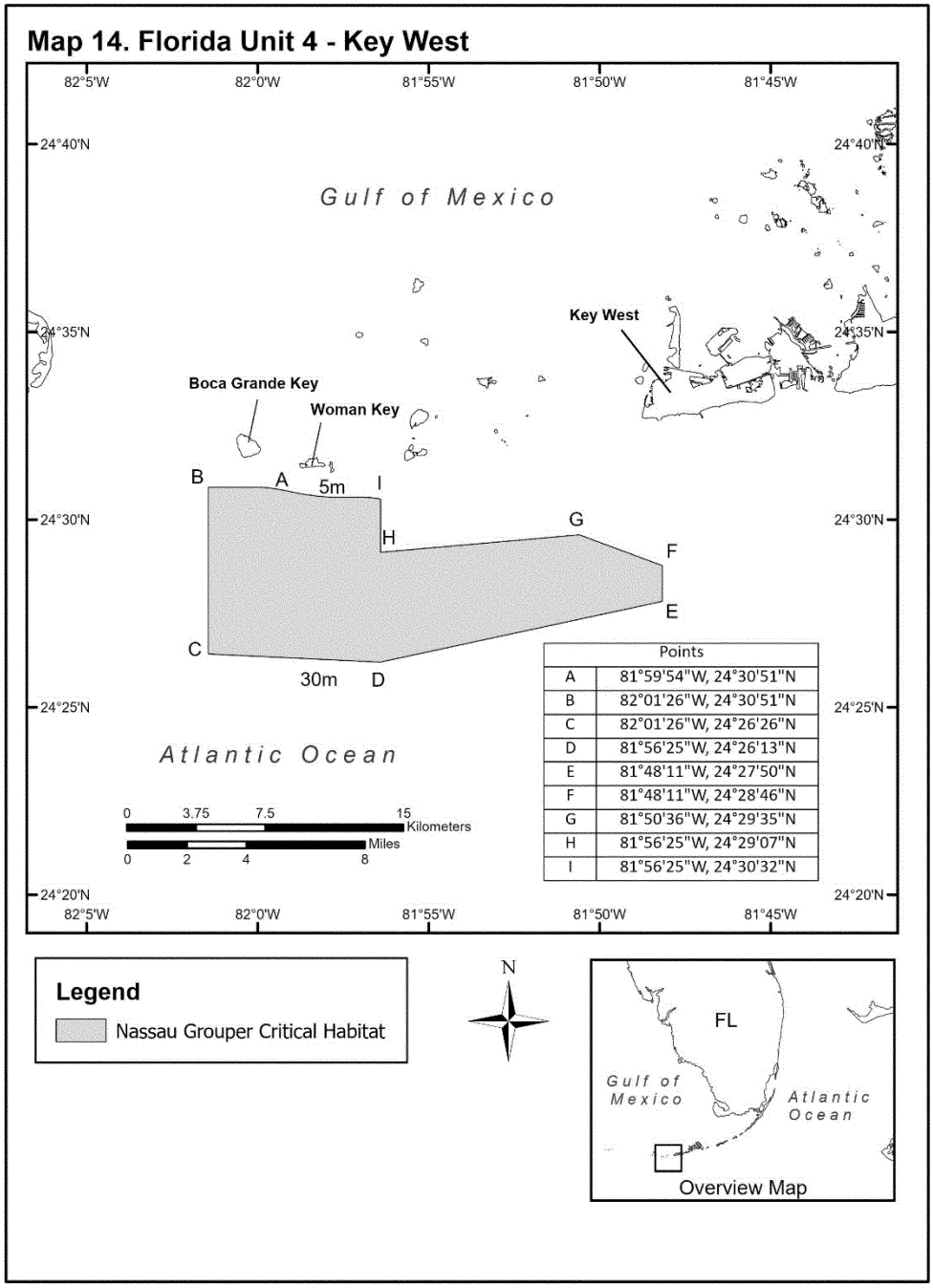
Nassau Grouper Critical Habitat

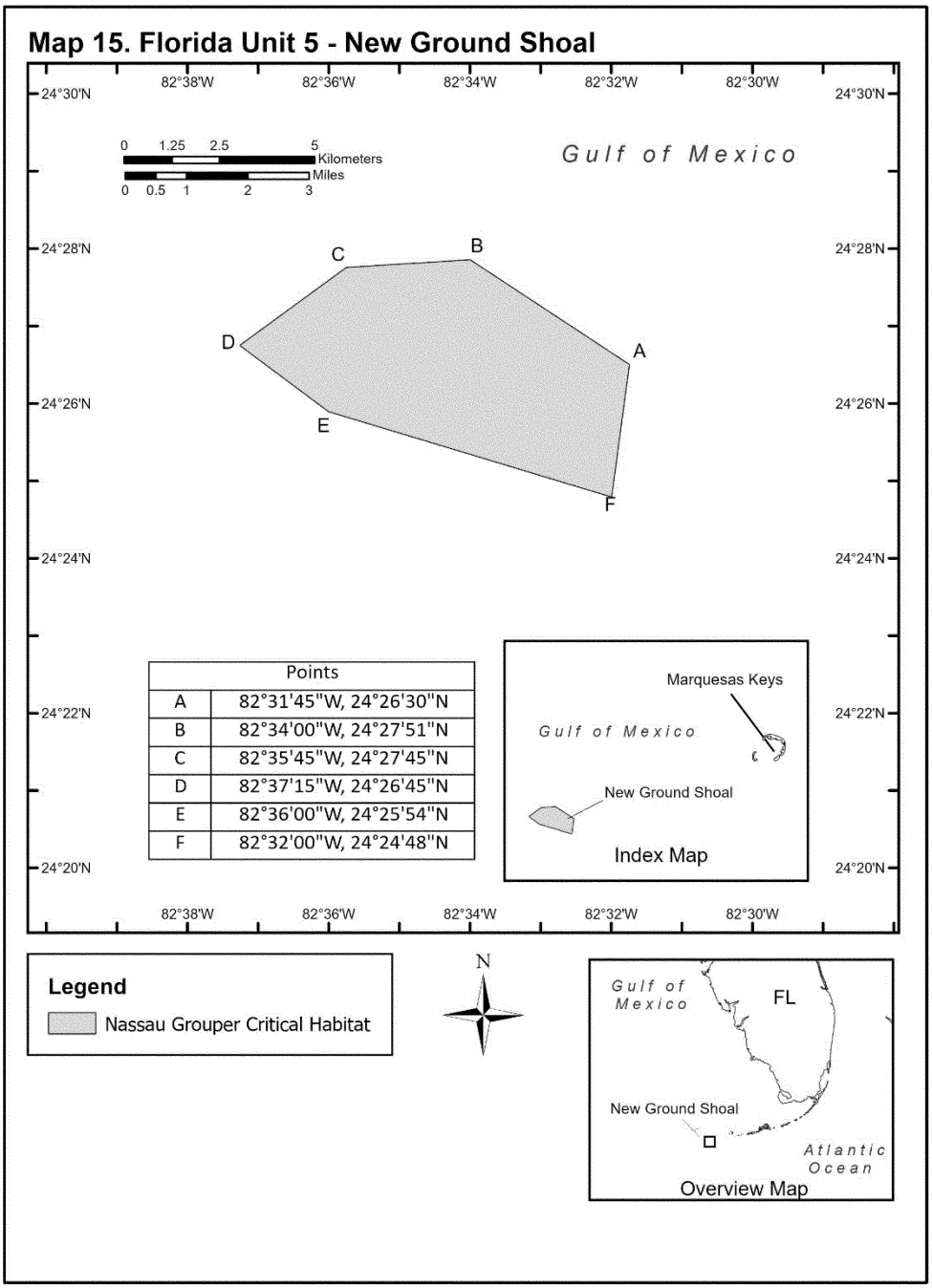


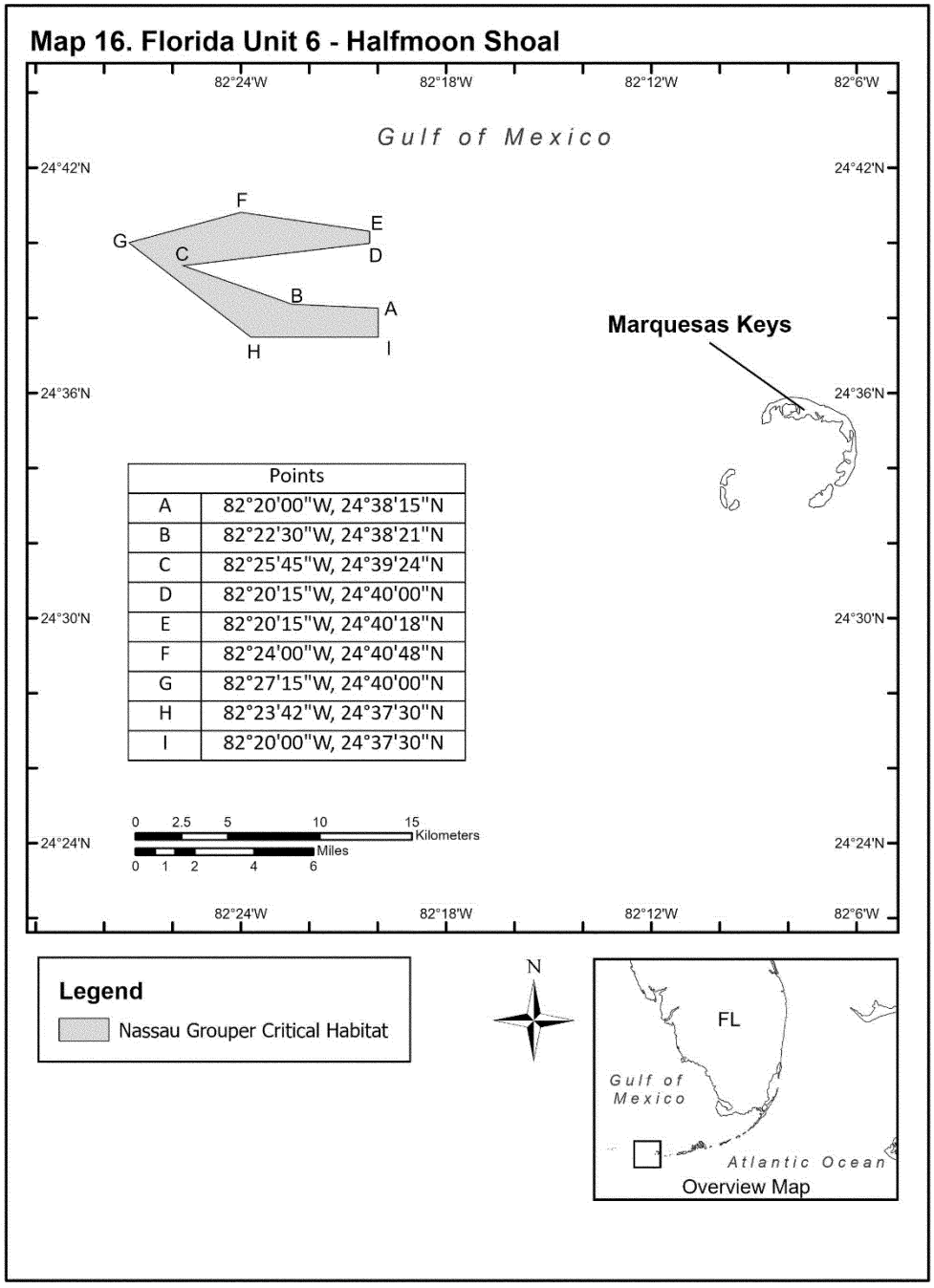

Map 11. Florida Unit 1 - Biscayne Bay/Key Largo
Points
A 80°09'22"W, 25°40'00"N
B 80°09'29"W, 25°37'55"N
C 80°05'31"W, 25°35'14"N
D 80°24'51"W, 24°58'55"N
E 80°29'21"W, 25°01'59"N
Miami
Government Cut
Rickenbacker Causeway
Key Biscayne
Miami-Dade
navigation channel
Biscayne Bay
Key Largo
20m
Atlantic Ocean
0 5 10 20 30 40 Kilometers
0 5 10 20 30 Miles
81°0'W 80°50'W 80°40'W 80°30'W 80°20'W 80°10'W 80°0'W 79°50'W
26°0'N 25°50'N 25°40'N 25°30'N 25°20'N 25°10'N 25°0'N 24°50'N
Legend
Nassau Grouper Critical Habitat
N
Florida
Gulf of Mexico
Atlantic Ocean
Overview Map

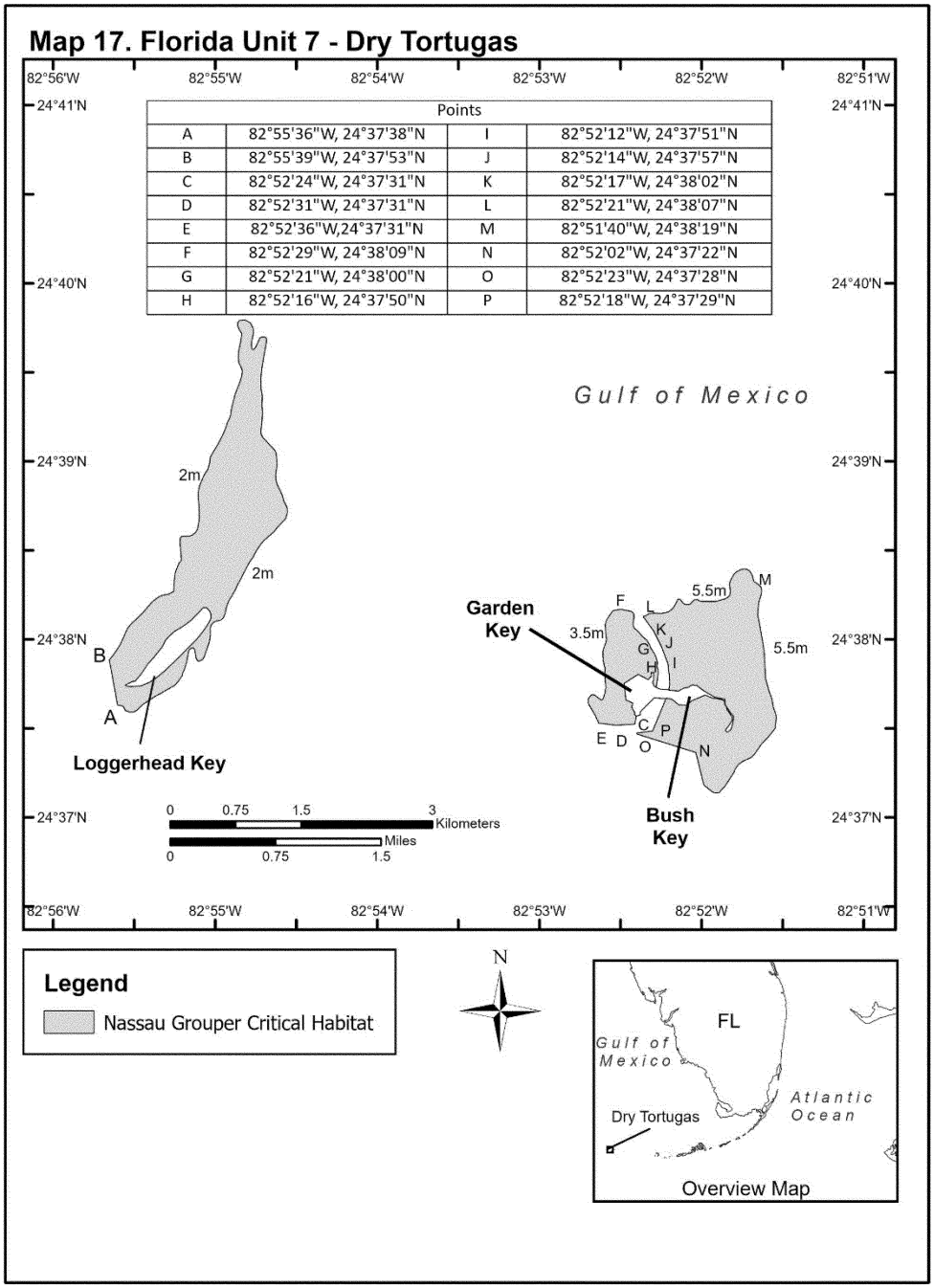

Map 12. Florida Unit 2 - Marathon
81°8'W
81°6'W
81°4'W
81°2'W
81°0'W
80°58'W
80°56'W
80°54'W
0 1 2 4 6 Kilometers
0 0.5 1 2 3 4 Miles
24°48'N
24°46'N
24°44'N
24°42'N
24°40'N
24°38'N
24°36'N
Gulf of Mexico
Grassy Key
Marathon
Knights Key
navigation channel
15m
Atlantic Ocean
A
B
C
D
E
F
G
H
I
Points
A 80°55'51"W, 24°46'26"N
B 80°55'52"W, 24°46'15"N
C 80°56'07"W, 24°45'47"N
D 80°54'25"W, 24°41'28"N
E 81°07'28"W, 24°37'12"N
F 81°07'29"W, 24°42'24"N
G 81°06'55"W, 24°42'28"N
H 81°06'51"W, 24°42'08"N
I 81°06'52"W, 24°42'05"N
Legend
Nassau Grouper Critical Habitat
N
FL
Gulf of Mexico
Atlantic Ocean
Overview Map

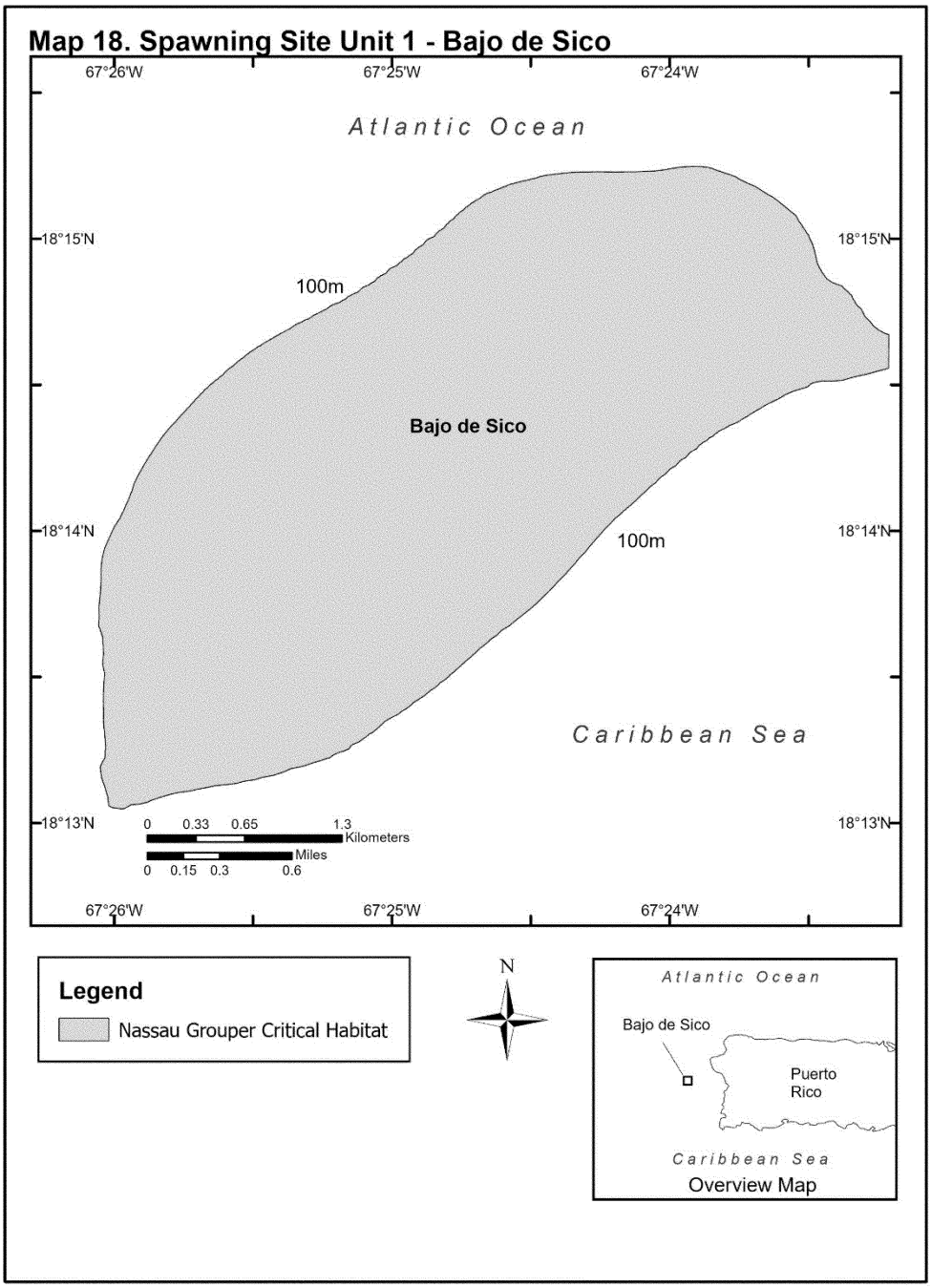

Map 13. Florida Unit 3 - Big Pine Key to Geiger Key
Points
A 81°19'41"W, 24°38'43"N
B 81°18'00"W, 24°34'11"N
C 81°35'30"W, 24°30'18"N
D 81°39'15"W, 24°34'38"N
Gulf of Mexico
Atlantic Ocean
Big Pine Key
Geiger Key
15m
81°40'W
81°35'W
81°30'W
81°25'W
81°20'W
81°15'W
24°50'N
24°45'N
24°40'N
24°35'N
24°30'N
24°25'N
0 5 10 20 Kilometers
0 2.5 5 10 Miles
Legend
Nassau Grouper Critical Habitat
N
FL
Gulf of Mexico
Atlantic Ocean
Overview Map

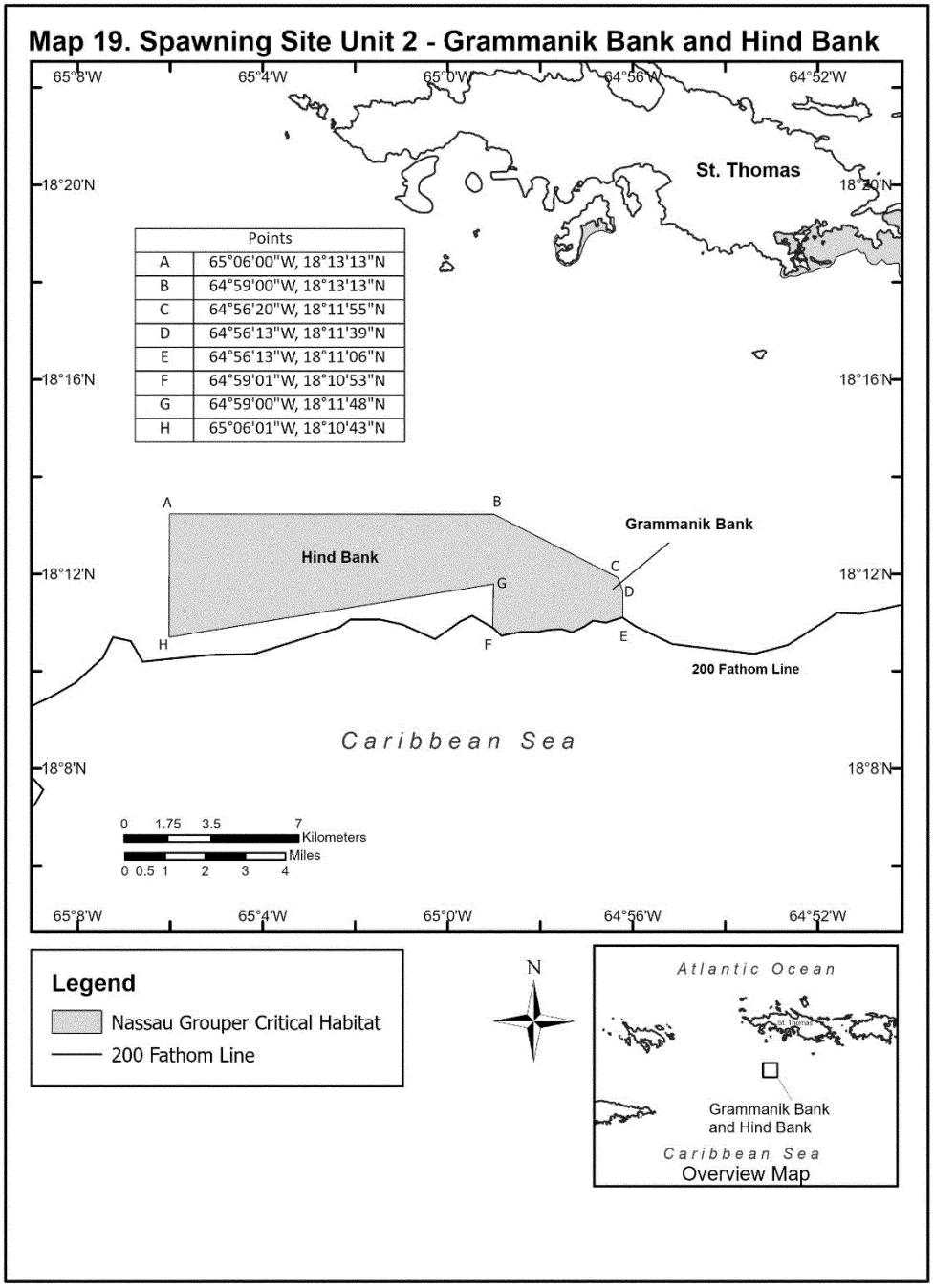

Map 14. Florida Unit 4 - Key West
82°5'W
82°0'W
81°55'W
81°50'W
81°45'W
24°40'N
24°35'N
24°30'N
24°25'N
24°20'N
Gulf of Mexico
Atlantic Ocean
Key West
Boca Grande Key
Woman Key
5m
30m
A
B
C
D
E
F
G
H
I
0 3.75 7.5 15 Kilometers
0 2 4 8 Miles
Points
A 81°59'54"W, 24°30'51"N
B 82°01'26"W, 24°30'51"N
C 82°01'26"W, 24°26'26"N
D 81°56'25"W, 24°26'13"N
E 81°48'11"W, 24°27'50"N
F 81°48'11"W, 24°28'46"N
G 81°50'36"W, 24°29'35"N
H 81°56'25"W, 24°29'07"N
I 81°56'25"W, 24°30'32"N
Legend
Nassau Grouper Critical Habitat
N
FL
Gulf of Mexico
Atlantic Ocean
Overview Map

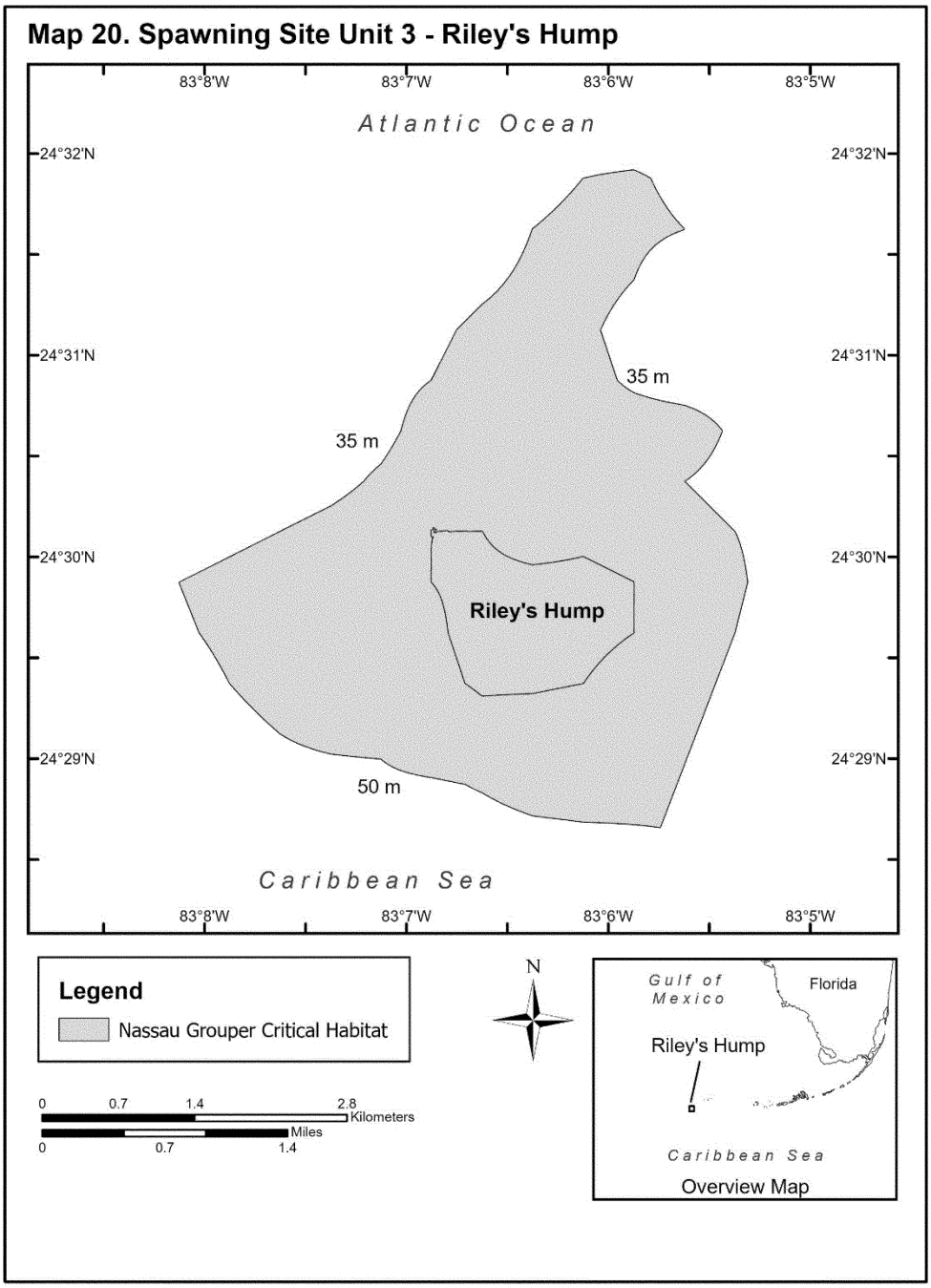

Map 15. Florida Unit 5 - New Ground Shoal
82°38'W
82°36'W
82°34'W
82°32'W
82°30'W
24°30'N
24°28'N
24°26'N
24°24'N
24°22'N
24°20'N
0 1.25 2.5 5 Kilometers
0 0.5 1 2 3 Miles
Gulf of Mexico
A
B
C
D
E
F
Points
A 82°31'45"W, 24°26'30"N
B 82°34'00"W, 24°27'51"N
C 82°35'45"W, 24°27'45"N
D 82°37'15"W, 24°26'45"N
E 82°36'00"W, 24°25'54"N
F 82°32'00"W, 24°24'48"N
Marquesas Keys
Gulf of Mexico
New Ground Shoal
Index Map
Legend
Nassau Grouper Critical Habitat
N
Gulf of Mexico
FL
New Ground Shoal
Atlantic Ocean
Overview Map


Map 16. Florida Unit 6 - Halfmoon Shoal
82°24'W
82°18'W
82°12'W
82°6'W
Gulf of Mexico
24°42'N
24°36'N
24°30'N
24°24'N
F
E
G
C
D
B
A
H
I
Marquesas Keys
Points
A 82°20'00"W, 24°38'15"N
B 82°22'30"W, 24°38'21"N
C 82°25'45"W, 24°39'24"N
D 82°20'15"W, 24°40'00"N
E 82°20'15"W, 24°40'18"N
F 82°24'00"W, 24°40'48"N
G 82°27'15"W, 24°40'00"N
H 82°23'42"W, 24°37'30"N
I 82°20'00"W, 24°37'30"N
0 2.5 5 10 15
Kilometers
Miles
0 1 2 4 6
Legend
Nassau Grouper Critical Habitat
N
FL
Gulf of Mexico
Atlantic Ocean
Overview Map


Map 17. Florida Unit 7 - Dry Tortugas
82°56'W
82°55'W
82°54'W
82°53'W
82°52'W
82°51'W
24°41'N
24°40'N
24°39'N
24°38'N
24°37'N
Points
A 82°55'36"W, 24°37'38"N
B 82°55'39"W, 24°37'53"N
C 82°52'24"W, 24°37'31"N
D 82°52'31"W, 24°37'31"N
E 82°52'36"W,24°37'31"N
F 82°52'29"W, 24°38'09"N
G 82°52'21"W, 24°38'00"N
H 82°52'16"W, 24°37'50"N
I 82°52'12"W, 24°37'51"N
J 82°52'14"W, 24°37'57"N
K 82°52'17"W, 24°38'02"N
L 82°52'21"W, 24°38'07"N
M 82°51'40"W, 24°38'19"N
N 82°52'02"W, 24°37'22"N
O 82°52'23"W, 24°37'28"N
P 82°52'18"W, 24°37'29"N
Gulf of Mexico
2m
2m
Loggerhead Key
Garden Key
3.5m
5.5m
5.5m
Bush Key
0 0.75 1.5 3 Kilometers
0 0.75 1.5 Miles
Legend
Nassau Grouper Critical Habitat
N
FL
Gulf of Mexico
Atlantic Ocean
Dry Tortugas
Overview Map


Map 18. Spawning Site Unit 1 - Bajo de Sico
67°26'W
67°25'W
67°24'W
Atlantic Ocean
18°15'N
100m
Bajo de Sico
18°14'N
100m
Caribbean Sea
18°13'N
0 0.33 0.65 1.3
Kilometers
Miles
0 0.15 0.3 0.6
Legend
Nassau Grouper Critical Habitat
N
Atlantic Ocean
Bajo de Sico
Puerto Rico
Caribbean Sea
Overview Map


Map 19. Spawning Site Unit 2 - Grammanik Bank and Hind Bank
65°8'W
65°4'W
65°0'W
64°56'W
64°52'W
18°20'N
18°16'N
18°12'N
18°8'N
St. Thomas
Points
A 65°06'00"W, 18°13'13"N
B 64°59'00"W, 18°13'13"N
C 64°56'20"W, 18°11'55"N
D 64°56'13"W, 18°11'39"N
E 64°56'13"W, 18°11'06"N
F 64°59'01"W, 18°10'53"N
G 64°59'00"W, 18°11'48"N
H 65°06'01"W, 18°10'43"N
Hind Bank
Grammanik Bank
200 Fathom Line
Caribbean Sea
0 1.75 3.5 7 Kilometers
0 0.5 1 2 3 4 Miles
Legend
Nassau Grouper Critical Habitat
200 Fathom Line
N
Atlantic Ocean
Grammanik Bank and Hind Bank
Caribbean Sea
Overview Map



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Part III

Environmental Protection Agency

40 CFR Part 52
Air Plan Disapproval; Kansas; Regional Haze; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA–R07–OAR–2023–0582; FRL–11576–01–R7]

Air Plan Disapproval; Kansas; Regional Haze

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to disapprove a revision to Kansas's State Implementation Plan (SIP) submitted on July 28, 2021, to satisfy applicable requirements under the Clean Air Act (CAA) and EPA's Regional Haze Rule (RHR) for the program's second planning period. As required by section 169A of the Clean Air Act, the federal Regional Haze Rule calls for state and federal agencies to work together to improve visibility, including Regional Haze, in 156 national parks and wilderness areas. The rule requires the states, in coordination with the EPA, the National Park Service (NPS), U.S. Fish and Wildlife Service (FWS), the U.S. Forest Service (FS), and other interested parties, to develop and implement air quality protection plans in which states revise their long-term strategies (LTS) for making reasonable progress towards the national goal of preventing any future, and remedying any existing, anthropogenic impairment of visibility in these mandatory Class I Federal Areas. Disapproval does not start a mandatory sanctions clock.

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

ADDRESSES: You may send comments, identified by Docket ID No. EPA–R07–OAR–2023–0582 to *https://www.regulations.gov.* Follow the online instructions for submitting comments.

Instructions: All submissions received must include the Docket ID No. for this rulemaking. Comments received will be posted without change to *https://www.regulations.gov/,* including any personal information provided. For detailed instructions on sending comments and additional information on the rulemaking process, see the ''Written Comments'' heading of the **SUPPLEMENTARY INFORMATION** section of this document.

FOR FURTHER INFORMATION CONTACT: Jed D. Wolkins, Environmental Protection Agency, Region 7 Office, Air Permitting and Planning Branch, 11201 Renner Boulevard, Lenexa, Kansas 66219; telephone number: (913) 551–7588; email address: *wolkins.jed@epa.gov.*

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

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I. Written Comments

Submit your comments, identified by Docket ID No. EPA–R07–OAR–2023–0582, at *https://www.regulations.gov.* 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, 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.*

II. What is being addressed in this document?

The EPA is proposing to disapprove Kansas's Regional Haze plan for the second planning period. As required by section 169A of the CAA, the federal RHR calls for state and federal agencies to work together to improve visibility in 156 national parks and wilderness areas. The rule requires the states, in coordination with the EPA, the NPS, FWS, the FS, and other interested parties, to develop and implement air quality protection plans to reduce the pollution that causes visibility impairment in mandatory Class I Federal areas. Visibility impairing pollutants include fine and coarse particulate matter (PM) (*e.g.,* sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (*e.g.,* sulfur dioxide (SO_2), oxides of nitrogen (NO_X), and, in some cases, volatile organic compounds (VOC) and ammonia (NH_3)). As discussed in further detail below, the EPA is proposing to find that Kansas has submitted a Regional Haze plan that does not meet the Regional Haze requirements for the second planning period. The State's submission can be found in the docket for this action.

III. Background and Requirements for Regional Haze Plans

A. Regional Haze Background

In the 1977 CAA Amendments, Congress created a program for protecting visibility in the nation's mandatory Class I Federal areas, which include certain national parks and wilderness areas.[1] CAA section 169A. The CAA establishes as a national goal the ''prevention of any future, and the remedying of any existing, impairment of visibility in mandatory class I Federal

[1] Areas statutorily designated as mandatory Class I Federal Areas consist of national parks exceeding 6,000 acres, wilderness areas and national memorial parks exceeding 5,000 acres, and all international parks that were in existence on August 7, 1977. CAA 162(a). There are 156 mandatory Class I Areas. The list of areas to which the requirements of the visibility protection program apply is in 40 CFR part 81, subpart D.

areas which impairment results from manmade air pollution.'' CAA section 169A(a)(1). The CAA further directs the EPA to promulgate regulations to assure reasonable progress toward meeting this national goal. CAA section 169A(a)(4). On December 2, 1980, the EPA promulgated regulations to address visibility impairment in mandatory Class I Federal Areas (hereinafter referred to as ''Class I Areas'') that is ''reasonably attributable'' to a single source or small group of sources. (45 FR 80084, December 2, 1980). These regulations, codified at 40 CFR 51.300 through 51.307, represented the first phase of the EPA's efforts to address visibility impairment. In 1990, Congress added section 169B to the CAA to further address visibility impairment, specifically, impairment from Regional Haze. CAA 169B. The EPA promulgated the RHR, codified at 40 CFR 51.308,[2] on July 1, 1999. (64 FR 35714, July 1, 1999). These Regional Haze regulations are a central component of the EPA's comprehensive visibility protection program for Class I Areas.

Regional Haze is visibility impairment that is produced by a multitude of anthropogenic sources and activities which are located across a broad geographic area and that emit pollutants that impair visibility. Visibility impairing pollutants include fine and coarse PM (*e.g.,* sulfates, nitrates, organic carbon, elemental carbon, and soil dust) and their precursors (*e.g.,* SO_2, NO_X, and, in some cases, VOC and NH_3). Fine particle precursors react in the atmosphere to form fine PM ($PM_{2.5}$), which impairs visibility by scattering and absorbing light. Visibility impairment reduces the perception of clarity and color, as well as visible distance.[3]

To address Regional Haze visibility impairment, the 1999 RHR established an iterative planning process that requires both states in which Class I Areas are located and states ''the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility'' in a Class I Area to periodically submit SIP revisions to address such impairment. CAA section 169A(b)(2);[4] see also 40 CFR 51.308(b), (f) (establishing submission dates for iterative Regional Haze SIP revisions); (64 FR at 35768, July 1, 1999). Under the CAA, each SIP submission must contain ''a long-term (ten to fifteen years) strategy for making reasonable progress toward meeting the national goal,'' CAA section 169A(b)(2)(B); the initial round of SIP submissions also had to address the statutory requirement that certain older, larger sources of visibility impairing pollutants install and operate the best available retrofit technology (BART). CAA section 169A(b)(2)(A); 40 CFR 51.308(d), (e). States' first Regional Haze SIPs were due by December 17, 2007, 40 CFR 51.308(b), with subsequent SIP submissions containing updated LTS originally due July 31, 2018, and every ten years thereafter. (64 FR at 35768, July 1, 1999). The EPA established in the 1999 RHR that all states either have Class I Areas within their borders or ''contain sources whose emissions are reasonably anticipated to contribute to Regional Haze in a Class I Area''; therefore, all states must submit Regional Haze SIPs.[5] Id. at 35721.

Much of the focus in the first implementation period of the Regional Haze program, which ran from 2007 through 2018, was on satisfying states' BART obligations. First implementation period SIPs were additionally required to contain LTS for making reasonable progress toward the national visibility goal, of which BART is one component. The core required elements for the first implementation period SIPs (other than BART) are laid out in 40 CFR 51.308(d). Those provisions required that states containing Class I Areas establish reasonable progress goals (RPGs) that are measured in deciviews and reflect the anticipated visibility conditions at the end of the implementation period including from implementation of states' LTS. The first planning period RPGs were required to provide for an improvement in visibility for the most impaired days over the period of the implementation plan and ensure no degradation in visibility for the least impaired days over the same period. In establishing the RPGs for any Class I Area in a state, the state was required to consider four statutory factors: the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected sources. CAA section 169A(g)(1); 40 CFR 51.308(d)(1).

States were also required to calculate baseline (using the five year period of 2000–2004) and natural visibility conditions (*i.e.,* visibility conditions without anthropogenic visibility impairment) for each Class I Area, and to calculate the linear rate of progress needed to attain natural visibility conditions, assuming a starting point of baseline visibility conditions in 2004 and ending with natural conditions in 2064. This linear interpolation is known as the uniform rate of progress (URP) and is used as a tracking metric to help states assess the amount of progress they are making towards the national visibility goal over time in each Class I Area.[6] 40 CFR 51.308(d)(1)(i)(B), (d)(2). The 1999 RHR also provided that States' LTS must include the ''enforceable emissions limitations, compliance, schedules, and other measures as necessary to achieve the reasonable progress goals.'' 40 CFR 51.308(d)(3). In

[2] In addition to the generally applicable Regional Haze provisions at 40 CFR 51.308, the EPA also promulgated regulations specific to addressing Regional Haze visibility impairment in Class I Areas on the Colorado Plateau at 40 CFR 51.309. The latter regulations are applicable only for specific jurisdictions' Regional Haze plans submitted no later than December 17, 2007, and thus are not relevant here.

[3] There are several ways to measure the amount of visibility impairment, *i.e.,* haze. One such measurement is the deciview, which is the principal metric used by the RHR. Under many circumstances, a change in one deciview will be perceived by the human eye to be the same on both clear and hazy days. The deciview is unitless. It is proportional to the logarithm of the atmospheric extinction of light, which is the perceived dimming of light due to its being scattered and absorbed as it passes through the atmosphere. Atmospheric light extinction (b^{ext}) is a metric used to for expressing visibility and is measured in inverse megameters (Mm–1). The EPA's Guidance on Regional Haze State Implementation Plans for the Second Implementation Period (''2019 Guidance'') offers the flexibility for the use of light extinction in certain cases. Light extinction can be simpler to use in calculations than deciviews, since it is not a logarithmic function. See, *e.g.,* 2019 Guidance at 16, 19, *https://www.epa.gov/visibility/guidance-regional-haze-state-implementation-plans-second-implementation-period.* The EPA Office of Air Quality Planning and Standards, Research Triangle Park (August 20, 2019). The formula for the deciview is 10 ln (b^{ext})/10 Mm–1). 40 CFR 51.301.

[4] The RHR expresses the statutory requirement for states to submit plans addressing out-of-state Class I Areas by providing that states must address visibility impairment ''in each mandatory Class I Federal Area located outside the State that may be affected by emissions from within the State.'' 40 CFR 51.308(d), (f).

[5] In addition to each of the fifty states, the EPA also concluded that the Virgin Islands and District of Columbia must also submit Regional Haze SIPs because they either contain a Class I Area or contain sources whose emissions are reasonably anticipated to contribute Regional Haze in a Class I Area. *See* 40 CFR 51.300(b), (d)(3).

[6] The EPA established the URP framework in the 1999 RHR to provide ''an equitable analytical approach'' to assessing the rate of visibility improvement at Class I Areas across the country. The start point for the URP analysis is 2004 and the endpoint was calculated based on the amount of visibility improvement that was anticipated to result from implementation of existing CAA programs over the period from the mid-1990s to approximately 2005. Assuming this rate of progress would continue into the future, the EPA determined that natural visibility conditions would be reached in 60 years, or 2064 (60 years from the baseline starting point of 2004). However, the EPA did not establish 2064 as the year by which the national goal *must* be reached. 64 FR at 35731–32. That is, the URP and the 2064 date are not enforceable targets, but are rather tools that ''allow for analytical comparisons between the rate of progress that would be achieved by the state's chosen set of control measures and the URP.'' (82 FR 3078, 3084, January 10, 2017).

establishing their LTS, states are required to consult with other states that also contribute to visibility impairment in a given Class I Area and include all measures necessary to obtain their shares of the emission reductions needed to meet the RPGs. 40 CFR 51.308(d)(3)(i), (ii). Section 51.308(d) also contains seven additional factors states must consider in formulating their LTS, 40 CFR 51.308(d)(3)(v), as well as provisions governing monitoring and other implementation plan requirements. 40 CFR 51.308(d)(4). Finally, the 1999 RHR required states to submit periodic progress reports—SIP revisions due every five years that contain information on states' implementation of their Regional Haze plans and an assessment of whether anything additional is needed to make reasonable progress, see 40 CFR 51.308(g), (h)—and to consult with the Federal Land Manager(s) [7] (FLMs) responsible for each Class I Area according to the requirements in CAA section 169A(d) and 40 CFR 51.308(i).

On January 10, 2017, the EPA promulgated revisions to the RHR, (82 FR 3078, January 10, 2017), that apply for the second and subsequent implementation periods. The 2017 rulemaking made several changes to the requirements for Regional Haze SIPs to clarify States' obligations and streamline certain Regional Haze requirements. The revisions to the Regional Haze program for the second and subsequent implementation periods focused on the requirement that States' SIPs contain LTS for making reasonable progress towards the national visibility goal. The reasonable progress requirements as revised in the 2017 rulemaking (referred to here as the 2017 RHR Revisions) are codified at 40 CFR 51.308(f). Among other changes, the 2017 RHR Revisions adjusted the deadline for States to submit their second implementation period SIPs from July 31, 2018, to July 31, 2021, clarified the order of analysis and the relationship between RPGs and the LTS, and focused on making visibility improvements on the days with the most *anthropogenic* visibility impairment, as opposed to the days with the most visibility impairment overall. The EPA also revised requirements of the visibility protection program related to periodic progress reports and FLM consultation. The specific requirements applicable to second implementation period Regional Haze SIP submissions are addressed in detail below.

The EPA provided guidance to the states for their second implementation period SIP submissions in the preamble to the 2017 RHR Revisions as well as in subsequent, stand-alone guidance documents. In August 2019, the EPA issued ''Guidance on Regional Haze State Implementation Plans for the Second Implementation Period'' (''2019 Guidance'').[8] On July 8, 2021, the EPA issued a memorandum containing ''Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period'' (''2021 Clarifications Memo'').[9] Additionally, the EPA further clarified the recommended procedures for processing ambient visibility data and optionally adjusting the URP to account for international anthropogenic and prescribed fire impacts in two technical guidance documents: the December 2018 ''Technical Guidance on Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program'' (''2018 Visibility Tracking Guidance''),[10] and the June 2020 ''Recommendation for the Use of Patched and Substituted Data and Clarification of Data Completeness for Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program'' and associated Technical Addendum (''2020 Data Completeness Memo'').[11]

As previously explained in the 2021 Clarifications Memo, the EPA intends the second implementation period of the Regional Haze program to secure meaningful reductions in visibility impairing pollutants that build on the significant progress states have achieved to date. The Agency also recognizes that analyses regarding reasonable progress are state-specific and that, based on states' and sources' individual circumstances, what constitutes reasonable reductions in visibility impairing pollutants will vary from state-to-state. While there exist many opportunities for states to leverage both ongoing and upcoming emission reductions under other CAA programs, the Agency expects states to undertake rigorous reasonable progress analyses that identify further opportunities to advance the national visibility goal consistent with the statutory and regulatory requirements. See generally 2021 Clarifications Memo. This is consistent with Congress's determination that a visibility protection program is needed in addition to the CAA's National Ambient Air Quality Standards (NAAQS) and Prevention of Significant Deterioration (PSD) programs, as further emission reductions may be necessary to adequately protect visibility in Class I Areas throughout the country.[12]

B. Roles of Agencies in Addressing Regional Haze

Because the air pollutants and pollution affecting visibility in Class I Areas can be transported over long distances, successful implementation of the Regional Haze program requires long-term, regional coordination among multiple jurisdictions and agencies that have responsibility for Class I Areas and the emissions that impact visibility in those Areas. In order to address Regional Haze, states need to develop strategies in coordination with one another, considering the effect of emissions from one jurisdiction on the air quality in another. Five regional planning organizations (RPOs),[13] which include representation from state and tribal governments, the EPA, and FLMs, were developed in the lead-up to the first implementation period to address Regional Haze. RPOs evaluate technical information to better understand how

[7] The EPA's regulations define ''Federal Land Manager'' as ''the Secretary of the department with authority over the Federal Class I Area (or the Secretary's designee) or, with respect to Roosevelt-Campobello International Park, the Chairman of the Roosevelt-Campobello International Park Commission.'' 40 CFR 51.301.

[8] Guidance on Regional Haze State Implementation Plans for the Second Implementation Period. *https://www.epa.gov/visibility/guidance-regional-haze-state-implementation-plans-second-implementation-period* The EPA Office of Air Quality Planning and Standards, Research Triangle Park (August 20, 2019).

[9] Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period. *https://www.epa.gov/system/files/documents/2021-07/clarifications-regarding-regional-haze-state-implementation-plans-for-the-second-implementation-period.pdf.* The EPA Office of Air Quality Planning and Standards, Research Triangle Park (July 8, 2021).

[10] Technical Guidance on Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program. *https://www.epa.gov/visibility/technical-guidance-tracking-visibility-progress-second-implementation-period-regional* The EPA Office of Air Quality Planning and Standards, Research Triangle Park. (December 20, 2018).

[11] Recommendation for the Use of Patched and Substituted Data and Clarification of Data Completeness for Tracking Visibility Progress for the Second Implementation Period of the Regional Haze Program. *https://www.epa.gov/visibility/memo-and-technical-addendum-ambient-data-usage-and-completeness-regional-haze-program.* The EPA Office of Air Quality Planning and Standards, Research Triangle Park (June 3, 2020).

[12] See, *e.g.,* H.R. Rep No. 95–294 at 205 (''In determining how to best remedy the growing visibility problem in these areas of great scenic importance, the committee realizes that as a matter of equity, the national ambient air quality standards cannot be revised to adequately protect visibility in all areas of the country.''), (''the mandatory Class I increments of [the PSD program] do not adequately protect visibility in Class I Areas'').

[13] RPOs are sometimes also referred to as ''multi-jurisdictional organizations,'' or MJOs. For the purposes of this document, the terms RPO and MJO are synonymous.

emissions from State and Tribal land impact Class I Areas across the country, pursue the development of regional strategies to reduce emissions of PM and other pollutants leading to Regional Haze, and help states meet the consultation requirements of the RHR.

The Central Regional Air Planning Association (CenRAP), one of the five RPOs described above, that Kansas was a member of during the first planning period, was a collaborative effort of state governments, tribal governments, and Federal Agencies established to initiate and coordinate activities associated with the management of Regional Haze, visibility, and other air quality issues in parts of the Great Plains, Midwest, Southwest, and South Regions of the United States.

After the first planning period SIPs were submitted, the planning was shifted to the Central State Air Resources Agencies (CenSARA). CenSARA is a collaborative effort of state governments established to initiate and coordinate activities associated with the management of Regional Haze and other air quality issues in parts of the Great Plains, Midwest, Southwest, and South Regions of the United States. Member states include: Arkansas, Iowa, Kansas, Louisiana, Missouri, Nebraska, Oklahoma, and Texas. Unlike CenRAP, CenSARA has solely state members. However, CenSARA does reach out to Tribal and Federal partners. The Federal partners of CenSARA are the EPA, the NPS, the FWS, and FS.

IV. Requirements for Regional Haze Plans for the Second Implementation Period

Under the CAA and EPA's regulations, all 50 states, the District of Columbia, and the U.S. Virgin Islands are required to submit Regional Haze SIPs satisfying the applicable requirements for the second implementation period of the Regional Haze program by July 31, 2021. Each state's SIP must contain a LTS for making reasonable progress toward meeting the national goal of remedying any existing and preventing any future anthropogenic visibility impairment in Class I Areas. CAA section 169A(b)(2)(B). To this end, § 51.308(f) lays out the process by which states determine what constitutes their LTS, with the order of the requirements in § 51.308(f)(1) through (f)(3) generally mirroring the order of the steps in the reasonable progress analysis [14] and (f)(4) through (f)(6) containing additional, related requirements. Broadly speaking, a state first must identify the Class I Areas within the state and determine the Class I Areas outside the state in which visibility may be affected by emissions from the state. These are the Class I Areas that must be addressed in the state's LTS. See 40 CFR 51.308(f), (f)(2). For each Class I Area within its borders, a state must then calculate the baseline, current, and natural visibility conditions for that area, as well as the visibility improvement made to date and the URP. See 40 CFR 51.308(f)(1). Each state having a Class I Area and/or emissions that may affect visibility in a Class I Area must then develop a LTS that includes the enforceable emission limitations, compliance schedules, and other measures that are necessary to make reasonable progress in such Areas. A reasonable progress determination is based on applying the four factors in CAA section 169A(g)(1) to sources of visibility-impairing pollutants that the state has selected to assess for controls for the second implementation period. Additionally, as further explained below, the RHR at 40 CFR 51.3108(f)(2)(iv) separately provides five ''additional factors'' [15] that states must consider in developing their LTS. See 40 CFR 51.308(f)(2). A state evaluates potential emission reduction measures for those selected sources and determines which are necessary to make reasonable progress using the four statutory factors. Those measures are then incorporated into the state's LTS. After a state has developed its LTS, it then establishes RPGs for each Class I Area within its borders by modeling the visibility impacts of all reasonable progress controls at the end of the second implementation period, *i.e.,* in 2028, as well as the impacts of other requirements of the CAA. The RPGs include reasonable progress controls not only for sources in the state in which the Class I Area is located, but also for sources in other states that contribute to visibility impairment in that Area. The RPGs are then compared to the baseline visibility conditions and the URP to ensure that progress is being made towards the statutory goal of preventing any future and remedying any existing anthropogenic visibility impairment in Class I Areas. 40 CFR 51.308(f)(2)–(3).

In addition to satisfying the requirements at 40 CFR 51.308(f) related to reasonable progress, the Regional Haze SIP revisions for the second implementation period must address the requirements in § 51.308(g)(1) through (5) pertaining to periodic reports describing progress towards the RPGs, 40 CFR 51.308(f)(5), as well as requirements for FLM consultation that apply to all visibility protection SIPs and SIP revisions. 40 CFR 51.308(i).

A state must submit its Regional Haze SIP and subsequent SIP revisions to the EPA according to the requirements applicable to all SIP revisions under the CAA and EPA's regulations. See CAA 169(b)(2); CAA 110(a). Upon EPA approval, a SIP is enforceable by the Agency and the public under the CAA. If the EPA finds that a state fails to make a required SIP revision, or if the EPA finds that a state's SIP is incomplete or if disapproves the SIP, the Agency must promulgate a federal implementation plan (FIP) that satisfies the applicable requirements. CAA 110(c)(1).

A. Identification of Class I Areas

The first step in developing a Regional Haze SIP is for a state to determine which Class I Areas, in addition to those within its borders, ''may be affected'' by emissions from within the state. In the 1999 RHR, the EPA determined that all states contribute to visibility impairment in at least one Class I Area, 64 FR at 35720–22, and explained that the statute and regulations lay out an ''extremely low triggering threshold'' for determining ''whether States should be required to engage in air quality planning and analysis as a prerequisite to determining the need for control of emissions from sources within their State.'' *Id.* at 35721.

A state must determine which Class I Areas must be addressed by its SIP by evaluating the total emissions of visibility impairing pollutants from all sources within the state. While the RHR does not require this evaluation to be conducted in any particular manner, EPA's 2019 Guidance provides recommendations for how such an assessment might be accomplished, including by, where appropriate, using the determinations previously made for the first implementation period. 2019 Guidance at 8–9. In addition, the determination of which Class I Areas may be affected by a state's emissions is subject to the requirement in 40 CFR 51.308(f)(2)(iii) to ''document the technical basis, including modeling, monitoring, cost, engineering, and emissions information, on which the State is relying to determine the emission reduction measures that are necessary to make reasonable progress in each mandatory Class I Federal Area it affects.''

[14] The EPA explained in the 2017 RHR Revisions that we were adopting new regulatory language in 40 CFR 51.308(f) that, unlike the structure in § 51.308(d), ''tracked the actual planning sequence.'' (82 FR 3091, January 10, 2017).

[15] The five ''additional factors'' for consideration in § 51.308(f)(2)(iv) are distinct from the four factors listed in CAA section 169A(g)(1) and 40 CFR 51.308(f)(2)(i) that states must consider and apply to sources in determining reasonable progress.

B. Calculations of Baseline, Current, and Natural Visibility Conditions; Progress to Date; and the Uniform Rate of Progress

As part of assessing whether a SIP submission for the second implementation period is providing for reasonable progress towards the national visibility goal, the RHR contains requirements in § 51.308(f)(1) related to tracking visibility improvement over time. The requirements of this subsection apply only to states having Class I Areas within their borders; the required calculations must be made for each such Class I Area. EPA's 2018 Visibility Tracking Guidance [16] provides recommendations to assist states in satisfying their obligations under § 51.308(f)(1); specifically, in developing information on baseline, current, and natural visibility conditions, and in making optional adjustments to the URP to account for the impacts of international anthropogenic emissions and prescribed fires. See 82 FR 3103–05.

The RHR requires tracking of visibility conditions on two sets of days: the clearest and the most impaired days. Visibility conditions for both sets of days are expressed as the average deciview index for the relevant five-year period (the period representing baseline or current visibility conditions). The RHR provides that the relevant sets of days for visibility tracking purposes are the 20% clearest (the 20% of monitored days in a calendar year with the lowest values of the deciview index) and 20% most impaired days (the 20% of monitored days in a calendar year with the highest amounts of anthropogenic visibility impairment).[17] 40 CFR 51.301. A state must calculate visibility conditions for both the 20% clearest and 20% most impaired days for the baseline period of 2000–2004 and the most recent five-year period for which visibility monitoring data are available (representing current visibility conditions). 40 CFR 51.308(f)(1)(i), (iii). States must also calculate natural visibility conditions for the clearest and most impaired days,[18] by estimating the conditions that would exist on those two sets of days absent anthropogenic visibility impairment. 40 CFR 51.308(f)(1)(ii). Using all these data, states must then calculate, for each Class I Area, the amount of progress made since the baseline period (2000–2004) and how much improvement is left to achieve in order to reach natural visibility conditions.

Using the data for the set of most impaired days only, states must plot a line between visibility conditions in the baseline period and natural visibility conditions for each Class I Area to determine the URP—the amount of visibility improvement, measured in deciviews, that would need to be achieved during each implementation period in order to achieve natural visibility conditions by the end of 2064. The URP is used in later steps of the reasonable progress analysis for informational purposes and to provide a non-enforceable benchmark against which to assess a Class I Area's rate of visibility improvement.[19] Additionally, in the 2017 RHR Revisions, the EPA provided states the option of proposing to adjust the endpoint of the URP to account for impacts of anthropogenic sources outside the United States and/or impacts of certain types of wildland prescribed fires. These adjustments, which must be approved by the EPA, are intended to avoid any perception that states should compensate for impacts from international anthropogenic sources and to give states the flexibility to determine that limiting the use of wildland-prescribed fire is not necessary for reasonable progress. 82 FR 3107 footnote 116.

EPA's 2018 Visibility Tracking Guidance can be used to help satisfy the 40 CFR 51.308(f)(1) requirements, including in developing information on baseline, current, and natural visibility conditions, and in making optional adjustments to the URP. In addition, the 2020 Data Completeness Memo provides recommendations on the data completeness language referenced in § 51.308(f)(1)(i) and provides updated natural conditions estimates for each Class I Area.

C. Long-Term Strategy for Regional Haze

The core component of a Regional Haze SIP submission is a LTS that addresses Regional Haze in each Class I Area within a state's borders and each Class I Area that may be affected by emissions from the state. The LTS ''must include the enforceable emissions limitations, compliance schedules, and other measures that are necessary to make reasonable progress, as determined pursuant to (f)(2)(i) through (iv).'' 40 CFR 51.308(f)(2). The amount of progress that is ''reasonable progress'' is based on applying the four statutory factors in CAA section 169A(g)(1) in an evaluation of potential control options for sources of visibility impairing pollutants, which is referred to as a ''four-factor'' analysis. The outcome of that analysis is the emission reduction measures that a particular source or group of sources needs to implement in order to make reasonable progress towards the national visibility goal. See 40 CFR 51.308(f)(2)(i). Emission reduction measures that are necessary to make reasonable progress may be either new, additional control measures for a source, or they may be the existing emission reduction measures that a source is already implementing. See 2019 Guidance at 43; 2021 Clarifications Memo at 8–10. Such measures must be represented by ''enforceable emissions limitations, compliance schedules, and other measures'' (*i.e.,* any additional compliance tools) in a state's LTS in its SIP. 40 CFR 51.308(f)(2).

Section 51.308(f)(2)(i) provides the requirements for the four-factor analysis. The first step of this analysis entails selecting the sources to be evaluated for emission reduction measures; to this end, the RHR requires states to consider ''major and minor stationary sources or groups of sources, mobile sources, and area sources'' of visibility impairing pollutants for potential four-factor control analysis. 40 CFR 51.308(f)(2)(i). A threshold question at this step is which visibility impairing pollutants will be analyzed. As the EPA previously explained, consistent with the first implementation period, the EPA generally expects that each state will analyze at least SO_2 and NO_X in selecting sources and determining control measures. See 2019 Guidance at 12, 2021 Clarifications Memo at 4. A state that chooses not to consider at least these two pollutants should demonstrate why such

[16] The 2018 Visibility Tracking Guidance references and relies on parts of the 2003 Tracking Guidance: ''Guidance for Tracking Progress Under the Regional Haze Rule,'' which can be found at *https://www3.epa.gov/ttnamti1/files/ambient/visible/tracking.pdf.*

[17] This document also refers to the 20% clearest and 20% most anthropogenically impaired days as the ''clearest'' and ''most impaired'' or ''most anthropogenically impaired'' days, respectively.

[18] The RHR at 40 CFR 51.308(f)(1)(ii) contains an error related to the requirement for calculating two sets of natural conditions values. The rule says ''most impaired days or the clearest days'' where it should say ''most impaired days and clearest days.'' This is an error that was intended to be corrected in the 2017 RHR Revisions but did not get corrected in the final rule language. This is supported by the preamble text at 82 FR 3098: ''In the final version of 40 CFR 51.308(f)(1)(ii), an occurrence of ''or'' has been corrected to ''and'' to indicate that natural visibility conditions for both the most impaired days and the clearest days must be based on available monitoring information.''

[19] Being on or below the URP is not a ''safe harbor''; *i.e.,* achieving the URP does not mean that a Class I Area is making ''reasonable progress'' and does not relieve a state from using the four statutory factors to determine what level of control is needed to achieve such progress. *See, e.g.,* 82 FR at 3093.

consideration would be unreasonable. 2021 Clarifications Memo at 4.

While states have the option to analyze *all* sources, the 2019 Guidance explains that ''an analysis of control measures is not required for every source in each implementation period,'' and that ''[s]electing a set of sources for analysis of control measures in each implementation period is . . . consistent with the Regional Haze Rule, which sets up an iterative planning process and anticipates that a state may not need to analyze control measures for all its sources in a given SIP revision.'' 2019 Guidance at 9. However, given that source selection is the basis of all subsequent control determinations, a reasonable source selection process ''should be designed and conducted to ensure that source selection results in a set of pollutants and sources the evaluation of which has the potential to meaningfully reduce their contributions to visibility impairment.'' 2021 Clarifications Memo at 3.

The EPA explained in the 2021 Clarifications Memo that each state has an obligation to submit a LTS that addresses the Regional Haze visibility impairment that results from emissions from within that state. Thus, source selection should focus on the in-state contribution to visibility impairment and be designed to capture a meaningful portion of the state's total contribution to visibility impairment in Class I Areas. A state should not decline to select its largest in-state sources on the basis that there are even larger out-of-state contributors. 2021 Clarifications Memo at 4.[20] Additionally, as stated in both the 2019 Guidance and 2021 Clarifications memo, a state that brings no sources forward for analysis of control measures must explain how doing so is consistent with the statutory and regulatory requirements for SIPs to contain the measures necessary to make reasonable progress. 2019 Guidance at 10 and 2021 Clarifications Memo at 5–6.

Thus, while states have discretion to choose any source selection methodology that is reasonable, whatever choices they make should be reasonably explained. To this end, 40 CFR 51.308(f)(2)(i) requires that a state's SIP submission include ''a description of the criteria it used to determine which sources or groups of sources it evaluated.'' The technical basis for source selection, which may include methods for quantifying potential visibility impacts such as emissions divided by distance metrics, trajectory analyses, residence time analyses, and/or photochemical modeling, must also be appropriately documented, as required by 40 CFR 51.308(f)(2)(iii).

Once a state has selected the set of sources, the next step is to determine the emissions reduction measures for those sources that are necessary to make reasonable progress for the second implementation period.[21] This is accomplished by considering the four factors—''the costs of compliance, the time necessary for compliance, and the energy and nonair quality environmental impacts of compliance, and the remaining useful life of any existing source subject to such requirements.'' CAA section 169A(g)(1). The EPA has explained that the four-factor analysis is an assessment of potential emission reduction measures (*i.e.,* control options) for sources; ''use of the terms 'compliance' and 'subject to such requirements' in section 169A(g)(1) strongly indicates that Congress intended the relevant determination to be the requirements with which sources would have to comply in order to satisfy the CAA's reasonable progress mandate.'' 82 FR at 3091. Thus, for each source it has selected for four-factor analysis,[22] a state must consider a ''meaningful set'' of technically feasible control options for reducing emissions of visibility impairing pollutants. *Id.* at 3088. The 2019 Guidance provides that ''[a] state must reasonably pick and justify the measures that it will consider, recognizing that there is no statutory or regulatory requirement to consider all technically feasible measures or any particular measures. A range of technically feasible measures available to reduce emissions would be one way to justify a reasonable set.'' 2019 Guidance at 29.

EPA's 2021 Clarifications Memo provides further guidance on what constitutes a reasonable set of control options for consideration: ''A reasonable four-factor analysis will consider the full range of potentially reasonable options for reducing emissions.'' 2021 Clarifications Memo at 7. In addition to add-on controls and other retrofits (*i.e.,* new emission reduction measures for sources), the EPA explained that states should generally analyze efficiency improvements for sources' existing measures as control options in their four-factor analyses, as in many cases such improvements are reasonable given that they typically involve only additional operation and maintenance costs. Additionally, the 2021 Clarifications Memo provides that states that have assumed a higher emission rate than a source has achieved or could potentially achieve using its existing measures should also consider lower emission rates as potential control options. That is, a state should consider a source's recent actual and projected emission rates to determine if it could reasonably attain lower emission rates with its existing measures. If so, the state should analyze the lower emission rate as a control option for reducing emissions. 2021 Clarifications Memo at 7. The EPA's recommendations to analyze potential efficiency improvements and achievable lower emission rates apply to both sources that have been selected for four-factor analysis and those that have forgone a four-factor analysis on the basis of existing ''effective controls.'' See 2021 Clarifications Memo at 5, 10.

After identifying a reasonable set of potential control options for the sources it has selected, a state then collects information on the four factors with regard to each option identified. The EPA has also explained that, in addition to the four statutory factors, states have flexibility under the CAA and RHR to reasonably consider visibility benefits as an additional factor alongside the four statutory factors.[23] The 2019 Guidance

[20] Similarly, in responding to comments on the 2017 RHR Revisions the EPA explained that ''[a] state should not fail to address its many relatively low-impact sources merely because it only has such sources and another state has even more low-impact sources and/or some high impact sources.'' Responses to Comments on Protection of Visibility: Amendments to Requirements for State Plans; Proposed Rule (81 FR 26942, May 4, 2016) at 87–88.

[21] The CAA provides that, ''[i]n determining reasonable progress there shall be taken into consideration'' the four statutory factors. CAA section 169A(g)(1). However, in addition to four-factor analyses for selected sources, groups of sources, or source categories, a state may also consider additional emission reduction measures for inclusion in its long-term strategy, *e.g.,* from other newly adopted, on-the-books, or on-the-way rules and measures for sources not selected for four-factor analysis for the second planning period.

[22] ''Each source'' or ''particular source'' is used here as shorthand. While a source-specific analysis is one way of applying the four factors, neither the statute nor the RHR requires states to evaluate individual sources. Rather, states have ''the flexibility to conduct four-factor analyses for specific sources, groups of sources or even entire source categories, depending on state policy preferences and the specific circumstances of each state.'' 82 FR at 3088. However, not all approaches to grouping sources for four-factor analysis are necessarily reasonable; the reasonableness of grouping sources in any particular instance will depend on the circumstances and the manner in which grouping is conducted. If it is feasible to establish and enforce different requirements for sources or subgroups of sources, and if relevant factors can be quantified for those sources or subgroups, then states should make a separate reasonable progress determination for each source or subgroup. 2021 Clarifications Memo at 7–8.

[23] See, *e.g.,* Responses to Comments on Protection of Visibility: Amendments to Requirements for State Plans; Proposed Rule (81 FR 26942, May 4, 2016), Docket Number EPA–HQ–OAR–2015–0531,

Continued

provides recommendations for the types of information that can be used to characterize the four factors (with or without visibility), as well as ways in which states might reasonably consider and balance that information to determine which of the potential control options is necessary to make reasonable progress. See 2019 Guidance at 30–36. The 2021 Clarifications Memo contains further guidance on how states can reasonably consider modeled visibility impacts or benefits in the context of a four-factor analysis. 2021 Clarifications Memo at 12–13, 14–15. Specifically, the EPA explained that while visibility can reasonably be used when comparing and choosing between multiple reasonable control options, it should not be used to summarily reject controls that are reasonable given the four statutory factors. 2021 Clarifications Memo at 13. Ultimately, while states have discretion to reasonably weigh the factors and to determine what level of control is needed, § 51.308(f)(2)(i) provides that a state ''must include in its implementation plan a description of . . . how the four factors were taken into consideration in selecting the measure for inclusion in its long-term strategy.''

As explained above, § 51.308(f)(2)(i) requires states to determine the emission reduction measures for sources that are necessary to make reasonable progress by considering the four factors. Pursuant to § 51.308(f)(2), measures that are necessary to make reasonable progress towards the national visibility goal must be included in a state's LTS and in its SIP.[24] If the outcome of a four-factor analysis is a new, additional emission reduction measure for a source, that new measure is necessary to make reasonable progress towards remedying existing anthropogenic visibility impairment and must be included in the SIP. If the outcome of a four-factor analysis is that no new measures are reasonable for a source, continued implementation of the source's existing measures is generally necessary to prevent future emission increases and thus to make reasonable progress towards the second part of the national visibility goal: preventing future anthropogenic visibility impairment. See CAA section 169A(a)(1). That is, when the result of a four-factor analysis is that no new measures are necessary to make reasonable progress, the source's existing measures are generally necessary to make reasonable progress and must be included in the SIP. However, there may be circumstances in which a state can demonstrate that a source's existing measures are *not* necessary to make reasonable progress. Specifically, if a state can demonstrate that a source will continue to implement its existing measures and will not increase its emission rate, it may not be necessary to have those measures in the LTS in order to prevent future emission increases and future visibility impairment. EPA's 2021 Clarifications Memo provides further explanation and guidance on how states may demonstrate that a source's existing measures are not necessary to make reasonable progress. See 2021 Clarifications Memo at 8–10. If the state can make such a demonstration, it need not include a source's existing measures in the LTS or its SIP.

As with source selection, the characterization of information on each of the factors is also subject to the documentation requirement in § 51.308(f)(2)(iii). The reasonable progress analysis, including source selection, information gathering, characterization of the four statutory factors (and potentially visibility), balancing of the four factors, and selection of the emission reduction measures that represent reasonable progress, is a technically complex exercise, but also a flexible one that provides states with bounded discretion to design and implement approaches appropriate to their circumstances. Given this flexibility, § 51.308(f)(2)(iii) plays an important function in requiring a state to document the technical basis for its decision making so that the public and the EPA can comprehend and evaluate the information and analysis the state relied upon to determine what emission reduction measures must be in place to make reasonable progress. The technical documentation must include the modeling, monitoring, cost, engineering, and emissions information on which the state relied to determine the measures necessary to make reasonable progress. This documentation requirement can be met through the provision of and reliance on technical analyses developed through a regional planning process, so long as that process and its output has been approved by all state participants. In addition to the explicit regulatory requirement to document the technical basis of their reasonable progress determinations, states are also subject to the general principle that those determinations must be reasonably moored to the statute.[25] That is, a state's decisions about the emission reduction measures that are necessary to make reasonable progress must be consistent with the statutory goal of remedying existing and preventing future visibility impairment.

The four statutory factors (and potentially visibility) are used to determine what emission reduction measures for selected sources must be included in a state's LTS for making reasonable progress. Additionally, the RHR at 40 CFR 51.3108(f)(2)(iv) separately provides five ''additional factors'' [26] that states must consider in developing their LTS: (1) Emission reductions due to ongoing air pollution control programs, including measures to address reasonably attributable visibility impairment; (2) measures to reduce the impacts of construction activities; (3) source retirement and replacement schedules; (4) basic smoke management practices for prescribed fire used for agricultural and wildland vegetation management purposes and smoke management programs; and (5) the anticipated net effect on visibility due to projected changes in point, area, and mobile source emissions over the period addressed by the LTS. The 2019 Guidance provides that a state may satisfy this requirement by considering these additional factors in the process of selecting sources for four-factor analysis, when performing that analysis, or both, and that not every one of the additional factors needs to be considered at the same stage of the process. See 2019 Guidance at 21. The EPA provided further guidance on the five additional factors in the 2021 Clarifications Memo, explaining that a state should generally not reject cost-effective and otherwise reasonable controls merely because there have been emission reductions since the first

U.S. Environmental Protection Agency at 186; 2019 Guidance at 36–37.

[24] States may choose to, but are not required to, include measures in their LTS beyond just the emission reduction measures that are necessary for reasonable progress. See 2021 Clarifications Memo at 16. For example, states with smoke management programs may choose to submit their smoke management plans to the EPA for inclusion in their SIPs but are not required to do so. See, *e.g.,* 82 FR at 3108–09 (requirement to consider smoke management practices and smoke management programs under 40 CFR 51.308(f)(2)(iv) does not require states to adopt such practices or programs into their SIPs, although they may elect to do so).

[25] See Arizona ex rel. *Darwin* v. *U.S. EPA,* 815 F.3d 519, 531 (9th Cir. 2016); *Nebraska* v. *U.S. EPA,* 812 F.3d 662, 668 (8th Cir. 2016); *North Dakota* v. *EPA,* 730 F.3d 750, 761 (8th Cir. 2013); *Oklahoma* v. *EPA,* 723 F.3d 1201, 1206, 1208–10 (10th Cir. 2013); cf. also *Nat'l Parks Conservation Ass'n* v. *EPA,* 803 F.3d 151, 165 (3d Cir. 2015); *Alaska Dep't of Envtl. Conservation* v. *EPA,* 540 U.S. 461, 485, 490 (2004).

[26] The five ''additional factors'' for consideration in § 51.308(f)(2)(iv) are distinct from the four factors listed in CAA section 169A(g)(1) and 40 CFR 51.308(f)(2)(i) that states must consider and apply to sources in determining reasonable progress.

planning period owing to other ongoing air pollution control programs or merely because visibility is otherwise projected to improve at Class I Areas. Additionally, states generally should not rely on these additional factors to summarily assert that the state has already made sufficient progress and, therefore, no sources need to be selected or no new controls are needed regardless of the outcome of four-factor analyses. 2021 Clarifications Memo at 13.

Because the air pollution that causes Regional Haze crosses state boundaries, § 51.308(f)(2)(ii) requires a state to consult with other states that also have emissions that are reasonably anticipated to contribute to visibility impairment in a given Class I Area. Consultation allows for each state that impacts visibility in an Area to share whatever technical information, analyses, and control determinations may be necessary to develop coordinated emission management strategies. This coordination may be managed through inter- and intra-RPO consultation and the development of regional emissions strategies; additional consultations between states outside of RPO processes may also occur. If a state, pursuant to consultation, agrees that certain measures (*e.g.,* a certain emission limitation) are necessary to make reasonable progress at a Class I Area, it must include those measures in its SIP. 40 CFR 51.308(f)(2)(ii)(A). Additionally, the RHR requires that states that contribute to visibility impairment at the same Class I Area consider the emission reduction measures the other contributing states have identified as being necessary to make reasonable progress for their own sources. 40 CFR 51.308(f)(2)(ii)(B). If a state has been asked to consider or adopt certain emission reduction measures, but ultimately determines those measures are not necessary to make reasonable progress, that state must document in its SIP the actions taken to resolve the disagreement. 40 CFR 51.308(f)(2)(ii)(C). The EPA will consider the technical information and explanations presented by the submitting state and the state with which it disagrees when considering whether to approve the state's SIP. See *id.;* 2019 Guidance at 53. Under all circumstances, a state must document in its SIP submission all substantive consultations with other contributing states. 40 CFR 51.308(f)(2)(ii)(C).

D. Reasonable Progress Goals

Reasonable progress goals ''measure the progress that is projected to be achieved by the control measures states have determined are necessary to make reasonable progress based on a four-factor analysis.'' 82 FR at 3091. Their primary purpose is to assist the public and the EPA in assessing the reasonableness of states' LTS for making reasonable progress towards the national visibility goal. See 40 CFR 51.308(f)(3)(iii)–(iv). States in which Class I Areas are located must establish two RPGs, both in deciviews—one representing visibility conditions on the clearest days and one representing visibility on the most anthropogenically impaired days—for each Area within their borders. 40 CFR 51.308(f)(3)(i). The two RPGs are intended to reflect the projected impacts, on the two sets of days, of the emission reduction measures the state with the Class I Area, as well as all other contributing states, have included in their LTS for the second implementation period.[27] The RPGs also account for the projected impacts of implementing other CAA requirements, including non-SIP based requirements. Because RPGs are the modeled result of the measures in states' LTS (as well as other measures required under the CAA), they cannot be determined before states have conducted their four-factor analyses and determined the control measures that are necessary to make reasonable progress. See 2021 Clarifications Memo at 6.

For the second implementation period, the RPGs are set for 2028. RPGs are not enforceable targets, 40 CFR 51.308(f)(3)(iii); rather, they ''provide a way for the states to check the projected outcome of the [long-term strategy] against the goals for visibility improvement.'' 2019 Guidance at 46. While states are not legally obligated to achieve the visibility conditions described in their RPGs, § 51.308(f)(3)(i) requires that ''[t]he long-term strategy and the RPG must provide for an improvement in visibility for the most impaired days since the baseline period and ensure no degradation in visibility for the clearest days since the baseline period.'' Thus, states are required to have emission reduction measures in their LTS that are projected to achieve visibility conditions on the most impaired days that are better than the baseline period and shows no degradation on the clearest days compared to the clearest days from the baseline period. The baseline period for the purpose of this comparison is the baseline visibility condition—the annual average visibility condition for the period 2000–2004. See 40 CFR 51.308(f)(1)(i), 82 FR at 3097–98.

So that RPGs may also serve as a metric for assessing the amount of progress a state is making towards the national visibility goal, the RHR requires states with Class I Areas to compare the 2028 RPG for the most impaired days to the corresponding point on the URP line (representing visibility conditions in 2028 if visibility were to improve at a linear rate from conditions in the baseline period of 2000–2004 to natural visibility conditions in 2064). If the most impaired days RPG in 2028 is above the URP (*i.e.,* if visibility conditions are improving more slowly than the rate described by the URP), each state that contributes to visibility impairment in the Class I Area must demonstrate, based on the four-factor analysis required under 40 CFR 51.308(f)(2)(i), that no additional emission reduction measures would be reasonable to include in its LTS. 40 CFR 51.308(f)(3)(ii). To this end, 40 CFR 51.308(f)(3)(ii) requires that each state contributing to visibility impairment in a Class I Area that is projected to improve more slowly than the URP provide ''a robust demonstration, including documenting the criteria used to determine which sources or groups [of] sources were evaluated and how the four factors required by paragraph (f)(2)(i) were taken into consideration in selecting the measures for inclusion in its long-term strategy.'' The 2019 Guidance provides suggestions about how such a ''robust demonstration'' might be conducted. See 2019 Guidance at 50–51.

The 2017 RHR, 2019 Guidance, and 2021 Clarifications Memo also explain that projecting an RPG that is on or below the URP based on only on-the-books and/or on-the-way control measures (*i.e.,* control measures already required or anticipated before the four-factor analysis is conducted) is not a ''safe harbor'' from the CAA's and RHR's requirement that all states must conduct a four-factor analysis to determine what emission reduction measures constitute reasonable progress. The URP is a planning metric used to gauge the amount of progress made thus far and the amount left before reaching natural visibility conditions. However, the URP

[27] RPGs are intended to reflect the projected impacts of the measures all contributing states include in their LTS. However, due to the timing of analyses and of control determinations by other states, other on-going emissions changes, a particular state's RPGs may not reflect all control measures and emissions reductions that are expected to occur by the end of the implementation period. The 2019 Guidance provides recommendations for addressing the timing of RPG calculations when states are developing their LTS on disparate schedules, as well as for adjusting RPGs using a post-modeling approach. 2019 Guidance at 47–48.

is not based on consideration of the four statutory factors and therefore cannot answer the question of whether the amount of progress being made in any particular implementation period is ''reasonable progress.'' See 82 FR at 3093, 3099–3100; 2019 Guidance at 22; 2021 Clarifications Memo at 15–16.

E. Monitoring Strategy and Other State Implementation Plan Requirements

Section 51.308(f)(6) requires states to have certain strategies and elements in place for assessing and reporting on visibility. Individual requirements under this subsection apply either to states with Class I Areas within their borders, states with no Class I Areas but that are reasonably anticipated to cause or contribute to visibility impairment in any Class I Area, or both. A state with Class I Areas within its borders must submit with its SIP revision a monitoring strategy for measuring, characterizing, and reporting Regional Haze visibility impairment that is representative of all Class I Areas within the state. SIP revisions for such states must also provide for the establishment of any additional monitoring sites or equipment needed to assess visibility conditions in Class I Areas, as well as reporting of all visibility monitoring data to the EPA at least annually. Compliance with the monitoring strategy requirement may be met through a state's participation in the Interagency Monitoring of Protected Visual Environments (IMPROVE) monitoring network, which is used to measure visibility impairment caused by air pollution at the 156 Class I Areas covered by the visibility program. 40 CFR 51.308(f)(6), (f)(6)(i), (f)(6)(iv). The IMPROVE monitoring data is used to determine the 20% most anthropogenically impaired and 20% clearest sets of days every year at each Class I Area and tracks visibility impairment over time.

All states' SIPs must provide for procedures by which monitoring data and other information are used to determine the contribution of emissions from within the state to Regional Haze visibility impairment in affected Class I Areas. 40 CFR 51.308(f)(6)(ii), (iii). *S*ection 51.308(f)(6)(v) further requires that all states' SIPs provide for a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment in any Class I Area; the inventory must include emissions for the most recent year for which data are available and estimates of future projected emissions. States must also include commitments to update their inventories periodically. The inventories themselves do not need to be included as elements in the SIP and are not subject to the EPA review as part of the Agency's evaluation of a SIP revision.[28] All states' SIPs must also provide for any other elements, including reporting, recordkeeping, and other measures, that are necessary for states to assess and report on visibility. 40 CFR 51.308(f)(6)(vi). Per the 2019 Guidance, a state may note in its regional Haze SIP that its compliance with the Air Emissions Reporting Rule (AERR) in 40 CFR part 51, subpart A satisfies the requirement to provide for an emissions inventory for the most recent year for which data are available. To satisfy the requirement to provide estimates of future projected emissions, a state may explain in its SIP how projected emissions were developed for use in establishing RPGs for its own and nearby Class I Areas.[29]

Separate from the requirements related to monitoring for Regional Haze purposes under 40 CFR 51.308(f)(6), the RHR also contains a requirement at § 51.308(f)(4) related to any additional monitoring that may be needed to address visibility impairment in Class I Areas from a single source or a small group of sources. This is called ''reasonably attributable visibility impairment.'' [30] Under this provision, if the EPA or the FLM of an affected Class I Area has advised a state that additional monitoring is needed to assess reasonably attributable visibility impairment, the state must include in its SIP revision for the second implementation period an appropriate strategy for evaluating such impairment.

F. Requirements for Periodic Reports Describing Progress Towards the Reasonable Progress Goals

Section 51.308(f)(5) requires a state's Regional Haze SIP revision to address the requirements of paragraphs 40 CFR 51.308(g)(1) through (5) so that the plan revision due in 2021 will serve also as a progress report addressing the period since submission of the progress report for the first implementation period. The Regional Haze progress report requirement is designed to inform the public and the EPA about a state's implementation of its existing LTS and whether such implementation is in fact resulting in the expected visibility improvement. See 81 FR 26942, 26950 (May 4, 2016), (82 FR at 3119, January 10, 2017). To this end, every state's SIP revision for the second implementation period is required to describe the status of implementation of all measures included in the state's LTS, including BART and reasonable progress emission reduction measures from the first implementation period, and the resulting emissions reductions. 40 CFR 51.308(g)(1) and (2).

A core component of the progress report requirements is an assessment of changes in visibility conditions on the clearest and most impaired days. For second implementation period progress reports, § 51.308(g)(3) requires states with Class I Areas within their borders to first determine current visibility conditions for each Area on the most impaired and clearest days, 40 CFR 51.308(g)(3)(i)(B), and then to calculate the difference between those current conditions and baseline (2000–2004) visibility conditions in order to assess progress made to date. See 40 CFR 51.308(g)(3)(ii)(B). States must also assess the changes in visibility impairment for the most impaired and clearest days since they submitted their first implementation period progress reports. See 40 CFR 51.308(g)(3)(iii)(B), (f)(5). Since different states submitted their first implementation period progress reports at different times, the starting point for this assessment will vary state by state.

Similarly, states must provide analyses tracking the change in emissions of pollutants contributing to visibility impairment from all sources and activities within the state over the period since they submitted their first implementation period progress reports. See 40 CFR 51.308(g)(4), (f)(5). Changes in emissions should be identified by the type of source or activity. Section 51.308(g)(5) also addresses changes in emissions since the period addressed by the previous progress report and requires states' SIP revisions to include an assessment of any significant changes in anthropogenic emissions within or outside the state. This assessment must include an explanation of whether these changes in emissions were anticipated and whether they have limited or impeded progress in reducing emissions and improving visibility relative to what the state projected based on its LTS for the first implementation period.

G. Requirements for State and Federal Land Manager Coordination

CAA section 169A(d) requires that before a state holds a public hearing on a proposed Regional Haze SIP revision, it must consult with the appropriate

[28] See ''Step 8: Additional requirements for regional haze SIPs'' in 2019 Regional Haze Guidance at 55.

[29] *Id.*

[30] The EPA's visibility protection regulations define ''reasonably attributable visibility impairment'' as ''visibility impairment that is caused by the emission of air pollutants from one, or a small number of sources.'' 40 CFR 51.301.

FLM or FLMs; pursuant to that consultation, the state must include a summary of the FLMs' conclusions and recommendations in the notice to the public. Consistent with this statutory requirement, the RHR also requires that states ''provide the [FLM] with an opportunity for consultation, in person and at a point early enough in the State's policy analyses of its long-term strategy emission reduction obligation so that information and recommendations provided by the [FLM] can meaningfully inform the State's decisions on the long-term strategy.'' 40 CFR 51.308(i)(2). Consultation that occurs 120 days prior to any public hearing or public comment opportunity will be deemed ''early enough,'' but the RHR provides that in any event the opportunity for consultation must be provided at least 60 days before a public hearing or comment opportunity. This consultation must include the opportunity for the FLMs to discuss their assessment of visibility impairment in any Class I Area and their recommendations on the development and implementation of strategies to address such impairment. 40 CFR 51.308(i)(2). In order for the EPA to evaluate whether FLM consultation meeting the requirements of the RHR has occurred, the SIP submission should include documentation of the timing and content of such consultation. The SIP revision submitted to the EPA must also describe how the state addressed any comments provided by the FLMs. 40 CFR 51.308(i)(3). Finally, a SIP revision must provide procedures for continuing consultation between the state and FLMs regarding the state's visibility protection program, including development and review of SIP revisions, five-year progress reports, and the implementation of other programs having the potential to contribute to impairment of visibility in Class I Areas. 40 CFR 51.308(i)(4).

V. The EPA's Evaluation of Kansas's Regional Haze Submission for the Second Implementation Period

A. Background on Kansas's First Implementation Period SIP Submission

Kansas submitted its Regional Haze SIP for the first implementation period to the EPA on October 26, 2009. The EPA approved Kansas's first implementation period Regional Haze SIP submission on December 27, 2011 (76 FR 80754, December 27, 2011). The requirements for Regional Haze SIPs for the first implementation period are contained in 40 CFR 51.308(d) and (e). Pursuant to 40 CFR 51.308(g), Kansas was also responsible for submitting a five-year progress report as a SIP revision for the first implementation period, which it did on March 10, 2015. The EPA approved the progress report into Kansas's SIP on September 14, 2015 (80 FR 55030, September 14, 2015).

B. Kansas's Second Implementation Period SIP Submission and the EPA's Evaluation

In accordance with CAA sections 169A and the RHR at 40 CFR 51.308(f),51.308(g), and 51.308(i), on July 28, 2021, Kansas submitted a revision to Kansas's SIP to address its Regional Haze obligations for the second implementation period, which runs through 2028. Kansas made its 2021 Regional Haze SIP submission available for public comment on May 27, 2021. Kansas received and responded to public comments and included both the comments and responses to those comments in its submission.

The following sections describe Kansas's SIP submission. This document also contains EPA's evaluation to determine if Kansas's submission meets all of the applicable requirements of the CAA and RHR for the second implementation period of the Regional Haze program.

C. Identification of Class I Areas

Section 169A(b)(2) of the CAA requires each state in which any Class I Area is located or ''the emissions from which may reasonably be anticipated to cause or contribute to any impairment of visibility'' in a Class I Area to have a plan for making reasonable progress toward the national visibility goal. The RHR implements this statutory requirement at 40 CFR 51.308(f), which provides that each state's plan ''must address Regional Haze in each mandatory Class I Federal Area located within the State and in each mandatory Class I Federal Area located outside the State that may be affected by emissions from within the State,'' and (f)(2), which requires each state's plan to include a LTS that addresses Regional Haze in such Class I Areas.

The EPA explained in the 1999 RHR preamble that the CAA section 169A(b)(2) requirement that states submit SIPs to address visibility impairment establishes ''an 'extremely low triggering threshold' in determining which States should submit SIPs for regional haze.'' 64 FR at 35721. In concluding that each of the contiguous 48 states and the District of Columbia meet this threshold,[31] the EPA relied on ''a large body of evidence demonstrat[ing] that long-range transport of fine PM contributes to regional haze,'' *id.,* including modeling studies that ''preliminarily demonstrated that each State not having a Class I Area had emissions contributing to impairment in at least one downwind Class I Area.'' *Id.* at 35722. In addition to the technical evidence supporting a conclusion that each state contributes to *existing* visibility impairment, the EPA also explained that the second half of the national visibility goal—preventing *future* visibility impairment—requires having a framework in place to address future growth in visibility-impairing emissions and makes it inappropriate to ''establish criteria for excluding States or geographic areas from consideration as potential contributors to regional haze visibility impairment.'' *Id.* at 35721. Thus, the EPA concluded that the agency's ''statutory authority and the scientific evidence are sufficient to require all States to develop regional haze SIPs to ensure the prevention of any future impairment of visibility, and to conduct further analyses to determine whether additional control measures are needed to ensure reasonable progress in remedying existing impairment in downwind Class I Areas.'' *Id.* at 35722. EPA's 2017 revisions to the RHR did not disturb this conclusion. *See* 82 FR at 3094.

Kansas contains no Class I Areas. However, in Kansas's Regional Haze plan, Kansas lists seven Class I Areas: Upper Buffalo Wilderness Area, Arkansas; Hercules-Glades Wilderness Area, Missouri; Mingo Wilderness Area, Missouri; Salt Creek Wilderness Area, New Mexico; Wheeler Peak Wilderness Area, New Mexico; White Mountain Wilderness Area, New Mexico; and Wichita Mountains Wilderness Area, Oklahoma; as ''Kansas-related Class I Areas, [32] *i.e.,* Class I Areas potentially affected by Kansas emissions. To make this determination, Kansas used the results from the CenSARA 2018 area of influence (AOI) analysis. The AOI analysis is a back-trajectory technique that identifies visibility impairment contributions from individual major point sources. The EPA agrees that the CenSARA AOI information is a

[31] The EPA determined that ''there is more than sufficient evidence to support our conclusion that emissions from each of the 48 contiguous states and the District of Columba may reasonably be anticipated to cause or contribute to visibility impairment in a Class I Area.'' 64 FR at 35721. Hawaii, Alaska, and the U.S. Virgin Islands must also submit Regional Haze SIPs because they contain Class I Areas.

[32] ''Related Class I Areas'' is not a term used by the EPA, nor is it in CAA, the RHR, or any EPA guidance. Kansas coined the term in their submission.

technically sound method for identifying Areas that are potentially affected by Kansas emissions. The EPA also agrees that the seven Class I Areas identified by Kansas are potentially affected by Kansas's emissions.

In their second planning period submission, Kansas also opted to analyze the visibility impacts from Kansas, and compare those to visibility impacts from other states also impacting the same seven Class I Areas. That analysis showed seventeen states having more visibility impact on the seven Class I Areas compared to Kansas. Kansas additionally states that its emissions have an insignificant visibility impact in the seven Class I Areas it identified. The EPA notes that while Kansas's analysis shows it has less of a visibility impact than other states in the seven Class I Areas it identified, Kansas also showed that its sources do, in fact, impact visibility in these seven Class I Areas. As stated previously, the threshold for visibility impact on Class I Areas is low. Therefore, a small visibility impact on any of the Class I Areas identified by Kansas as being impacted by its emissions is sufficient to trigger the regional haze requirements to evaluate sources for control measures considering the four factors.

D. Regional Haze Rule Provisions That Do Not Apply to States With No Class I Areas

As noted above, Kansas emissions potentially impact visibility in seven out-of-state Class I Areas. However, Kansas does not contain any Class I Areas. Therefore, a number of RHR provisions are not applicable to the Kansas SIP submission and the EPA will not evaluate the Kansas regional haze SIP submission for compliance with those provisions.

The following RHR provisions do not apply to the Kansas SIP:

- § 51.308(f)(1)—*Calculations of baseline, current, and natural visibility conditions; progress to date; and the uniform rate of progress.* The entirety of the provisions in § 51.308(f)(1), including 51.308(f)(i) to 51.308(f)(vi) only contain regulatory requirements for states with Class I Areas.
- § 51.308(f)(3)—*Reasonable progress goals.* § 51.308(f)(3)(i), 51.308(f)(3)(ii)(A), 51.308(f)(3)(iii), and 51.308(f)(3)(iv) only contain regulatory requirements for states with Class I Areas.
- § 51.308(f)(4)—*Additional monitoring to assess reasonably attributable visibility impairment (RAVI).* This provision could in theory apply to all states. However, there are no RAVI monitoring requirements for Kansas. Therefore, this provision is not applicable to the Kansas SIP.
- § 51.308(f)(6)—*Monitoring strategy and other implementation plan requirements.* § 51.308(f)(6), 51.308(f)(6)(i), 51.308(f)(6)(ii), and 51.308(f)(6)(iv) only contain regulatory requirements for states with Class I Areas.
- § 51.308(g)—*Requirements for periodic reports describing progress towards the reasonable progress goals.* The RHR at § 51.308(f)(5) requires second planning period SIPs to address certain progress report provisions within § 51.308(g). However, § 51.308(g)(3) only contains regulatory requirements for states with Class I Areas.

E. Calculations of Baseline, Current, and Natural Visibility Conditions; Progress to Date; and the Uniform Rate of Progress

Section 51.308(f)(1) requires states to determine the following for ''each mandatory Class I Federal Area located within the State'': baseline visibility conditions for the most impaired and clearest days, natural visibility conditions for the most impaired and clearest days, progress to date for the most impaired and clearest days, the differences between current visibility conditions and natural visibility conditions, and the URP. This section also provides the option for states to propose adjustments to the URP line for a Class I Area to account for visibility impacts from anthropogenic sources outside the United States and/or the impacts from wildland prescribed fires that were conducted for certain, specified objectives. 40 CFR 51.308(f)(1)(vi)(B).

These requirements only apply to states with Class I Areas. Because Kansas does not have any Class I Areas, these statutory requirements do not apply to Kansas.

F. Long-Term Strategy for Regional Haze

a. Four-Factor Analysis

Each state having a Class I Area within its borders or emissions that may affect visibility in a Class I Area must develop a LTS for making reasonable progress towards the national visibility goal. CAA section 169A(b)(2)(B). As explained in the Background section of this document, reasonable progress is achieved when all states contributing to visibility impairment in a Class I Area are implementing the measures determined—through application of the four statutory factors to sources of visibility impairing pollutants—to be necessary to make reasonable progress. 40 CFR 51.308(f)(2)(i). Each state's LTS must include the enforceable emission limitations, compliance schedules, and other measures that are necessary to make reasonable progress. 40 CFR 51.308(f)(2). All new (*i.e.,* additional) measures that are the outcome of four-factor analyses are necessary to make reasonable progress and must be in the LTS. If the outcome of a four-factor analysis and other measures necessary to make reasonable progress is that no new measures are reasonable for a source, that source's existing measures are necessary to make reasonable progress, unless the state can demonstrate that the source will continue to implement those measures and will not increase its emission rate. Existing measures that are necessary to make reasonable progress must also be in the LTS. In developing its LTS, a state must also consider the five additional factors in § 51.308(f)(2)(iv). As part of its reasonable progress determinations, the state must describe the criteria used to determine which sources or group of sources were evaluated (*i.e.,* subjected to four-factor analysis) for the second implementation period and how the four factors were taken into consideration in selecting the emission reduction measures for inclusion in the LTS. 40 CFR 51.308(f)(2)(iii).

In its SIP submission, Kansas included information on the emissions impacts of numerous sources in Kansas on various Class I Areas, but did not select any sources, did not conduct any four-factor analysis, and did not analyze possible efficiency improvements for sources' existing measures. However, Kansas's own submission lists one hundred twenty-eight (128) sources in Kansas with non-zero visibility impacts on at least one Class I Area, and when SO_2 and NO_X emissions were considered together, impacts from individual Kansas sources ranged from 0.01% to 0.84% of the total estimated visibility impact.[33] The highest impacting sources based on the AOI metric used by Kansas [34] are Sunflower Electric-Holcomb, KCP&L–La Cygne, Birla Carbon USA, Kansas City BPU–Nearman.[35]

[33] Based upon the CenSARA AOI work. See the July 28th, 2021 Kansas submission, Appendix 6, included in the docket for this action.

[34] AOI is one of several methods to estimate the visibility impact of sources. Different methods could have different rankings. AOI is an acceptable method.

[35] The EPA is not determining that these four sources would need to be selected. The EPA is highlighting that visibility impacting sources exist to be selected. Kansas could also have a reasonable

In its SIP submission, Kansas provides several reasons why it believes it is reasonable to not select sources for four-factor analyses, none of which are based in statute or the Regional Haze regulations. For example, Kansas believes there is an ''emission control inequity'' between Kansas and surrounding states. Therefore, Kansas suggests it is unfair to require the state to select sources and conduct four-factor analyses in order to determine if existing limits and/or controls are sufficient, or if additional controls are needed for reasonable progress. Kansas believes that surrounding states should first match Kansas's emission reductions before Kansas is required to consider further controls. However, there is ample information presented by the state to show that sources in Kansas do impact nearby Class I Areas and the state could have selected the visibility impairing sources in Kansas for further analysis. This fact remains true regardless of whether a neighboring state contributes more. Neither the statute nor the RHR contemplate ''emission control inequity'' as a justification for a state not to select sources and evaluate existing and potential control measures, considering the four statutory factors.

As stated above, impacts from individual Kansas's sources ranged from 0.01% to 0.84% of the total estimated impact.[36] Moreover, the 2017 RHR recognized the possibility that smaller in-state sources may need to be selected and evaluated for control measures as a part of the reasonable progress analysis in order to address the state's visibility impact to Class I Areas. This was further clarified in the 2021 Clarifications memo where the EPA stated a ''state should not fail to address its many relatively low-impact sources merely because it only has such sources and another state has even more low-impact sources and/or some high impact sources.'' [37] States should not use large out-of-state sources to exclude contributions from relatively smaller but still important in-state sources.[38] States with relatively small sources compared to their neighbors should nonetheless select their largest in-state sources.[39]

Therefore, despite the fact that surrounding states contribute a larger percentage of visibility impairment to a specific Class I Area compared to Kansas, that does not mean that Kansas's contributions to visibility impairment are insignificant. On the contrary, the fact that Kansas contributes to visibility impacts to Class I Areas, even at the levels that it does, is evidence that sources in Kansas should be evaluated, including consideration of the four factors, to determine whether cost effective controls for those sources exist and to determine measures that are necessary to make reasonable progress.

Further, the national goal set by Congress outlines both the remedying of any existing visibility impairment, and also preventing any future visibility impairment. CAA section 169A(a). In addition to not selecting sources for a four-factor analysis, Kansas also did not evaluate whether the continued implementation of a source's existing measures is necessary for reasonable progress. Kansas therefore did not provide a reasonable rationale to support its conclusion that for the second planning period, no additional measures are necessary for its LTS, despite outlining seven Class I Areas where its emissions impact visibility.

Kansas also argues that because of the SO_2 reductions it has achieved in the first planning period compared to other states, Kansas's contribution to impairment in Class I Areas is therefore insignificant. The EPA acknowledges that Kansas made significant reductions in SO_2 emissions in the first planning period and that surrounding states have a larger total of SO_2 emissions, but neither the Regional Haze Rule nor the CAA allow a state to not select sources, nor consider the four factors, in reliance on their previous planning period reductions or due to higher emissions in other states. This was further clarified in the 2021 Clarifications memo where the EPA stated that a state should generally not reject cost-effective and otherwise reasonable controls merely because there have been emission reductions since the first planning period owing to other ongoing air pollution control programs or merely because visibility is otherwise projected to improve at Class I areas.[40]

A source's visibility impact relative to a state's total contribution to visibility impairment is relevant to ensuring that a state is addressing its own contribution regardless of what other states are doing.[41]

Therefore, the EPA does not find it reasonable for Kansas to not select sources and evaluate potential control measures, without consider the four factors in the CAA and EPA's regulations to determine what cost-effective measures, if any, are necessary to make reasonable progress toward the national goal, and thus need to be a part of the state's LTS.

Kansas failed to ''evaluate and determine the emission reduction measures that are necessary to make reasonable progress by considering the costs of compliance, the time necessary for compliance, the energy and non-air quality environmental impacts of compliance, and the remaining useful life of any potentially affected anthropogenic source of visibility impairment,'' as required by 40 CFR 51.308(f)(2)(i) and CAA section 169A(g)(1). The EPA outlined this fact during the public comment period of Kansas's draft SIP submittal.[42] In Kansas's response to our comments, it declaratively states it cannot consider the four factors without selecting sources. Providing a long-term strategy for making reasonable progress toward the national goal, including consideration of the four factors, is a statutory requirement for every state, one that does not go away by a state simply deciding, without analyses, that doing so would lead to insignificant results.[43] The EPA discusses a state not selecting sources in both the 2019 Guidance and the 2021 Clarification Memo. As the EPA stated in the 2019 Guidance, a state must explain how the decision to bring forth no sources is consistent with the CAA's requirements that SIPs make reasonable progress toward the national goal of preventing future and remedying existing anthropogenic visibility impairment, and that reasonable progress must be determined by considering the four statutory factors.[44] EPA then provides

basis to select a different, smaller, or larger set of sources.

[36] Based upon the CenSARA AOI work. See the July 28th, 2021 Kansas submission, Appendix 6, included in the docket for this action. For Hercules Glades Wilderness Area, Missouri: Arkansas and Missouri each have greater than twenty-five percent impact; Oklahoma, Illinois, Texas, and Kentucky each have between ten and four percent impact; and Iowa, Kansas, Tennesse, Louisiana, and Nebraska each have between three and one percent impact.

[37] Responses to Comments on Protection of Visibility: Amendments to Requirements for States Plans; Proposed Rule (81 FR 26942, May 4, 2016) at 87–88, available at *https://www.regulations.gov/document/EPA-HQ-OAR-2015-0531-0635.*

[38] 2021 Clarifications Memo at 4.

[39] Id.

[40] 2021 Clarifications Memo at 13.

[41] 2021 Clarifications Memo at 15.

[42] See June 28, 2021 letter from Dana Skelley, Director Air and Radiation Division, EPA Region 7 to Douglas Watson Air Monitoring and Planning Section Chief, KDHE. The letter is titled ''EPA Comments on KS 2nd Round RH SIP LETTERHEAD.pdf'' in the docket for this action.

[43] *See* CAA sections 169A(b)(2)(B), 169A(g)(1).

[44] Guidance on Regional Haze State Implementation Plans for the Second Implementation Period, at 10. *https://www.epa.gov/visibility/guidance-regional-haze-state-implementation-plans-second-implementation-period.* The EPA Office of Air Quality Planning and Standards, Research Triangle Park (August 20, 2019).

an example of how a state could make such a demonstration.[45]

The EPA further explained in the 2021 Clarification Memo that a state that brings no sources forward for analysis of control measures must explain how doing so is consistent with the statutory and regulatory requirements for SIPs to contain the measures necessary to make reasonable progress. In this case, the state is not merely asserting that its sources need no further controls to make reasonable progress, but that even identifying sources to analyze is a futile exercise because it is obvious that a four-factor analysis would not result in any new controls.[46] Kansas has not adequately supported this assertion. To reach a determination that existing measures are sufficient for Reasonable Progress, the four factors must be considered. Kansas has not provided a reasoned explanation for how not selecting sources and not considering the four factors, is consistent with the statute and the RHR. Further, Kansas has not shown that further reductions of visibility impairing pollutants are not reasonable, and has not explained how its approach, which fails to consider the four factors, is consistent with the CAA and RHR. The State is required to consider the four factors to determine what, if any, measures are necessary for reasonable progress and must be included in the state's long-term strategy and regulatory portion of the SIP submission. For Kansas, given the state has numerous sources emitting visibility-impairing pollutants that may impact Class I Areas, the State's approach is unsupportable.

Kansas failed to consider the four statutory factors for any sources, thereby not providing the required analysis to support a conclusion that no additional measures are necessary for reasonable progress in its LTS. Therefore, Kansas does not establish that its second planning period SIP submission contains the emission limits, schedules of compliance, and other measures as may be necessary to make reasonable progress toward meeting the national visibility goal.[47] Therefore, the SIP submission does not meet the regional haze requirements, nor requirements of the CAA. Specifically, as described in detail above, the SIP submission does not meet the statutory requirements in CAA section 169A(b)(2)(B) to contain a LTS for making reasonable progress; the CAA section 169A(g)(1) requirement to consider the four factors in determining reasonable progress; and the CAA section 169A(b)(2) requirement for the SIP to contain the emissions limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal. In addition, the lack of source selection, evaluation of emissions measures considering the four factors, and related inadequate documentation of the analyses results in not meeting the regulatory requirements in § 51.308(f)(2), 51.308(f)(2)(i), and 51.308(f)(2)(iii). Therefore, the EPA is proposing to disapprove Kansas's Regional Haze SIP submission.

b. Additional Long-Term Strategy Requirements

The consultation requirements of § 51.308(f)(2)(ii) provides that states must consult with other states that are reasonably anticipated to contribute to visibility impairment in a Class I Area to develop coordinated emission management strategies containing the emission reductions measures that are necessary to make reasonable progress. Section 51.308(f)(2)(ii)(A) and (B) require states to consider the emission reduction measures identified by other states as necessary for reasonable progress and to include agreed upon measures in their SIPs, respectively. Section 51.308(f)(2)(ii)(C) speaks to what happens if states cannot agree on what measures are necessary to make reasonable progress.

Kansas included documentation of its CenSARA calls that occurred from January 2020 to July 2020. Kansas contacted the states of Colorado and New Mexico in May 2020. Kansas's consultation documentation is free of any state disagreeing with or providing comment on Kansas's approach on its LTS. However, for the reasons outlined throughout this document, the EPA cannot approve Kansas's consultation requirements because the consultation was based on a SIP that did not meet the required statutory elements.

Section 51.308(f)(2)(iii) also requires that the emissions information considered to determine the measures that are necessary to make reasonable progress include information on emissions for the most recent year for which the state has submitted triennial emissions data to the EPA (or a more recent year), with a 12-month exemption period for newly submitted data.

Kansas included emissions information from the most recent year in its submittal.[48] Kansas included emission totals for NH_3, $PM_{2.5}$, PM_{10}, SO_2, VOC, and NO_X. Kansas grouped the emissions by: Natural Sources, Wild and Prescribed Fires, Residential Wood Combustion, Agricultural Fires, Agricultural NH3 Emissions, the Oil and Gas Industry, Electric Generating Units (EGUs), Industry other than Oil and Gas and EGUs, Airports, Rail, Marine, Onroad, and Nonroad. Kansas included emissions 2011 through 2017. Kansas used the National Emissions Inventory for 2011, 2014, 2017; the EPA 2016 modeling inventory for 2016; and the Kansas Emission Inventory for 2012, 2013, and 2017.[49]

TABLE 1—KANSAS ANTHROPOGENIC NO_X EMISSIONS

Section	Pollutant	2014	2015	2016	2017	2018
Oil and Gas	NO_X	62,100	57,172	49,832	52,141	46,008
Other Industry	NO_X	47,617	45,064	41,759	41,460	38,531
Onroad	NO_X	73,361	64,648	54,097	50,897	41,264
Rail	NO_X	29,313	26,344	21,770	23,617	19,845
EGU	NO_X	26,681	18,030	15,231	13,378	14,455
Nonroad	NO_X	32,011	28,948	25,373	23,846	20,528
Airports	NO_X	1,740	1,764	1,811	1,764	1,799
Ag Fire	NO_X	2,531	1,717	593	709	709
Residential Wood	NO_X	368	361	378	297	302

[45] Id.

[46] Clarifications Regarding Regional Haze State Implementation Plans for the Second Implementation Period at 5 and 6. *https://www.epa.gov/system/files/documents/2021-07/clarifications-regarding-regional-haze-state-implementation-plans-for-the-second-implementation-period.pdf.* The EPA Office of Air Quality Planning and Standards, Research Triangle Park (July 8, 2021).

[47] See 40 CFR 51.308(f)(2).

[48] See the July 28th, 2021 Kansas submission, Appendix 9, included in the docket for this action.

[49] Kansas did not have emission inventories for 2015 and 2018 and instead estimated emissions using a statistical method, the ''least squares'' method. Kansas does not explain in its submission why it is missing data from 2015 and 2018.

TABLE 1—KANSAS ANTHROPOGENIC NO_X EMISSIONS—Continued

Section	Pollutant	2014	2015	2016	2017	2018
Marine	NO_X	16	8	0		

From July 28th, 2021 Kansas submission, Appendix 9.

TABLE 2—KANSAS ANTHROPOGENIC SO_2 EMISSIONS

Section	Pollutant	2014	2015	2016	2017	2018
Other Industry	SO_2	7,352	6,904	6,381	6,157	5,671
EGU	SO_2	31,541	13,858	7,137	5,558	5,450
Airports	SO_2	176	182	192	186	194
Onroad	SO_2	293	290	294	271	271
Ag Fire	SO_2	660	433	123	145	145
Residential Wood	SO_2	107	102	107	68	68
Oil and Gas	SO_2	108	89	63	67	44
Nonroad	SO_2	59	50	37	38	27
Rail	SO_2	18	16	14	16	14

From July 28th, 2021 Kansas submission, Appendix 9.

As summarized above, the state provided emissions inventory information by sector and for individual sources for multiple years, including the most recent year for which the state submitted emissions data to the EPA in compliance with the triennial reporting requirements of the AERR. However, because the State did not conduct the proper analyses to determine what measures are necessary for reasonable progress, it is not clear how this emissions data was used in the submission to fulfill the regional haze requirements, including documentation of the technical basis for determining the emissions measures that are necessary for reasonable progress. Therefore, as outlined throughout this document, the EPA cannot approve the regulatory requirements under § 51.308(f)(2)(iii) because Kansas's SIP did not meet the required statutory elements.

G. Reasonable Progress Goals

Section 51.308(f)(3) contains the requirements pertaining to RPGs for each Class I Area. As noted previously, most of regulatory requirements in § 51.308(f)(3) do not apply to states without Class I Areas. However, § 51.308(f)(3)(ii)(B) requires that if a state contains sources that are reasonably anticipated to contribute to visibility impairment in a Class I Area in *another* state, and the RPG for the most impaired days in that Class I Area is above the URP, the upwind state must provide the same demonstration.

At the time Kansas submitted its SIP, this provision did not apply because the states with Class I Areas that are affected by Kansas sources did not submit any RPGs that are above the respective URPs. Because we are disapproving the Kansas SIP, if Kansas chooses to submit a revised SIP to the EPA, it should re-evaluate whether 40 CFR 51.308(f)(3)(ii)(B) applies to Kansas.

H. Monitoring Strategy and Other Implementation Plan Requirements

Section 51.308(f)(6) specifies that each comprehensive revision of a state's Regional Haze SIP must contain or provide for certain elements, including monitoring strategies, emissions inventories, and any reporting, recordkeeping and other measures needed to assess and report on visibility. A main requirement of this subsection is for states with Class I Areas to submit monitoring strategies for measuring, characterizing, and reporting on visibility impairment. Section 51.308(f)(6)(ii) requires SIPs to provide for procedures by which monitoring data and other information are used in determining the contribution of emissions from within the state to Regional Haze visibility impairment at mandatory Class I Federal Areas both within and outside the state. As noted previously, most of regulatory requirements in § 51.308(f)(6) do not apply to states without Class I Areas.

However, § 51.308(f)(6)(iii) and (f)(6)(v) apply to all states that have emissions that contribute to a Class I Area, including Kansas. Section 51.308(f)(6)(iii) requires SIPs to provide procedures by which monitoring data and other information are used in determining the contribution of emissions from within the State to Regional Haze visibility impairment at mandatory Class I Federal Areas in other States.

Section 51.308(f)(6)(v) requires SIPs to provide for a statewide inventory of emissions of pollutants that are reasonably anticipated to cause or contribute to visibility impairment, including emissions for the most recent year for which data are available and estimates of future projected emissions. It also requires a commitment to update the inventory periodically. Section 51.308(f)(6)(v) also requires states to include estimates of future projected emissions and include a commitment to update the inventory periodically.

Kansas generally included details on the emissions and monitoring data they used to estimate their visibility contribution to out-of-state Class I Areas, to address § 51.308(f)(6)(iii). To address § 51.308(f)(6)(v), Kansas included emissions information from the most recent triennial inventory year available (2017) [50]. Kansas also included future projections for 2023 and 2028 and committed to update the inventory periodically.

However, as mentioned above, because the State did not conduct the proper analyses to determine what measures are necessary for reasonable progress, and did not satisfy the regional haze statutory requirements, the EPA is not approving these regulatory requirements at this time. The EPA is not approving these regulatory requirements because they do not contain measures that strengthen the existing regional haze SIP, or the SIP generally.

I. Requirements for Periodic Reports Describing Progress Towards the Reasonable Progress Goals

Section 51.308(f)(5) requires that periodic comprehensive revisions of states' Regional Haze plans also address

[50] See the July 28th, 2021 Kansas submission, Appendix 9, included in the docket for this action.

the progress report requirements of 40 CFR 51.308(g)(1) through (5). The purpose of these requirements is to evaluate progress towards the applicable RPGs for each Class I Area within the state and each Class I Area outside the state that may be affected by emissions from within that state. Sections 51.308(g)(1) and (2) apply to all states and require a description of the status of implementation of all measures included in a state's first implementation period Regional Haze plan and a summary of the emission reductions achieved through implementation of those measures. Section 51.308(g)(3) applies only to states with Class I Areas within their borders and requires such states to assess current visibility conditions, changes in visibility relative to baseline (2000–2004) visibility conditions, and changes in visibility conditions relative to the period addressed in the first implementation period progress report.

Section 51.308(g)(4) applies to all states and requires an analysis tracking changes in emissions of pollutants contributing to visibility impairment from all sources and sectors since the period addressed by the first implementation period progress report. This provision further specifies the year or years through which the analysis must extend depending on the type of source and the platform through which its emission information is reported. Finally, § 51.308(g)(5), which also applies to all states, requires an assessment of any significant changes in anthropogenic emissions within or outside the state have occurred since the period addressed by the first implementation period progress report, including whether such changes were anticipated and whether they have limited or impeded expected progress towards reducing emissions and improving visibility.

As noted previously, § 51.308(g)(3) does not apply to states without Class I Areas. With respect to the rest of the § 51.308(g) requirements, Kansas included a description of the status of the implementation of all measures included in Kansas's first implementation period Regional Haze Plan, a summary of the emissions reductions achieved from these measures, an analysis tracking changes in emissions, and an assessment of significant changes in emissions. However, as outlined throughout this document, because Kansas's SIP submission did not meet the required statutory or regulatory requirements, the EPA is not approving these regulatory requirements at this time. The EPA is not approving these regulatory requirements because they do not contain measures that strengthen the regional haze SIP, or the SIP generally.

J. Requirements for State and Federal Land Manager Coordination

Section 169A(d) of the CAA requires states to consult with FLMs before holding the public hearing on a proposed Regional Haze SIP, and to include a summary of the FLMs' conclusions and recommendations in the notice to the public.''

Section 51.308(i)(2)'s FLM consultation provision requires a state to provide FLMs with an opportunity for consultation that is early enough in the state's policy analyses of its emission reduction obligation so that information and recommendations provided by the FLMs' can meaningfully inform the state's decisions on its LTS. If the consultation has taken place at least 120 days before a public hearing or public comment period, the opportunity for consultation will be deemed early enough. Regardless, the opportunity for consultation must be provided at least sixty days before a public hearing or public comment period at the state level. Section 51.308(i)(2) also provides two substantive topics on which FLMs must be provided an opportunity to discuss with states: assessment of visibility impairment in any Class I Area and recommendations on the development and implementation of strategies to address visibility impairment. Section 51.308(i)(3) requires states, in developing their implementation plans, to include a description of how they addressed FLMs' comments.

Kansas included summaries of its consultation with various FLMs. On January 14, 2021, the NPS deferred consultation to other FLMs. In February and March of 2021, Kansas had a video call and email exchanges with the FS. Kansas included the comments from the FS and its responses. On February 19, 2021, Kansas had a video call with the FWS. Kansas included the comments from FWS and its responses. While Kansas did take administrative steps to conduct consultation, if the EPA finalizes the disapproval of the SIP, in the process of correcting the deficiencies outlined above with respect to the RHR and statutory requirements, the state (or the EPA in the case of an eventual FIP) will be required to again satisfy the FLM consultation requirements under § 51.308(i)(2). Therefore, the EPA cannot approve Kansas's consultation requirements because Kansas's consultation was based on a SIP that did not meet the required statutory and regulatory requirements.

VI. What action is the EPA taking?

The EPA is proposing to disapprove the Kansas SIP submission relating to Regional Haze for the second planning period received on July 28, 2021, because the state's SIP submission fails to meet both the regulatory requirements of the Regional Haze Rule and the statutory requirements of the Clean Air Act. Specifically, because Kansas failed to consider the four statutory factors, thereby not including a LTS that includes measures necessary for reasonable progress in its second planning period SIP submission, Kansas's SIP submission does not contain the emission limits, schedules of compliance, and other measures as may be necessary to make reasonable progress toward meeting the national visibility goal. Therefore, the SIP submission does not meet the regional haze requirements, nor requirements of the CAA. Specifically, as described in detail above, the SIP submission does not meet the statutory requirements in CAA section 169A(b)(2)(B) to contain a LTS for making reasonable progress; the CAA section 169A(g)(1) requirement to consider the four factors in determining reasonable progress; and the CAA section 169A(b)(2) requirement for the SIP to contain the emissions limits, schedules of compliance and other measures as may be necessary to make reasonable progress toward meeting the national goal. In addition, the lack of source selection, evaluation of emissions measures considering the four factors, and related inadequate documentation results in the Kansas submission not meeting the regulatory requirements in § 51.308(f)(2), 51.308(f)(2)(i), and 51.308(f)(2)(iii).

The EPA is not proposing a FIP at this time. If the EPA finalizes the disapproval, that will start a two-year clock for the EPA to propose and finalize a FIP. We are processing this as a proposed action because we are soliciting comments on this proposed action. Disapproval does not start a mandatory sanctions clock for Kansas. Final rulemaking will occur after consideration of any comments.

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of

the CAA. This action proposes to disapprove the state submittal as not meeting Federal requirements and does not impose additional requirements. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of the National Technology Transfer and Advancement Act (NTTA) because this rulemaking does not involve technical standards; and
- 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 Kansas Department of Health and the Environment 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. Due to the nature of the action being taken here, this action is expected to have a neutral impact on the air quality of the affected area. Consideration of EJ is not required as part of this action, and there is no information in the record inconsistent with the stated goal of E.O. 12898 of achieving environmental justice for people of color, low-income populations, and Indigenous peoples.
- This action does not have tribal implications as specified in Executive Order 13175. This action does not apply on any Indian reservation land, any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction, or non-reservation areas of Indian country. Thus, Executive Order 13175 does not apply to this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: December 19, 2023.

Meghan A. McCollister,

Regional Administrator, Region 7.

[FR Doc. 2023–28384 Filed 12–29–23; 8:45 am]

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Part IV

Federal Election Commission

11 CFR Parts 1, 4, et al.
Technological Modernization; Final Rule

FEDERAL ELECTION COMMISSION

11 CFR Parts 1, 4, 5, 6, 100, 102, 103, 104, 105, 106, 108, 109, 110, 111, 112, 114, 116, 200, 201, 300, 9003, 9004, 9007, 9032, 9033, 9034, 9035, 9036, 9038, and 9039

[Notice 2023–20]

Technological Modernization

AGENCY: Federal Election Commission.

ACTION: Final rule.

SUMMARY: These final rules modernize Federal Election Commission regulations in light of technological advances in communications, recordkeeping, and financial transactions, such as the making of contributions and expenditures through internet-based payment processors or text messaging. These final rules also eliminate and update references to outdated technologies and address similar technological issues.

DATES: Effective March 1, 2024.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Rothstein, Assistant General Counsel, or Ms. Joanna S. Waldstreicher or Mr. Tony Buckley, Attorneys, 1050 First Street NE, Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Election Commission is revising its regulations at 11 CFR chapter I to address electronic communications and transactions, such as contributions made using credit cards, by text messages, or through internet-based payment processors. The Commission is also making regulatory revisions to facilitate electronic accounting, recordkeeping, reporting, and redesignation by political committees. Additionally, as a retrospective assessment of Commission regulations,[1] the revisions eliminate or update references to outmoded technologies.

Transmitting Final Rules to Congress

Before promulgating rules or regulations to carry out the provisions of the Federal Election Campaign Act, the Commission transmits the rules or regulations to the Speaker of the House of Representatives and the President of the Senate for a thirty-legislative-day review period. 52 U.S.C. 30111(d). These final rules were transmitted to Congress on December 14, 2023.

Explanation and Justification

A. Rulemaking History

On May 2, 2013, the Commission published in the **Federal Register** an Advance Notice of Proposed Rulemaking (''ANPRM'') soliciting comment on whether and how it should revise its regulations to reflect technological advances.[2] The Commission then published a Notice of Proposed Rulemaking (''NPRM'') in the **Federal Register** on November 2, 2016.[3] The NPRM comment period ended on December 2, 2016. The Commission received three substantive comments in response to the ANPRM and three substantive comments in response to the NPRM; these are discussed in relevant part below.[4] The Commission published a Request for Additional Comment in the **Federal Register** on Sept. 8, 2022, seeking updated information on specific technological questions, and received four comments.[5] The Commission also published a Supplemental Notice of Proposed Rulemaking in the **Federal Register** on December 9, 2022, and received six substantive comments in response.[6]

B. The Growing Use of Electronic Transactions, Records, and Communications

Electronic financial transactions are increasingly commonplace. According to a recent triennial study conducted by the Federal Reserve System, data collected in recent years ''largely show a continuation of past payment trends, with card and ACH both gaining share at the expense of checks,'' and increases in the use of newer ways to make payments, such as digital wallets and P2P payments.[7]

Coinciding with the increased use of electronic payments is the regular use of electronic records, including transactional records, and electronic communications. A 2020 U.S. Government Accountability Office report on the U.S. Postal Service found that ''[a]s online communication and payments have expanded, USPS continues to face decreases in mail volume, its primary revenue source. First-Class Mail volume has declined 44 percent since fiscal year 2006,'' and ''USPS Marketing Mail—which comprises most other mail volume—declined 27 percent from fiscal year 2007 to fiscal year 2019, in part due to electronic advertising alternatives.'' [8] Indeed, in a section of the USPS website devoted to political mailing, one page addresses ''aligning your digital communications with direct mail delivery is a powerful way to integrate your channels to help voters feel more connected to your campaign.'' [9]

At the same time, the federal government also has been transitioning to electronic records management and communication. In 2014, the Federal Records Act was amended to require the National Archive and Records Administration to establish ''standards for the reproduction of records by photographic, microphotographic, or digital processes with a view to the disposal of the original records.'' [10] In 2022, the Office of Management and Budget issued a memorandum stating that ''[t]ransitioning Federal agencies to an electronic—or 'paperless'—environment is a priority to enable and increase the ability of the public to engage with Government in new and more efficient and effective ways. It is critical that Federal agencies move beyond paper-based processes and embrace the opportunities afforded to improve Government by transitioning fully to an electronic environment.'' [11]

The Commission has recognized this trend towards electronic records management and communication by

[1] *See generally,* Jeffrey S. Lubbers, A Guide to Federal Agency Rulemaking 404–411 (6th ed. 2018) (summarizing ''lookback'' efforts designed to update or remove outdated or ineffective regulations); Adoption of Recommendations, 79 FR 75114, 75114–17 (Dec. 17, 2014) (Administrative Conference of the United States framework for agencies' retrospective reviews of their regulations); Special Committee to Review the Government in the Sunshine Act, 60 FR 43108, 43109–10 (Aug. 18, 1995) (recognizing agencies' ''need to review regulations already adopted to ensure that they remain current, effective and appropriate'').

[2] Technological Modernization, 78 FR 25635 (May 2, 2013).

[3] Technological Modernization, 81 FR 76416 (Nov. 2, 2016).

[4] The Internal Revenue Service also commented that it sees no conflict between this rulemaking and the Internal Revenue Code or Treasury regulations. *See* 52 U.S.C. 30111(f).

[5] Technological Modernization, 87 FR 54915 (Sept. 8, 2022) (''Request for Additional Comment'').

[6] Technological Modernization, 87 FR 75518 (Dec. 9, 2022) (''SNPRM'').

[7] Fed. Reserve Sys., Developments in Noncash Payments for 2019 and 2020: Findings from the Federal Reserve Payments Study at 2, 11–14, (Dec. 2021), *https://www.federalreserve.gov/publications/files/developments-in-noncash-payments-for-2019-and-2020-20211222.pdf* (''Developments in Noncash Payments''); *see also* Fed. Reserve Sys., *The Federal Reserve Payments Study: 2022 Triennial Initial Data Release* (Apr. 21, 2023), *https://www.federalreserve.gov/paymentsystems/fr-payments-study.htm;* Fed. Reserve Sys., *The Federal Reserve Payments Study 2016* at 2 (2016), *https://www.federalreserve.gov/paymentsystems/files/2016-payments-study-20161222.pdf* (''2016 Study'').

[8] U.S. Gen. Accounting Office, GAO–20–385 USPS: Congressional Action Is Essential to Enable a Sustainable Business Model 8–9 (2020).

[9] *See* U.S. Postal Service, *Informed Visibility Feature for Political Campaigns, https://www.deliverthewin.com/content-library/informed-visibility-for-informed-political-campaigns/* (last visited Nov. 9, 2023).

[10] 44 U.S.C. 3302(3).

[11] OMB, Memorandum for the Heads of Executive Departments and Agencies (Dec. 23, 2022), *https://www.whitehouse.gov/wp-content/uploads/2022/12/M_23_07-M-Memo-Electronic-Records_final.pdf.*

establishing procedures for the public to electronically submit Freedom of Information Act (''FOIA'') requests, comments on rulemakings, and comments on draft advisory opinions.[12] In addition, certain political committees are required to file their reports electronically with the Commission,[13] while the Commission encourages committees that are not required to file electronically to do so regardless.[14] During the COVID–19 pandemic, the Commission adopted further procedures utilizing electronic communications and records, including encouraging email submission of advisory opinion requests, financial disclosures for presidential and vice-presidential candidates, and inspector general complaints; electronic signatures and notarizations on enforcement complaints; and email transmittal of enforcement and litigation documents.

The statutes that the Commission is charged with implementing—the Presidential Election Campaign Fund Act, 26 U.S.C. 9001–13, and the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031–42 (collectively, the ''Funding Acts''), and the Federal Election Campaign Act, 52 U.S.C. 30101–45 (''FECA'')—largely predate this technological evolution, as do many of the Commission's regulations. For example, these statutes and regulations generally contemplate contributions and disbursements being made by cash, check, or ''draft,'' without addressing electronic transactions, records, or communications. Thus, to implement FECA and the Funding Acts in a manner that accounts for the increased use of and reliance on newer technologies, the Commission is updating its regulations, as described below.

C. General Definitions

Many of the Commission's current regulations do not account for technological developments in how electronic documents are created, maintained, and submitted, particularly in the context of electronic transactions. The Commission is therefore revising its regulations to encompass electronic documents and transactions. Specifically, the Commission is adding new general definitions to 11 CFR part 100—for the terms ''record,'' ''written, writing, and a writing,'' and ''signature and signed''—and revising the existing definition of ''file, filed, and filing'' at 11 CFR 100.19. Each of these definitions will apply to all regulations implementing FECA and the Funding Acts in 11 CFR chapter 1, subchapters A–F (parts 100 through 300 and 9000 through 9042).[15] These new and revised definitions are designed to be broad enough to encompass both traditional (paper) and electronic documents and flexible enough to remain relevant as new forms of electronic documentation emerge in the future.

1. New Definition of ''Record''—11 CFR 100.34

FECA requires each political committee to ''keep an account of'' its contributions and disbursements and to maintain and preserve certain records.[16] The Funding Acts similarly require that certain records be kept, and furnished to the Commission on request.[17] The Commission's regulations implementing these requirements refer to ''record(s)'' almost 150 times, but few such references that include definitions or specific examples refer to electronic documentation.[18] The Commission has therefore received numerous requests for guidance regarding how its recordkeeping provisions apply to electronic records.[19]

As proposed in the NPRM, the Commission now adds a general definition of ''record'' at 11 CFR 100.34 that expressly includes both paper and electronic records. New 11 CFR 100.34 has two components.

First, § 100.34(a) defines ''record'' broadly, as ''information that is inscribed on a tangible medium or that is stored in an electronic or other medium from which the information can be retrieved and reviewed in visual or aural form.'' The definition draws on several sources that describe a variety of paper and electronic records. These sources include Black's Law Dictionary,[20] the Federal Rules of Evidence,[21] Federal Rules of Civil Procedure,[22] the Electronic Signatures in Global and National Commerce Act (also known as the E-Sign Act),[23] and the Uniform Electronic Transactions Act (''UETA'').[24] The new definition uses the term ''information'' (as do the Black's Law Dictionary, E-Sign Act, and UETA definitions of ''record'') rather

[12] *See, e.g.,* FEC, *Freedom of Information Act, https://www.fec.gov/freedom-information-act/* (last visited Nov. 9, 2023); FEC, *Procedures Regarding Draft Advisory Opinions, www.fec.gov/law/draftaos.shtml* (last visited Nov. 9, 2023); FEC, *Submit Comments on Ongoing Rulemakings, sers.fec.gov/fosers* (last visited Nov. 9, 2023).

[13] *See* 11 CFR 104.18(a).

[14] *See* FEC, *Electronic Filing Overview, https://www.fec.gov/help-candidates-and-committees/filing-reports/electronic-filing/* (last visited Nov. 9, 2023).

[15] *See* 11 CFR 9001.1, 9031.1 (applying definitions in part 100 to public finance regulations unless expressly stated otherwise). Unless expressly incorporated, the new part 100 definitions will not apply to the administrative regulations in parts 1–8 (such as those implementing the Privacy Act or FOIA), which generally have their own definition sections because they implement different statutes than the regulations in the remainder of 11 CFR chapter 1.

[16] *See* 52 U.S.C. 30102(c), (d), (h)(2), (i); *see also* 52 U.S.C. 30104(i)(8)(A)(ii) (including in definition of ''bundled contribution'' contributions received and credited through ''records,'' among other methods).

[17] *See* 26 U.S.C. 9003(a)(2), 9012(d)(1)(B), 9033(a)(2), 9042(c)(1)(B); *see also* 26 U.S.C. 9009(b), 9039(b).

[18] *See, e.g.,* 11 CFR 102.9(b)(2) (requiring records such as canceled checks, receipts, and carbon copies for disbursements over $200), 102.9(d) (addressing best efforts to obtain ''receipts, invoices, and cancelled checks''). *But see* 11 CFR 102.9(a)(4) (requiring photocopy of each check or written instrument or digital image of each check or written instrument), 104.22(a)(6)(ii)(A) (defining ''record'' for lobbyist bundling purposes to include electronic records).

[19] *See, e.g.,* Advisory Opinion 1995–09 (NewtWatch PAC) (approving proposal to maintain records supporting electronic fund transfers); Advisory Opinion 1993–04 (Christopher Cox Congressional Committee); Advisory Opinion 1994–40 (Alliance for American Leadership); *see also* FEC, *Campaign Guide: Congressional Candidates and Committees* 87 (2021), *www.fec.gov/pdf/candgui.pdf* (describing recordkeeping for credit card disbursements).

[20] *See Record,* Black's Law Dictionary (10th ed. 2014) (''record'' is ''[i]nformation that is inscribed on a tangible medium or that, having been stored in an electronic or other medium, is retrievable in perceivable form'' (citing UCC 1–201(b)(31)).

[21] *See* Fed. R. Evid. 101(b)(4) (''record'' includes ''a memorandum, report, or data compilation''), 1001(b) ('''recording' consists of letters, words, numbers, or their equivalent recorded in any manner''), 1001(d) (''original'' recording is ''recording itself or any counterpart intended to have the same effect by the person who executed or issued it. For electronically stored information, 'original' means any printout—or other output readable by sight—if it accurately reflects the information.'').

[22] *See* Fed. R. Civ. P. 34(a)(1)(A) (party may serve discovery of ''any designated documents or electronically stored information—including writings, drawings, graphics, charts, photographs, sound recordings, images, and other data or data compilation—stored in any medium from which information can be obtained directly or, if necessary, after translation by the responding party into a reasonably usable form'').

[23] *See* 15 U.S.C. 7006(9) (''record'' is ''information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form''), 7006(4) (''electronic record'' is record ''created, generated, sent, communicated, received, or stored by electronic means'').

[24] *See* Unif. Elec. Transactions Act 2(7) (Nat'l Conference of Comm'rs on Unif. State Laws 1999), *https://www.uniformlaws.org/committees/community-home/librarydocuments?communitykey=2c04b76c-2b7d-4399-977e-d5876ba7e034&LibraryFolderKey=&DefaultView=* (''electronic record'' is ''record created, generated, sent, communicated, received, or stored by electronic means''), 2(13) (''record'' is ''information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form''); *see also id.* at 2(5) ('''Electronic' means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities''). The UETA is a model law developed by the National Conference of Commissioners on Uniform State Laws. It has been adopted in 49 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands.

than more specific examples of the forms in which information may be presented (such as memoranda, reports, and other examples used in the Federal Rules of Evidence and Federal Rules of Civil Procedure definitions of ''record''). By using this broader term, the Commission intends the definition to be flexible enough to encompass any new forms of memorializing information that may arise as new documentation technologies emerge.

Similarly, the Commission intends the definition of ''record'' to be flexible with respect to the media in which information may be memorialized. Thus, the Commission is including in the definition information that is ''inscribed on a tangible medium'' or ''stored in an electronic or other medium.'' Similar language is used in the Black's Law Dictionary, E-Sign Act, UETA, and Federal Rules of Civil Procedure definitions of ''record.'' By including information stored in electronic ''or other'' media, the Commission intends the definition of ''record'' to be broad and flexible enough to address any new forms of media on which information may be stored as technology develops.

The new definition requires any information stored on ''electronic or other'' (non-tangible) media to be retrievable and reviewable in visual or aural form. Most of the source definitions noted above similarly require information to be both retrievable and perceivable. The new definition requires information to be retrievable in ''visual or aural'' form so that the Commission can review the record and, when appropriate, make it available to the public. In essence, therefore, the definition will enable any person to comply with the Commission's recordkeeping regulations through the use of tangible or intangible media, so long as the information stored in such records can be retrieved and reviewed.

Second, new 11 CFR 100.34(b) requires any person who provides an electronic (or otherwise non-tangible) record to the Commission to provide the equipment and software needed to retrieve and review the information in the record, upon request by, and at no cost to, the Commission. The new regulation specifies that the Commission may request such equipment and software when the Commission is unable to review the record using the Commission's existing equipment and software. A comparable requirement appears in 11 CFR 102.9(a)(4)(ii) for political committees that maintain digital images of checks or written instruments for contributions exceeding $50 and in 11 CFR 9036.2(b)(1)(vi) for publicly funded candidates submitting certain digital images. Because the Commission is adopting new § 100.34(b), it is removing the separate requirements in 11 CFR 102.9(a)(4)(ii) and 9036.2(b)(1)(vi).

In conjunction with the new definition, the Commission is making conforming amendments to a number of regulations.

First, the Commission is making conforming changes by replacing references to ''copy,'' ''journal,'' ''document,'' or ''documentation'' with references to ''record'' in the following provisions: 11 CFR 100.82(e)(1)(i), 100.82(e)(2)(ii), 100.93(j)(1) through (3), 100.142(e)(1)(i), 100.142(e)(2)(ii), 102.9(b)(2)(i)(B) and (b)(2)(ii), 102.9(f), 102.11, 104.10(a)(4), 104.10(b)(5), 104.14(b)(4)(iv) and (v), 104.17(a)(4), 104.17(b)(4), 106.2(a)(1), 106.2(b)(2)(ii), 106.2(b)(2)(v), 110.1(l)(1), 110.1(l)(4)(i), 110.1(l)(6), 111.4(d)(4), 111.12(a) and (b),[25] 111.15(c), 111.35(e), 111.36(b) through (e), 114.8(d)(2) and (3), 9003.1(b)(2) through (5), 9003.5, 9003.5(b), (b)(1)(ii)(A) and (B), (b)(1)(iii) and (iv), (b)(4), and (c), 9003.6(c), 9004.7(b)(5)(iv) and (v), 9004.9(d)(1)(i) and (e), 9007.1(b)(1)(iv) and (c)(2), 9033.1(b)(2) through (6), 9033.2(c), 9033.11, 9033.11(b), (b)(1)(ii)(A) and (B), (b)(1)(iii) and (iv), (b)(4), and (c), 9033.12(c), 9034.2(c)(1)(iii), 9034.5(c)(1) and (d), 9034.7(b)(5)(iv) and (v), 9034.8(b)(4), 9035.1(c)(3), 9036.1(b)(3), (4), and (7), 9036.2(b)(1)(vi) and (vii), 9036.3(b), (b)(4), and (d), 9036.4(b)(4), 9036.5(c)(1), 9038.1(b)(1)(iv) and (c)(2), 9038.2(b)(3), 9039.2(a)(3) and (b), and 9039.3(b)(2)(vi). The Commission's regulations will now use the defined term ''record'' in these provisions to increase consistency in the regulatory terminology. Moreover, by changing these provisions' references from ''copy,'' ''document,'' and ''journal'' to ''record,'' the Commission intends to avoid the implication that these provisions refer only to paper materials or to mean something other than what is meant by ''record.'' [26]

Second, the Commission is replacing the regulatory requirements that a committee receiving a check or other written instrument designated for a specific election must retain ''a full-size photocopy of the check or written instrument.'' [27] Recognizing that such records may reasonably be retained in forms other than ''a full-size photocopy,'' the Commission is amending 11 CFR 110.1(l)(1) and (l)(4)(ii) and 9036.1(b)(5) and (6) to require maintenance or submission, as appropriate, of a ''record'' that contains a complete image of that instrument. The Commission is not revising the references to ''full-size photocopies'' in 11 CFR 9036.1(b)(3) because that section already provides two procedures for submission of records: one for paper records and another for digital records.

Finally, the Commission is making conforming revisions to two provisions that describe the administrative record in public finance matters. The Commission is adding ''records'' to the lists of materials that comprise the administrative record for final determinations in §§ 9007.7(a) and 9038.7(a).

The Commission has decided not to change the standalone definition of ''records'' in the lobbyist bundling rule at 11 CFR 104.22(a)(6)(ii)(A), as that provision is already relatively expansive and is consistent with the new general definition the Commission is adopting.

2. New Definitions of ''Writing'' and ''Written''—11 CFR 100.35

FECA requires certain reports, statements, and other materials to be ''written'' or ''in writing.'' [28] The Funding Acts have similar ''writing'' and ''written'' requirements.[29] In the Commission's regulations, the terms ''written'' and ''writing'' (or forms of these words) appear more than 200 times, usually without definition or example.[30] The Commission has, however, interpreted at least one of these regulations to encompass certain categories of electronic documents.[31]

[25] The revisions to 11 CFR 111.12(a) and 111.15(c) render these provisions consistent with the equivalent provisions of the Federal Rules of Civil Procedure, which were amended in 2006 to explicitly include ''electronically stored information'' within the scope of material subject to document requests and subpoenas. *See* Fed. R. Civ. P. 34(a)(1)(A), 45(a)(1)(A)(iii).

[26] The Commission is also replacing the term ''document'' in certain regulations with ''writing,'' as discussed below. The Commission is not revising the terms ''copy,'' ''documentation,'' and ''document'' when they are used as terms of art or as verbs or when they intentionally refer to paper. *See, e.g.,* 11 CFR 100.134(e)(1)–(3) (''organizational documents'' of membership organizations), 102.9(b)(2) (specifying how disbursements ''shall be documented''), 4.1(j) (including ''paper copy'' in definition of ''duplication'' under FOIA).

[27] 11 CFR 110.1(l)(1), (l)(4)(ii); *see also* 11 CFR 9036.1(b)(5), (6) (referring to records that include ''full-size photocopy'' of contribution checks).

[28] *See, e.g.,* 52 U.S.C. 30101(8)(B)(vii)(II), 30101(9)(A)(ii), 30102(e)(1), 30103(d)(1), 30104(a)(6)(A), 30108(a), 30109(a)(1), 30109(a)(12)(A), 30118(b)(4)(B); *see also* 52 U.S.C. 30107(a)(1), 30124(a).

[29] *See, e.g.,* 26 U.S.C. 9002(1), 9003(a), 9032(1), 9032(9), 9033(a), 9034(a); *see also* 26 U.S.C. 9009(b), 9039(b).

[30] *See, e.g.,* 11 CFR 102.7(c), 109.33(a), 110.1(b), 9003.3(a)(1)(i)(C), 9007.2(c).

[31] *See, e.g.,* Electronic Contributor Redesignations, 76 FR 16233 (Mar. 23, 2011) (noting internet-based redesignation method that

To clarify that ''written'' material or material ''in writing'' can be either tangible or electronic, the Commission is adding a new general definition at 11 CFR 100.35.[32] The new definition essentially replicates Rule 1001(a) of the Federal Rules of Evidence by defining the terms ''written,'' ''in writing,'' and ''a writing'' to mean ''consisting of letters, words, numbers, or their equivalent set down in any medium or form, including paper, email or other electronic message, computer file, or digital storage device.'' [33] In this definition, the Commission intends ''writing'' and ''written'' to be broad enough to encompass not only letters and words, but also their equivalent—such as images or graphics (*e.g.,* emojis or GIFs) used in lieu of text—that may arise as new forms of electronic writing emerge in the future. As in the definition of ''record,'' the regulation will now provide that ''writing'' may be set down in any medium or form, including electronic. The examples in the definition are drawn from examples in the Black's Law Dictionary definition of ''writing'' and include those media that the Commission believes are most likely to be used by political committees. However, the examples are intended to be illustrative and not an exhaustive list.

In conjunction with the new definition, the Commission is making conforming changes to a number of regulations, as described below.

First, the Commission is amending three regulations that refer to ''electronic mail'' as a ''written method'' of notification by which a political committee may notify a contributor that the committee has redesignated or reattributed a contribution.[34] These references to ''electronic mail'' are redundant with the new definition of ''written.'' Furthermore, the continued inclusion of these references might cause confusion regarding whether other Commission regulations that address ''written'' material without specifically mentioning ''electronic mail'' implicitly exclude email. To avoid such redundancy and confusion, the Commission is removing these three references to electronic mail.

Second, the Commission is making conforming changes regarding notifications, reports, and other communications that, under existing regulations, must be made by ''letter.'' In light of the new broad definition of ''writing,'' and to avoid implying that the communications described in those provisions must be on paper, the Commission is replacing each reference to ''letter'' with ''writing'' in the following provisions: 11 CFR 100.3(a)(3), 110.6(c)(1)(v), 111.9(a) and (b), 111.17(a) and (b), 111.18(d), 111.37(a) and (b), 111.40(a), 116.8(b), 9003.1(a)(1), 9032.2(d), 9033.1(b)(8), and 9033.5(a)(2).

Similarly, the Commission is revising several references to ''letters'' or ''mailings'' by replacing them with references to the type of information contained therein, such as ''certification,'' ''report,'' ''notice,'' or ''agreement.'' For example, 11 CFR 9003.2(d) currently states: ''Major party candidates shall submit the certifications required under 11 CFR 9003.2 in a letter which shall be signed and submitted within 14 days after receiving the party's nomination for election,'' and the provision makes several additional references to ''such letter.'' The Commission is now revising 11 CFR 9003.2(d) to read: ''Major party candidates shall sign and submit the certifications required under 11 CFR 9003.2 within 14 days after receiving the party's nomination for election,'' and to replace further references to ''such letter'' with the phrase ''such certification.'' The Commission is similarly replacing each reference to ''letter'' or ''mailing'' in the following provisions: 11 CFR 110.6(c)(1)(ii), 111.6(a), 111.23(a) and (b), 114.8, 116.8(b), 200.3(a)(2), 200.3(a)(3), 200.4(b), 201.3(b)(1), 201.3(b)(2)(i), 9003.1(a)(2), 9033.1(a)(1), and 9033.2(a)(1).

The Commission is also revising some uses of ''letter'' in administrative regulations to which the new definition of ''writing'' would not apply. Specifically, the Commission is making the following revisions to its public disclosure and Rehabilitation Act regulations: (1) replace ''Letter requests'' with ''Requests'' in 11 CFR 5.4(a)(5); (2) replace the reference to ''a letter containing'' certain Rehabilitation Act notifications with a requirement for the notifications to be ''in writing,'' 11 CFR 6.170(g); and (3) conform § 6.170(h) to the foregoing change by replacing that section's reference to ''the letter'' required by § 6.170(g) with ''the notification.''

Third, the Commission is replacing the terms ''written document'' and ''written documentation'' with ''writing'' in 11 CFR 100.29(b)(6)(ii)(A) and 9034.2(c)(1)(i).

Finally, the Commission is making conforming changes to account for the fact that the new general definition of ''written'' may create confusion when applied to the use of that term in 11 CFR 300.64(c)(3). Section 300.64(c)(3) had provided that certain ''written'' material must satisfy the disclaimer requirements of 11 CFR 110.11(c)(2). Section 110.11, however, sets forth requirements such as font size and display type—requirements that, both on their face and under the explicit terms of the regulation, apply only to ''printed'' material.[35] Thus, to avoid suggesting that the new definition of ''written'' alters the substantive application of § 300.64, the Commission is conforming that section to § 110.11 by replacing the word ''written'' with ''printed'' in § 300.64(c)(3)(ii) and (iii) and removing the word ''written'' from § 300.64(c)(3)(v).

The Commission has decided not to exclude the term ''written instrument'' from the new definition.[36] The Commission judges that ''written instrument'' is generally understood to be a term of art referring to a check, money order, or negotiable instrument; as a term of art, it will not be affected by the new definition of ''written.''

3. New Definition of ''Signature'' and ''Electronic Signature''—11 CFR 100.36

FECA and the Funding Acts require certain documents to be signed,[37] sworn, notarized, submitted under oath, or certified under penalty of perjury.[38] In Commission regulations, the terms ''sign,'' ''signed,'' and ''signature'' (and variants thereof) appear more than 50 times. Only some of these references provide for electronic signatures,[39]

Commission found to be ''in writing and be signed by the contributor'' as required by 11 CFR 110.1(b)(5) and 110.2(b)(5)).

[32] Some Commission regulations that require a document to be ''in writing'' or ''written'' also require the document to be signed. The Commission is adopting a new definition of ''signed,'' discussed below.

[33] *See* Fed. R. Evid. 1001(a) (''writing' consists of letters, words, numbers, or their equivalent set down in any form''). The Federal Rules of Evidence separately clarify that ''a reference to any kind of written material or any other medium includes electronically stored information.'' Fed. R. Evid. 101(b)(6).

[34] *See* 11 CFR 110.1(b)(5)(ii)(B)(6), (C)(7), 110.1(k)(3)(ii)(B)(3).

[35] *See* 11 CFR 110.11(c)(2).

[36] *See* 11 CFR 102.9(a)(4)(i)–(ii), 104.8(d)(1), 110.1(k)(3)(ii)(B)(1), 110.1(l)(1), 110.1(l)(4)(ii), 110.6(c)(1)(v), 110.20(a)(5)(iii), 9034.2(a)(1), 9034.2(a)(4), 9034.2(b), 9034.2(c), 9034.3(c), 9034.9(c)(7)(iv), 9036.1(b)(3), 9036.2(b)(1)(vi), 9036.3(b)(1)–(3), 9036.3(c)(3), 9036.5(c)(1).

[37] *See* 52 U.S.C. 30109(a)(1), 30109(a)(4)(B)(ii); *see also* 52 U.S.C. 30104(a)(1), 30104(a)(11)(C), 30104(d)(3).

[38] *See* 52 U.S.C. 30104(b)(6)(B)(iii), 30104(c)(2)(B), 30104(f)(2), 30107(a)(1), 30109(a)(1), 26 U.S.C. 9003(b)–(c), 9004(d); *see also* 52 U.S.C. 30104(a)(11)(C), 30104(d)(3).

[39] *See, e.g.,* 11 CFR 104.18(g) (providing for electronic signatures for reports), 111.4(b)(2) (complaints), 111.23(a) (designation of counsel), 300.37(d) (certifications by certain tax-exempt organizations), 9034.2(c) (allowing for alternative signatures for contributors over the internet).

although the Commission has interpreted at least one of the regulations that does not so provide to nonetheless allow certain electronic signatures.[40] Similarly, only some of the Commission regulations requiring certification under penalty of perjury provide for electronic certifications.[41]

To clarify that the regulatory signature requirements may generally be met electronically, the Commission is adding a general definition of ''signature'' at 11 CFR 100.36. The new definition contains three paragraphs.

New paragraph (a) defines ''signature'' as ''an individual's name or mark on a writing or record that identifies the individual and authenticates the writing or record.'' This definition draws on legal and other dictionary definitions of ''signature.'' [42] It also incorporates the terms ''writing'' and ''record,'' as opposed to the source dictionaries' use of the term ''document,'' to be consistent with the new definitions of those terms in 11 CFR 100.34 and 100.35, discussed above. Unlike at least one source definition,[43] the definition of ''signature'' here does not incorporate a subjective ''intent'' element, *i.e.,* a requirement that a signature be affixed by the signer with a certain intention; rather, the Commission is adopting an objective definition with which compliance can be initially determined on the face of the signed writing or record. New paragraph (a) also provides that, unless otherwise specified, the definition of ''signature'' includes an ''electronic signature.''

New paragraph (b) of 11 CFR 100.36 in turn defines an ''electronic signature'' as ''an electronic word, image, symbol, or process that an individual attaches to or associates with a writing or record to identify the individual and authenticate the writing or record.'' This definition is drawn from several sources, including Black's Law Dictionary,[44] the E-Sign Act,[45] UETA,[46] and the Commission's interpretive rule concerning electronic redesignations of contributions.[47] New paragraph (b) follows all the source definitions of ''electronic signature'' in using the terms ''symbol'' and ''process,'' as well as in requiring that the electronic signature be attached to or associated with a writing or record. The Commission also is including ''word'' and ''image'' as methods of electronic signature, based on the examples in Black's Law Dictionary, to make clear that a writing or record can be signed by these means (such as by inserting a digital image of a person's handwritten signature). And as with new paragraph (a), new paragraph (b) incorporates the terms ''writing'' and ''record'' to be consistent with the new definitions in 11 CFR 100.34 and 100.35. The new definition thus encompasses forms that electronic signatures may take as new technologies emerge.

The new definition intentionally differs from the source definitions in certain respects. For example, the new definition does not include ''sound'' as a form of electronic signature because the Commission's current and anticipated reporting technologies would not enable it to receive and make public audio signatures. Further, the Commission does not distinguish between an ''electronic signature'' and a ''digital signature.'' Black's Law Dictionary defines the latter as having a heightened level of security, integrity, and authenticity compared to an electronic signature,[48] but because the Commission utilizes other methods to ensure a heightened level of authenticity when required (such as notarization requirements, as discussed below), the definition of ''signature'' need not differentiate between digital and electronic signatures.

New paragraph (b) lists as examples of electronic signatures ''a digital image of a handwritten signature'' and ''a secure, digital code attached to an electronically transmitted message that uniquely identifies and authenticates the sender.'' These examples are drawn from the definition of ''digital signature'' and examples of ''electronic signature'' in Black's Law Dictionary; the Commission believes them to be the forms of electronic signature most likely to be used by political committees. However, the examples are intended to be illustrative only and not an exhaustive list.

As noted above, the new regulation provides that electronic signatures are valid signatures ''unless otherwise specified.'' This language allows the Commission to require more specific forms of electronic signatures, or even to prohibit electronic signatures, in certain circumstances. Preserving such flexibility is important because, as new technologies develop, some forms of electronic signatures may arise that are unreliable or otherwise not suitable for authenticating records.

In light of the new definition of ''signature,'' the Commission is making conforming changes to regulations that have more specific signature requirements. For example, 11 CFR 104.4(d)(2) and 109.10(e)(2)(ii) have specified that an independent expenditure report must be verified by one of two methods: by ''handwritten signature'' on reports filed on paper, or by ''typing the treasurer's name'' on reports filed by electronic mail. The Commission is revising these provisions to allow electronically filed independent expenditure reports to be verified by ''electronic signature'' (which might include, but would not be limited to, typing the treasurer's name on the reports). The Commission also is revising the electronic signature requirement at 11 CFR 9034.2(c), which defines ''signature'' for matchable presidential primary election payments made by credit or debit card, and is

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[40] *See, e.g.,* Electronic Contributor Redesignations, 76 FR 16233; *see also* Advisory Opinion 2013–12 (Service Employees International Union COPE) at 3–4 (discussing Commission's history of approving ''authorizations in a form other than the traditional written signature, where the use of technology would not compromise the intent of the [FECA] or Commission regulations'').

[41] *Compare* 11 CFR 104.4(d)(2) (electronic certification under penalty of perjury for reporting), 104.18(g) (same), *and* 109.10(e)(2)(ii) (same), *with* 11 CFR 111.4(b)–(c) (notarization requirement for complaints), *and* 111.11 (sworn answers). *See also* 11 CFR 100.93(a)(3)(iv)(A), 100.93(g)(3), 102.2(a)(3), 104.3(b)(3)(vii)(B), 104.3(d)(1)(v), 300.11(d), 300.37(d).

[42] *See Signature,* Black's Law Dictionary (11th ed. 2019) (defining ''signature'' to include any ''name, mark, or writing used with the intention of authenticating a document'' (citing U.C.C. 1–201(37) and 3–401(b) and Restatement (Second) of Contracts 134 (1979))); *Signature,* Random House Dictionary of the English Language, Unabridged (2nd ed. 1987) (defining ''signature'' as ''a person's name, or a mark representing it, as signed personally or by a deputy, as in subscribing a letter or other document'').

[43] *See Signature,* Black's Law Dictionary (11th ed. 2019).

[44] This dictionary defines an ''electronic signature'' as an ''electronic symbol, sound, or process that is either attached to or logically associated with a document (such as a contract or other record) and executed or adopted by a person with the intent to sign the document.'' *Electronic Signature,* Black's Law Dictionary (11th ed. 2019). The dictionary provides as examples ''a typed name at the end of an email, a digital image of a handwritten signature, and the click of an 'I accept' button on an e-commerce site.'' *Id.*

[45] *See* 15 U.S.C. 7006(5) (defining ''electronic signature'' as ''an electronic sound, symbol, or process, attached to or logically associated with a . . . record and executed or adopted by a person with the intent to sign the record'').

[46] *See* UETA 2(8) (defining ''electronic signature'' as ''an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record'').

[47] *See* Electronic Contributor Redesignations, 76 FR 16233. To the extent that this interpretive rule's approach to a ''signature'' could be construed to conflict with the new definition of ''signature,'' it is superseded.

[48] *See Digital Signature,* Black's Law Dictionary (11th ed. 2019) (defining ''digital signature'' as ''secure, digital code attached to an electronically transmitted message that uniquely identifies and authenticates the sender''), *Electronic Signature,* Black's Law Dictionary (10th ed. 2014) (stating that ''electronic signature does not suggest or require the use of encryption, authentication, or identification measures'').

making other changes to that section as described further below.[49]

New paragraph (c) of 11 CFR 100.36 provides that a ''writing or record may be sworn, made under oath, or otherwise certified or verified under penalty of perjury, by electronic signature.'' This tracks the corresponding provision of the E-Sign Act, which provides that a legal requirement for a signature to be ''acknowledged, verified, or made under oath'' is ''satisfied if the electronic signature of the person authorized to perform those acts . . . is attached to or logically associated with the signature or record.'' [50] This proposal therefore provides sufficient safeguards of integrity and authenticity for material that must be sworn or otherwise verified.

Finally, new paragraph (c) also states that ''[a] writing or record may be notarized electronically pursuant to applicable State law.'' A number of states currently allow for electronic notarization.[51] Commission practice currently refers to a state's law to determine the validity of a notarization from that state. The Commission received no comments on this aspect of the rulemaking and has determined to continue accepting documents notarized under state law.

4. Revised Definition of ''File, Filed, or Filing''—11 CFR 100.19(g)

The Commission is revising the definition of ''file, filed, or filing'' at 11 CFR 100.19 so that interested parties can more easily communicate electronically with the Commission. The Commission also is making conforming amendments throughout 11 CFR chapter I.

Section 100.19 has defined ''file, filed or filing'' to include certain forms of electronic submission, but only in the context of documents that must be filed with the Commission under 11 CFR parts 101, 102, 104, 105, 107, 108, and 109. As such, the rule has addressed the filing of reports and statements only regarding independent expenditures, electioneering communications, and the organization, contributions, and disbursements of political committees. But, as described in more detail below, the Commission's regulations also require or provide for the submission of numerous other documents to the Commission. Many of these current regulations regarding sending documents to the Commission specifically refer to [52] the Commission's mailing address as set out in 11 CFR 1.2.[53] This implied that the submissions had to be made physically (such as by mail or hand-delivery), rather than electronically.

To provide the Commission with greater flexibility to accept documents electronically, the Commission is adding new paragraph (g) to 11 CFR 100.19. Under new paragraph (g), a document other than those already covered by paragraphs (a) through (f) may be filed ''in person or by mail, including priority mail or express mail, or overnight delivery service, with the Federal Election Commission, or by any alternative means, including electronic, that the Commission may prescribe.'' The Commission intends to build upon this change by adopting such procedures for receiving electronic submissions—such as through online forms [54] or email [55]—as the Commission determines to be appropriate for the various categories of documents.

The Commission also is revising the introductory paragraph of 11 CFR 100.19 to explicitly note the scope of new paragraph (g). This change will not affect the existing rules on documents governed by paragraphs (a) through (f).

Given that neither FECA nor the Funding Acts require paper mailing addresses, the Commission is further amending 11 CFR 100.19(a) to delete the cross-reference to the street address for the Commission.

Similarly, the Commission is making conforming amendments corresponding to those discussed in the NPRM by replacing the references to the Commission's street address as set out in 11 CFR 1.2 [56] in a number of regulations that refer to submissions to the Commission—or to a particular Commission officer, such as the Chief FOIA Officer—with references to ''filing'' and § 100.19(g), as appropriate, and by removing the references to the Commission's street address from other regulations.[57] These regulations are 11 CFR 1.3(b), 1.4(a), 4.5(a)(4)(i), 4.5(a)(4)(iv), 4.7(b)(1), 4.8(c), 5.5(a),[58] 5.5(c), 6.170(d)(3), 6.170(i), 104.2(b), 104.3(e)(5), 104.21(c)(3),[59] 111.4(a), 111.15(a), 111.16(c), 112.1(e), 112.3(d), and 200.2(b)(5).

For the same reasons, the Commission also is amending other regulatory requirements relating to communications by mail:

- Sections 4.5(a)(4)(i) and 4.8(b) require that certain information be included ''on the envelope'' in which a FOIA request or appeal is sent to the Commission. As revised, these regulations will state that such information must be clearly indicated on the ''envelope or subject line, or in a similarly prominent location'' of the communication.
- Section 112.4(g) provides that an advisory opinion must be ''sent by mail, or personally delivered'' by the Commission to the person who requested it. As revised, the provision will require only that the advisory opinion ''be provided'' by the Commission to the requestor, so as to encompass electronic transmission of the advisory opinion.
- Section 102.6(c)(2) provides that a solicitation of contributions to a separate segregated fund may be included ''in'' a bill for membership

[49] *See infra* Section (E)(3).

[50] 15 U.S.C. 7001(g); *see also* UETA 11 (providing that notarization, acknowledgment, verification, or oath requirement is ''satisfied if the electronic signature of the person authorized to perform those acts . . . is attached to or logically associated with the signature or record'').

[51] The National Association of Secretaries of State notes that 38 states currently permit some form of electronic notarization, and 34 of those have laws permitting remote electronic notarization, while additional states and Washington, DC have issued emergency regulations or guidance permitting remote electronic notarization due to the COVID–19 pandemic. *See* Nat'l Assoc. of Secs. of State, *Remote Electronic Notarization, https://www.nass.org/initiatives/remote-electronic-notarization* (last visited Nov. 9, 2023).

[52] The NPRM proposed removing the street address from these provisions because at that time, each of these provisions included the street address. However, in the interim, the Commission published a final rule in the **Federal Register**, updating the Commission's street address in 11 CFR 1.2 and replacing the Commission's street address with a cross-reference to 11 CFR 1.2 wherever else it appeared in Title 11. Change of Address; Technical Amendments, 82 FR 60852 (Dec. 26, 2017) (''Change of Address Final Rule'').

[53] *See, e.g.,* 11 CFR 1.3(b), 111.4(a), 111.15(a), 112.1(e), 112.3(d).

[54] *See, e.g.,* FEC, *Searchable Electronic Rulemaking System—Basic Search, sers.fec.gov/fosers* (release date June 14, 2013) (web portal for commenting on rulemakings).

[55] *See, e.g.,* FEC, *The Advisory Opinion Process, www.fec.gov/law/draftaos.shtml* (establishing email address for comments on draft advisory opinions) (last visited Nov. 9, 2023).

[56] As discussed in note 50, *supra,* the Commission has already replaced the street address in these provisions with a cross-reference to 11 CFR 1.2. *See* Change of Address Final Rule, 82 FR at 60852. Thus, these final rules replace the cross-references to § 1.2, rather than the street address itself.

[57] Because the definitions in part 100 of the Commission's regulations generally do not apply to parts 1–8 of the regulations, the new references to ''filing'' in parts 1–8 explicitly cross-reference new 11 CFR 100.19(g).

[58] In the NPRM, the Commission proposed retaining the reference to ''999 E Street NW'' in 11 CFR 5.5(a) along with the hours of the public disclosure division. However, given that the Commission subsequently revised this provision by replacing the street address with a cross-reference to 11 CFR 1.2, the Commission is removing the cross-reference and office hours.

[59] In the NPRM, the Commission did not include the three provisions of part 104 now included in this list. The Commission has decided to remove the cross-references to the street address as set out in § 1.2 from these three provisions for the same reasons it is being removed from the other listed provisions.

dues. Because such bills are now sometimes delivered electronically, rather than in paper form, the Commission is changing ''in'' to ''with.'' The substantive requirements for soliciting contributions to a separate segregated fund are not changing.[60]

- In § 114.1(g), which provides a non-exhaustive list of the manner in which a solicitation may be made, the Commission is adding ''emails'' to the existing list of ''mailings, oral requests . . . , and hand distribution of pamphlets'' to recognize that solicitations may be made electronically.[61]
- In § 116.9(a)(2), which describes what constitutes a political committee's reasonable diligence in attempting to locate a creditor, the Commission is adding email as a valid means of attempting to contact the creditor.
- Sections 9003.1(b)(7) and 9033.1(b)(8) require submission of the ''name and mailing address'' of the person entitled to receive public fund payments on behalf of a candidate. The Commission is amending these to require the person's email address, as well.

To allow for electronic filing, notice, and service of documents and records in the Commission's enforcement process, the Commission is revising part 111 of its regulations. First, the Commission is removing or limiting requirements to file multiple copies of documents where multiple copies are no longer necessary. In 11 CFR 111.4(a), the Commission is clarifying that the requirement for a complainant to file three copies of a complaint applies to non-electronic filings only. In 11 CFR 111.15(a) and 111.16(c), the Commission is deleting the provisions that state that a respondent ''should . . . if possible'' file multiple copies of a motion or brief.

Second, the Commission is revising the following regulations that currently refer to ''enclos[ing]'' a copy of a document: 11 CFR 111.5(a), 111.5(b), and 111.16(b). As revised, the regulations state that the Commission shall ''provide'' a copy of the relevant document.

Third, the Commission is revising 11 CFR 111.13(c) and (d), which govern the service of subpoenas, orders, and notifications, to add explicit electronic service options. The regulations currently allow for service by a number of means, including by mail, in person, and ''by any other method whereby actual notice is given.'' The Commission is revising this last clause to read ''by any other method, including electronically, whereby actual notice is given.'' [62]

Finally, at 11 CFR 111.23(a)(1), the Commission is adding ''email address'' to the list of information about respondent's counsel that must be provided to the Commission.

The Commission intends these revisions to simplify and modernize the process by which it interacts with respondents and complainants during the enforcement process by providing options for electronic communications.

D. Electronic Contributions

The Commission is also revising its regulations to address electronic contributions. These revisions fall into three general categories that correspond to three stages in the electronic flow of funds from a contributor to a political committee: (1) when the contributor authorizes the transaction; (2) when the entity processing the payment (the ''payment processor'') [63] transfers the contribution to the recipient political committee; and (3) when the recipient political committee deposits the funds into its campaign depository. The Commission is revising its rules in these areas in light of its understanding of the standards and practices that vendors and payment processors use to process payments made by check, credit card, debit card, prepaid card, and other payment methods; the methods by which vendors and payment processors verify a payor's identity, attribute payments, and collect, maintain, and transmit transaction records; [64] and the Commission's understanding of the operators and users of established and emerging electronic payment platforms—such as PayPal, Venmo, Square, Zelle, and other electronic wallet, P2P, mobile app, and social media payment platforms.

1. When a Contributor Authorizes a Transaction: Contribution Is ''Made'' and ''Received''

For purposes of the contribution limits, Commission regulations specify that a contribution is made ''when the contributor relinquishes control over the contribution''; control is relinquished when the contribution ''is delivered by the contributor to the candidate, to the political committee, or to an agent of the political committee.'' [65] The regulations further specify that a contribution that is mailed is considered to be made on the date of the postmark.[66]

Although the regulations are silent as to when electronic contributions are ''made,'' the Commission has addressed the issue of when credit card contributions are made in several advisory opinions.[67] Generally, the Commission has concluded that a credit card contribution is made ''when the credit card or credit card number is presented, because at that point '[t]he contributor is strictly obligated by the card agreement to make payment of the credit card bill and incurs substantial penalties with possible collection fees and cancellation of future credit privileges for nonpayment.' '' [68]

The Commission is revising 11 CFR 110.1(b)(6) and 110.2(b)(6) by adding a description of when electronic contributions—credit card or otherwise—are considered to be ''made.'' As revised, the regulations build on the Commission's conclusions in the above-referenced advisory opinions by providing that a contribution made in an electronic transaction ''is considered to be made when the contributor authorizes the transaction.'' The revised regulations do not provide examples of specific types of ''electronic transactions''—such as the physical presentation of a debit card; the entry of a credit or prepaid card number in an online form, in person, or by telephone; the transfer of a bitcoin; or the sending of a text message—because the Commission has

[60] The twice-annual solicitation of employees outside of the restricted class may be conducted only by mail sent to the employee's residence. *See* 52 U.S.C. 30118(b)(4)(B); 11 CFR 114.6(c). Thus, the Commission is not amending the reference to ''mail'' in section 114.6(c), and the change to 11 CFR 102.6(c)(2), which allows for solicitations by means other than mail, does not apply to these twice-yearly solicitations.

[61] The Commission is not adding an electronic reference to the non-exhaustive list at 11 CFR 114.1(f) of the manner in which a solicited contribution may be received because the list already includes payroll deduction, which may be accomplished electronically.

[62] The Commission is not making any corresponding changes to 11 CFR 111.2(c)—which adds three days to each service period under part 111 for ''any paper'' served ''by mail''—because electronic submissions are essentially immediate and therefore do not require extensions to account for delivery time.

[63] Payment processors include, for example, such entities as First Data, PayPal, BitPay, m-Qube, and other commercial entities that process and transmit traditional, online, or text-message payments in the ordinary course of business.

[64] *See, e.g., Online Person-to-Person (P2P), Account-to-Account Payments and Electronic Cash,* Fed. Fin. Inst. Examination Council, *https://ithandbook.ffiec.gov/it-booklets/retail-payment-systems/payment-instruments-clearing-and-settlement/card-based-electronic-payments/online-person-to-person-p2p-account-to-account-a2a-payments-and-electronic-cash.aspx* (last visited Nov. 30, 2023).

[65] 11 CFR 110.1(b)(6); *see also id.* 110.2(b)(6).

[66] *Id.* 110.1(b)(6); *see also id.* 110.2(b)(6).

[67] *See* Advisory Opinion 2012–07 (Feinstein for Senate); Advisory Opinion 2008–08 (Zucker); Advisory Opinion 1991–01 (Deloitte & Touche PAC); Advisory Opinion 1990–14 (AT&T).

[68] Advisory Opinion 2008–08 (Zucker) at 3 (quoting Advisory Opinion 1990–14 (AT&T)); *see also* Advisory Opinion 2012–07 (Feinstein for Senate) at 5.

determined that examples distinguishing between electronic and non-electronic transactions are not necessary; in fact, examples tied to specific technologies might be unduly limiting or risk becoming rapidly obsolete. The Commission does not intend for the new regulation to alter the existing approach the Commission takes in determining the dates on which electronic payments are made pursuant to recurring monthly payment authorizations.[69]

Like the existing regulations regarding when a contribution is ''made,'' the regulations concerning when a contribution is ''received'' focus on possession. The current regulations provide that the ''date of receipt'' of a contribution is the date a person ''obtains possession of the contribution.'' [70] In the context of credit card contributions, the Commission has stated that a contribution is received when the contributor's authorization to charge the credit card is received. ''Inasmuch as such authorizations may be presented to [the recipient's] bank in order to credit [the recipient's] account, the receipt of such an authorization is the equivalent of the receipt of a check that may be deposited and, thus, the date this occurs is the date upon which [the recipient] obtains possession of the contribution.'' [71]

Because a commercial payment processor or the recipient political committee may receive the contributor's authorization before obtaining actual possession of the contributor's funds, the Commission is revising 11 CFR 102.8(a) and (b)(2) to explicitly provide that the date of receipt is the date that a person either obtains possession of a contribution ''or, for a contribution made in an electronic transaction in which the receipt of authorization precedes the receipt of funds, obtains the contributor's authorization of the transaction.'' The Commission is not including in the regulatory text any technology-specific examples of when a contribution is ''received'' for the same reasons given above for not including technology-specific examples of when a contribution is ''made.''

2. Commercial Payment Processors: Revisions to the Conduit and Forwarding Rules

Many contributions are first received not by the ultimate recipient political committees, but by commercial entities that process the payments. In several advisory opinions, the Commission has addressed the application of its regulations to the receipt of contributions via commercial entities that process contributions electronically—including entities that process contributions made by text message [72] or via web-based platforms.[73] The Commission is revising its forwarding regulations at 11 CFR 102.8 and its earmarking regulations at 11 CFR 110.6 to codify some of the conclusions of these advisory opinions.

a. Revisions to Forwarding Rule, 11 CFR 102.8

Section 102.8 implements FECA's requirement that ''[e]very person who receives a contribution'' for a political committee must forward the contribution and information about the contributor to the recipient political committee within either 10 or 30 days, depending on whether the recipient is an authorized or unauthorized committee and the amount of the contribution.[74] Under the revised definition of ''receipt,'' discussed above, this forwarding requirement is triggered when a commercial payment processor receives a contributor's authorization to make a contribution, even if the payment processor has not yet received the contributor's funds.

Because this scenario occurs frequently in modern electronic transactions,[75] the Commission is adding a new paragraph (d) to 11 CFR 102.8 to make clear that payment processors must satisfy FECA's forwarding requirement within 10 or 30 days of receiving a contributor's authorization of a contribution, even if the processor has not yet received the contributor's funds. Under new paragraph (d), a payment processor will satisfy the forwarding requirements of 52 U.S.C. 30102(b) if it transmits funds and contributor information to a recipient political committee within 10 or 30 days, as applicable, of the contributor's authorization of the transaction. To ensure that a payment processor does not make contributions to candidates and committees by transmitting the funds, the payment processor must meet this forwarding requirement in its ordinary course of business.[76] The revised rule thus reflects how modern transactions are conducted and ensures that FECA's forwarding requirement is satisfied when contributors and political committees make and receive contributions electronically.[77]

[69] For example, Advisory Opinion 1991–01 (Deloitte & Touche PAC) concerned a political committee's proposal to obtain contributors' credit card authorizations several months before charging their credit cards for contributions. The Commission concluded that, ''[i]n view of the contributor's ability to revoke the authorization'' during this time period, each contributor would be deemed to relinquish control over a contribution, and thus to make the contribution, when the credit card was charged, rather than when the authorization occurred. Advisory Opinion 1991–01 (Deloitte & Touche PAC) at 4.

[70] 11 CFR 102.8(a); *see also id.* 102.8(b)(2) (same description of ''receipt''); *id.* 102.17(c)(3)(iii) (providing that political committee receives contribution through joint fundraising committee on date contribution is received by committee's joint fundraising representative), 9034.8(c)(4)(iii) (same).

[71] Advisory Opinion 1990–04 (American Veterinary Medical Association PAC) at 2–3; *see also* Advisory Opinion 2012–35 (Global Transaction Services Group) (determining that contributions made by credit or debit card are received as of date credit or debit card holder authorizes card to be charged with contribution); Advisory Opinion 2012–17 (Red Blue T *et al.*) at 6 (''m-Qube I'') (''Under m-Qube's proposed factoring arrangement, which is similar to how credit card contributions are handled, the Commission considers the contributions to be received at the time of the opt-in, as opposed to when the bill is paid.''); FEC, Campaign Guide: Congressional Candidates and Committees 25 (2021), *https://www.fec.gov/resources/cms-content/documents/candgui.pdf.*

[72] *See, e.g.,* Advisory Opinion 2012–30 (Revolution Messaging); Advisory Opinion 2012–28 (CTIA—The Wireless Association) (''CTIA II''); Advisory Opinion 2012–26 (Cooper for Congress *et al.*) (''m-Qube II''); Advisory Opinion 2012–17 (m-Qube I); Advisory Opinion 2010–23 (CTIA—The Wireless Association) (''CTIA I'').

[73] *See, e.g.,* Advisory Opinion 2018–05 (CaringCent); Advisory Opinion 2017–06 (Stein and Gottlieb); Advisory Opinion 2014–07 (Crowdpac); Advisory Opinion 2012–35 (Global Transaction Services Group); Advisory Opinion 2012–22 (skimmerhat); Advisory Opinion 2012–09 (Points for Politics); Advisory Opinion 2011–19 (GivingSphere); Advisory Opinion 2011–06 (Democracy Engine *et al.*); Advisory Opinion 2007–04 (Atlatl); Advisory Opinion 2006–08 (Brooks).

[74] 52 U.S.C. 30102(b)(2).

[75] For example, when a credit card holder uses a credit card to purchase goods or services from a merchant, the merchant often receives payment for the goods and services before the credit card holder is even billed. *See, e.g.,* Visa, *Frequently Asked Questions—How do Visa transactions work?, https://usa.visa.com/run-your-business/accept-visa-payments.html* (follow ''Learn how Visa transactions work'' hyperlink and click play arrow) (last visited Nov. 9, 2023). Similarly, in certain text message transactions, payment processors transmit funds to merchants before the mobile phone users pay bills with associated charges. *See* Advisory Opinion 2010–23 (CTIA I); Advisory Opinion 2012–17 (m-Qube I).

[76] *See, e.g.,* 11 CFR 116.3; Advisory Opinion 2012–26 (m-Qube II); Advisory Opinion 2012–31 (AT&T).

[77] This revision codifies the application of the forwarding requirements of 52 U.S.C. 30102(b) and 11 CFR 102.8 to contributions made by text message and web-based platforms, as set forth in Advisory Opinion 2012–26 (m-Qube II). The revision supersedes Advisory Opinion 2012–17 (m-Qube I) to the extent it concluded that contributions made by text message were not subject to the forwarding requirements. Factored payments from payment processors to political committees as described in Advisory Opinion 2012–17 (m-Qube I) and Advisory Opinion 2012–26 (m-Qube II) are one means of satisfying the forwarding requirements if made within 10 or 30 days of the contributor's authorization, as applicable. *See* 52 U.S.C. 30102(b); 11 CFR 102.8; *see also* Advisory Opinion 2012–35 (Global Transaction Services Group) at 4 (approving proposal where processor transmitted contributions to political committees within ten days); Advisory

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The Commission is not adopting regulatory language to define ''ordinary course of business,'' but the term will be construed consistently with the definition of the same term in 11 CFR 116.3(c), which looks to the vendor's past practices, as well as industry custom, to determine whether the vendor acted in the ordinary course of business.

The Commission received a comment in response to the NPRM regarding direct carrier billing (''DCB''), which is a particular form of commercial payment processing that enables customers to pay for goods and services by charging them to a wireless bill. The comment asked the Commission to adopt a detailed rule specifically to address DCB, proposing, for example, that a contribution that is forwarded by DCB should be deemed ''made'' only ''when a wireless company transfers funds from its accounts to a connection aggregator.'' [78] As the Commission has noted throughout this rulemaking, however, the Commission is revising its regulations in part to move away from technology-specific rules, in favor of technology-neutral language.[79] The Commission therefore declines to promulgate regulatory text that would govern this single payment practice. Any person uncertain as to the effect of the revised regulations on a particular technology may seek additional guidance through the Commission's advisory opinion process.

b. Revisions to Earmarking Rule, 11 CFR 110.6

FECA provides that, for purposes of contribution limitations, ''all contributions made by a person, either directly or indirectly . . . , including contributions which are in any way earmarked or otherwise directed through an intermediary or conduit to such candidate, shall be treated as contributions from such person to such candidate.'' [80] The Commission defines ''earmarked'' to mean ''a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution . . . being made to . . . a clearly identified candidate or a candidate's authorized committee.'' [81] Because FECA prohibits corporations from making contributions to candidate committees,[82] and because persons prohibited from making contributions and expenditures are also prohibited from being conduits or intermediaries who receive and forward earmarked contributions to a candidate,[83] a corporation generally may not receive and forward earmarked contributions.

Commission regulations provide for certain exceptions to the earmarking rule,[84] but these exceptions do not squarely apply to payments made through online processors that the Commission has addressed in several advisory opinions. In some of these opinions, the Commission concluded that the transactions were permissible because the corporations that processed the contributions were acting as commercial vendors to the political committee.[85] In other opinions, the Commission approved the transactions under the rationale that the corporations were providing services to the contributors.[86] And in Advisory Opinion 2012–22 (skimmerhat), the Commission determined expressly that contributions made through a for-profit corporation's website were ''direct contributions to the candidate . . . via a commercial processing service'' and ''not contributions to an intermediary and earmarked for a candidate.'' [87] The Commission explained that ''certain electronic transactional services . . . do not run afoul of the prohibition on corporations acting as a conduit or intermediary for earmarked contributions because certain electronic transactional services are so essential to the flow of modern commerce that they are akin to 'delivery services, bill-paying services, or check writing services.' '' [88]

In the NRPM, the Commission proposed two alternatives to amend 11 CFR 110.6(b) by exempting commercial payment processors from the definition of ''conduit or intermediary'' in 11 CFR 110.6(b)(2). Proposed alternatives A and B both would have exempted ''commercial payment processors'' from the earmarking rule, defining a ''commercial payment processor'' as any person whose usual and normal business is to process payments and who processes payments to candidates and authorized committees in the ordinary course of business; proposed alternative A would have additionally required that such a processor not exercise direction or control over the choice of the recipient candidate or authorized committee. The Commission also asked, though, whether it should bring § 110.6 in line with the flow of modern commerce by revising the definition of ''earmarked'' at 11 CFR 110.6(b)(1)—rather than revising the definition of ''conduit or intermediary'' at 11 CFR 110.6(b)(2)—by, for example, clarifying that the definition of ''earmark'' does not generally include a contributor's authorization to initiate an electronic transaction.[89]

After further consideration, the Commission has decided to adopt this latter approach to revising the earmarking rule. Specifically, the Commission is revising § 110.6 to clarify in the definition of ''earmarked'' in 11 CFR 110.6(b)(1) that a ''contributor's authorization that a commercial payment processor, whose usual and normal business is to process payments, transmit funds from the contributor to the designated candidate or authorized committee in the commercial payment processor's ordinary course of business does not in itself constitute an earmark.'' This final rule adopts the description of ''commercial payment processor'' proposed in both alternatives A and B, *i.e.,* an entity whose usual and normal business is to process payments and which does so in the ordinary course of business. However, because

Opinion 2010–23 (CTIA I) at 6–7 (rejecting proposal to process contributions by text message because, in part, contributions would not be forwarded to recipient committees within timeframe required by 52 U.S.C. 30102(b) and 11 CFR 102.8).

[78] CTIA, Comment at 16 (Dec. 2, 2016), *http://sers.fec.gov/fosers/showpdf.htm?docid=354000.*

[79] The same commenter also acknowledged in a more recent comment that ''a shift in mobile fundraising by political committees . . . has obviated the need to charge political contributions to a wireless user's bill and to process the contributions by DCB.'' CTIA, Comment at 3 (Oct. 11, 2022), *https://sers.fec.gov/fosers/showpdf.htm?docid=420616.*

[80] Thus, earmarked contributions are ''subject to the original contributors' limits on contributions to the candidate.'' Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions, 54 FR 34098, 34105 (Aug. 17, 1989). 52 U.S.C. 30116(a)(8).

[81] 11 CFR 110.6(b)(1).

[82] *See* 52 U.S.C. 30118.

[83] 11 CFR 110.6(b)(2).

[84] *See* 11 CFR 110.6(b)(2)(i).

[85] *See* Advisory Opinion 2021–10 (Retail Benefits, Inc.); Advisory Opinion 2018–05 (CaringCent); Advisory Opinion 2007–04 (Atlatl); Advisory Opinion 2004–19 (*DollarVote.org*); *see also* Advisory Opinion 2012–09 (Points for Politics).

[86] *See* Advisory Opinion 2021–07 (PACMS); Advisory Opinion 2019–04 (Prytany); Advisory Opinion 2017–06 (Stein and Gottlieb); Advisory Opinion 2011–19 (GivingSphere); Advisory Opinion 2011–06 (Democracy Engine); Advisory Opinion 2006–08 (Brooks).

[87] Advisory Opinion 2012–22 (skimmerhat) at 10.

[88] *Id.* (citing Advisory Opinion 2011–06 (Democracy Engine)); *see also* Advisory Opinion 2016–08 (*eBundler.com*) at 8 (''where a commercial vendor provides contribution processing services to contributors, the contributions made through the platform . . . are . . . direct contributions to the candidate . . . made via a commercial processing service'' and not earmarked contributions); Advisory Opinion 2014–07 (Crowdpac) (approving commercial processor's transmission of contributions to candidates); ActBlue, Comment at 5, *sers.fec.gov/fosers/showpdf.htm?docid=297360* (stating that without electronic payment processors, ''committees would not be able to raise campaign funds on the internet or by credit card at all'').

[89] NPRM, 81 FR 76427.

the new rule presents an exception to the definition of ''earmark'' rather than an exception to the definition of ''conduit or intermediary,'' the new rule focuses on the contributor's authorization of the transaction rather than on the payment processor's actions. This approach is consistent with the changes the Commission is making to ''authorization'' of transactions in 11 CFR 102.8, discussed above.

As mentioned in the NPRM, the new rule clarifies that a contributor's authorization to initiate an electronic transaction through a payment processor does not ''in itself'' constitute an earmark. This regulatory language is intended to recognize that a contribution that is otherwise earmarked within the meaning of the Commission's regulations is not excluded from treatment as an earmark merely because the transaction includes an authorization to a payment processor. The Commission anticipates that specific applications of the revised definition of ''earmark,'' including instances where a processor exercises direction or control over the contribution, will be informed by the Commission's existing precedents.

The term ''commercial payment processors'' is not intended to distinguish between persons who process contributions as a service to contributors and those who process contributions as a service to candidates and authorized committees. Thus, the term encompasses processors that transmit funds from wireless service providers to recipient committees, as well as online payment systems such as PayPal and Square, and the requestors in the advisory opinions in which the Commission has approved electronic payment processing.[90] The Commission anticipates, however, that the distinction will remain relevant to determine whether fees associated with contributions made through commercial payment processors are considered part of the contributed amount. As the Commission has explained in several advisory opinions, where a contributor's payment of a fee would ''relieve the recipient political committee[ ] of a financial burden [it] would otherwise incur,'' the fee would be considered a contribution.[91]

The Commission intends the revision to 11 CFR 110.6(b)(1) to clarify and codify its existing guidance on the issue, and thus to encourage the use of evolving and emerging technological innovations to process contributions electronically.

3. When a Political Committee Deposits the Contribution: Campaign Depositories, Merchant Accounts, and Recordkeeping

Once a political committee has received a contribution, it must deposit that receipt in an account at a campaign depository within ten days.[92] The campaign depository must be a state bank, federally chartered depository institution, or depository institution with accounts insured by certain federal agencies.[93]

The Commission is revising several regulations to address issues related to the deposit into campaign depositories of contributions made electronically. First, the Commission is revising 11 CFR 103.3(a) to clarify the campaign depository requirements for joint merchant accounts. Second, the Commission is revising 11 CFR 102.9(a)(4) and 9036.1(b)(4) to address recordkeeping related to the electronic transfer of contributions from a payment processor to a political committee's campaign depository.

a. Campaign Depositories for Joint Merchant Accounts—11 CFR 103.3

Many political committees and payment processors use merchant accounts to process contributions. As one commenter noted in response to the ANPRM: ''In order to accept credit card contributions, the committee must have a merchant account with the payment processor which is connected to the website on the contribution end and to a specific bank account on the processing end.'' [94] The commenter characterized the merchant account system that is used for payment transfers as ''nothing but an accounting tool which operates purely as a pass-through.'' [95]

Merchant accounts operated and controlled by a payment processor may contain contributions for several different political committees.[96] The Commission has indicated that a political committee receiving funds through one of these merchant accounts should report and treat the merchant account as a campaign depository account.[97]

The Commission has now reconsidered its earlier guidance that political committees report the joint merchant accounts through which their contributions flow as their own campaign depository accounts. The Commission is not convinced of the disclosure or compliance value of reporting a third party's pass-through account, which the recipient political committee does not own, operate, or control, as the committee's own account.[98] The Commission is therefore amending 11 CFR 103.3(a), which governs the deposit of receipts in campaign depositories, to provide that contributions deposited in the ordinary course of business in a merchant account of a payment processor described in new 11 CFR 102.8(d) are not ''receipts'' of the recipient political committee, but are, instead, contributions to be forwarded by the processor under 11 CFR 102.8.[99] Together with the revisions to § 102.8 discussed above, this amendment aims to ensure that electronic payments passing through merchant accounts comply with FECA's forwarding requirements, while also adapting the campaign-depository rule to account for the ways in which electronic payments differ from the cash and check contributions that predominated when those requirements were enacted.

The new merchant account regulation applies to merchant accounts held in

[90] Because the new rule does not turn on the incorporation status of a payment processor, it does not affect the ability of a limited liability company that opts to be treated like a partnership for tax purposes to process contributions to candidates in the ordinary course of business. *See* Advisory Opinion 2012–09 (Points for Politics).

[91] *See, e.g.,* Advisory Opinion 2017–06 (Stein and Gottlieb) at 5; Advisory Opinion 2015–15 (*WeSupportThat.com*) at 5 (quoting Advisory Opinion 2014–07 (Crowdpac) and Advisory Opinion 2011–06 (Democracy Engine)).

[92] 52 U.S.C. 30102(h)(1); 11 CFR 103.3(a).

[93] *See* 52 U.S.C. 30102(h)(1); 11 CFR 103.2; *see also* 11 CFR 102.2(a)(1)(vi) (disclosure of campaign depositories).

[94] ActBlue, Comment at 2, *sers.fec.gov/fosers/showpdf.htm?docid=297360.*

[95] *Id.* at 4.

[96] *See* Advisory Opinion 1995–34 (Politechs) n.6 (describing processing of contributions for multiple committees through one merchant account).

[97] *Id; see also* Advisory Opinion 1999–22 (Aristotle Publishing) (approving proposal under which recipient political committees would report payment processor's FDIC-insured merchant account through which their contributions flowed as campaign depository accounts); Advisory Opinion 2012–07 (Feinstein for Senate) at 5 n.9 (reaffirming that ''joint merchant account'' of type described in Advisory Opinion 1999–22 (Aristotle Publishing) is campaign depository).

[98] *See* Advisory Opinion 2017–02 (War Chest) (concluding that committee need not report as campaign depositories those accounts held by trust in sub-custodian bank accounts in trust's name and over which committee has no control); ActBlue, Comment at 4, *sers.fec.gov/fosers/showpdf.htm?docid=297360* (noting that merchant accounts are standard aspect of credit card processing and arguing that therefore ''there is no need to treat merchant accounts as campaign depositories which must be registered with the Commission'').

[99] For ease of reading, the Commission is also dividing § 103.3(a) into two subparts to address the two distinct issues (receipts and disbursements) addressed therein.

the ordinary course of business by payment processors described in new 11 CFR 102.8(d) and not, therefore, to accounts of political committees. Thus, if a political committee administers or otherwise controls a merchant account, that account constitutes and must be reported as a campaign account as it always has.

In conjunction with the change to 11 CFR 103.3(a), the Commission is superseding Advisory Opinion 1995–34 (Politechs), Advisory Opinion 1999–22 (Aristotle Publishing), and Advisory Opinion 2012–07 (Feinstein for Senate), to the extent that these advisory opinions interpreted FECA as requiring political committees to treat joint merchant accounts over which the recipient political committees exercise no control as their own campaign depository accounts.

b. Recordkeeping—11 CFR 102.9(a)(4) and 9036.1(b)(4)

As noted above, FECA and Commission regulations require any person who receives a contribution for or on behalf of a political committee to forward the contribution and information about the contributor to the political committee within a certain period of time.[100] The Commission has seen, through its auditing function, that committees often receive contributions separately from contributors' information; that is, payment processors often forward contributions as an aggregated amount but forward information about each individual contributor separately. Because of this, marrying individual contributor information with the recipient political committee's records of receipts and deposits can be a challenge when committees are audited.

To address these challenges, the Commission is revising 11 CFR 102.9(a)(4). Section 102.9(a)(4) currently requires political committees to maintain, for each contribution that they receive in excess of $50, either (i) a full-size photocopy of the check or written instrument, or (ii) a digital image of the check or written instrument. As revised, paragraphs (4)(i) and (4)(ii) are being replaced with a new paragraph (4), which requires political committees to maintain a ''record'' of each contribution received. For checks or written instruments in excess of $50, the revised rule still requires treasurers to maintain an image of the instrument. For all contributions, the revised rule adds a requirement that a record of the receipt must include sufficient information associating that contribution with its deposit in the political committee's campaign depository, such as a batch number. The revised rule also removes the requirement that committees provide the Commission with the electronic means to read such records because that requirement appears in the new definition of ''record'' discussed above.

The Commission is adopting a similar revision to the recordkeeping provision at 11 CFR 9036.1(b)(4), which applies to bank documentation of deposits of publicly matched contributions. Section 9036.1(b)(4) requires a candidate to submit ''bank documentation, such as bank-validated deposit slips or unvalidated deposit slips accompanied by the relevant bank statements, which indicate that the contributions were deposited into a designated campaign depository.'' The Commission is adding, after ''relevant bank statements,'' language that would apply to electronic deposits: ''or, for deposits made electronically, information associating contributions to their deposit in the designated campaign depository, such as a batch number.''

E. Other Considerations in Electronic Contributions and Disbursements

The Commission is revising other regulations to modernize requirements concerning the receipt of ''currency'' and ''cash''; the receipt, disbursement, and transfer of funds; the records of contributions eligible for public matching funds; and the designation and attribution of contributions in light of electronic transactions and records.

1. ''Currency'' and ''Cash''—11 CFR 110.4

The term ''contribution'' includes gifts, advances, and deposits of ''money'' by any person for the purpose of influencing a federal election.[101] The term ''money'' includes ''currency of the United States or of any foreign nation,'' as well as checks, money orders, and any other negotiable instrument payable on demand.[102]

The legislative history of FECA indicates that Congress was particularly concerned about the role of cash in federal elections. As one legislator noted, ''cash offers too facile a medium for unethical and illegal activities''; its ''untraceability'' and ''easy transferability'' were of particular concern.[103] Thus, Congress limited contributions of currency to $100.[104] Commission regulations also prohibit the use in federal elections of any portion of an anonymous ''cash'' contribution that exceeds $50.[105]

The Commission invited comment several times on payment methods that share some of the characteristics of cash and received only a few comments addressing this topic. In the ANPRM, the Commission asked ''whether prepaid debit, credit, banking, and gift cards are functionally the same as cash'' and whether the Commission should amend its regulations to prohibit contributions in excess of $100 using those methods.[106] The Commission received one comment that addressed prepaid cards, from an entity that processes online contributions. In the NPRM, the Commission noted again that some electronic payment methods, particularly prepaid cards and some forms of cryptocurrency, have certain characteristics that are similar to cash.[107] Like currency, prepaid cards and some forms of cryptocurrency are easily transferable and relatively untraceable; all that is needed to acquire and use them is sufficient cash to purchase them. The Commission therefore proposed to update its rules to apply the limitations on contributions of cash or currency at 11 CFR 110.4(c) to contributions made by prepaid cards.[108] No commenters addressed this proposal. Most recently, the Commission sought comment about prepaid card transactions in the Request for Additional Comment, but did not receive any comments in response.[109]

The Commission also asked in the NPRM whether it should restrict contributions of cryptocurrency such as bitcoin to the ''cash'' contribution limit at 11 CFR 110.4(c). Alternatively, the Commission asked whether it should

[100] 52 U.S.C. 30102(b)(2); 11 CFR 102.8(a).

[101] 52 U.S.C. 30101(8)(A)(i); 11 CFR 100.52(a); *see also* 52 U.S.C. 30101(9)(A)(i); 11 CFR 100.111(a) (corresponding provisions for the term ''expenditure'').

[102] 11 CFR 100.52(c); *see also id.* 100.111(d) (corresponding provision for expenditures).

[103] 120 Cong. Rec. H7832 (daily ed. Aug. 7, 1974) (statement of Rep. Boland).

[104] 52 U.S.C. 30123; *see also* 11 CFR 110.4(c) (also referring to such contributions as ''cash''), 9034.3(j) (disallowing matching funds for contributions of currency of United States or foreign country).

[105] 11 CFR 110.4(c)(3); *see also* 52 U.S.C. 30102(c)(2) (requiring name and address of contributors for contributions over $50).

[106] ANPRM, 78 FR at 25638.

[107] NPRM, 81 FR at 76429.

[108] *Id.*

[109] Request for Additional Comment, 87 FR at 54916–17.

treat receipts and disbursements of cryptocurrency as in-kind contributions because they cannot be deposited in campaign depositories.[110] Two commenters, an advocacy center focused on blockchain technologies and a cryptocurrency exchange, discussed the use of cryptocurrency in response to the NPRM. Both opined that the Commission should not treat cryptocurrency contributions the same as cash contributions.

The Commission has determined not to amend its rules at this time to address prepaid cards or cryptocurrency. These payment methods involve potentially complex commercial and technological issues that are beyond the Commission's current expertise. To understand fully the potential effects that any regulatory changes might have on industry practices, it is important for the Commission to hear from those who regularly use and implement these payment methods. Few commenters have shared their perspectives on the feasibility or potential implications of amending Commission regulations to address prepaid cards or cryptocurrency. Because any regulatory changes concerning these payment methods would benefit from a more focused inquiry and expertise on these rapidly evolving technologies, the Commission has decided not to amend its regulations as proposed at this time.

2. Updating References to Contributions and Disbursements by Check

a. Committee Disbursements by Electronic Transfer

FECA requires each political committee to maintain at least one checking account and to make all disbursements (other than from petty cash) ''by check.'' [111] The Commission has implemented this requirement in regulations that require all disbursements (other than petty cash disbursements) to be made ''by check or similar draft drawn on'' a campaign depository account.[112] The Commission has further interpreted the term ''similar draft'' to include certain forms of electronic disbursement.[113] Consistent with these prior interpretations and in light of the increasing use of electronic transactions in the campaign finance arena, the Commission is revising 11 CFR 102.10 and 103.3(a) to provide that disbursements may be made by ''check or similar draft, including electronic transfer'' from a campaign depository; revising 11 CFR 110.1(b)(3)(i)(A) to enable political committees to refund contributions by ''committee check or similar draft, including electronic transfer''; and revising 11 CFR 110.6(c)(1)(iv)(C) to require conduits and intermediaries to report earmarked contributions that are forwarded by electronic transfer, in addition to reporting earmarked contributions forwarded in cash or by the contributor's or conduit's check. The Commission intends these revisions to be consistent with the Commission's prior interpretations of the terms ''check'' or ''similar draft.''

b. Recordkeeping for Disbursements by Electronic Transfer

In light of the regulatory revisions for disbursements by electronic transfer, and because current technology allows checks to be processed electronically without the creation of a canceled check (such as depositing a check using a smartphone app), the Commission is revising the recordkeeping requirements for political committee disbursements. Section 102.9(b) describes the records that political committees must keep of their disbursements. The Commission is revising 11 CFR 102.9(b)(2), (b)(2)(i)(B), and (b)(2)(ii), which currently require committees to keep a ''cancelled check'' to a payee or recipient (among other records of disbursements) to provide that a record of disbursement may consist of a ''canceled check or record of electronic transfer'' to the payee or recipient. The Commission also is removing 11 CFR 102.9(b)(2)(iii), which requires political committees to document disbursements made by share drafts or checks drawn on credit union accounts, because this provision is no longer necessary in light of changes to the recordkeeping provisions in other parts of § 102.9.

Sections 9003.5(b) and 9033.11(b) contain the disbursement documentation requirements for publicly financed candidates. The Commission is revising 11 CFR 9003.5(b)(1), 9003.5(b)(1)(iv), 9003.5(b)(2)(ii), 9033.11(b)(1), 9033.11(b)(1)(iv), and 9033.11(b)(2)(ii) to provide explicitly that a record of disbursement may consist of a ''record of electronic transfer to the payee,'' in addition to canceled checks negotiated by the payee.

c. Electronic Funds Transfers Related to Separate Segregated Fund Administration

The Commission is making similar revisions to two regulations relating to contributions by ''check'' to a separate segregated fund (''SSF''). First, the Commission is revising 11 CFR 102.6(c)(3), which provides that a contributor may ''write a check'' representing both a contribution to an SSF and a payment of dues or other fees ''drawn on the contributor's personal checking account or on a non-repayable corporate drawing account of the individual contributor.'' [114] In Advisory Opinion 1990–04 (American Veterinary Medical Association PAC), the Commission interpreted this provision as allowing a combined payment by credit card. Consistent with the approach in that advisory opinion, and because of the increasing use of electronic payments, the Commission is revising 11 CFR 102.6(c)(3) to enable contributors to make combined payments to an SSF by credit card or electronic payment, as well as by check. The combined payment would still have to be made from the contributor's personal account, irrespective of whether made by check or electronically, or through a payroll-deduction plan.[115] The rule retains the reference to ''a non-repayable corporate drawing account of the individual,'' because the Commission wants to retain the clarification that such accounts are, for purposes of 11 CFR 102.6(c)(3), ''personal accounts.''

Second, the Commission is revising 11 CFR 114.6(d)(2)(iii), which requires the custodian of an SSF to forward to the SSF funds from certain separate accounts ''by check drawn on'' such accounts. Consistent with the revisions concerning disbursements from campaign depositories, the Commission is revising 11 CFR 114.6(d)(2)(iii) to allow such funds to be forwarded ''by check or similar draft, including electronic transfer.''

d. Electronic Transfers of Earmarked Contributions

The Commission has determined not to revise 11 CFR 110.6(c)(1)(v) to address a conduit or intermediary's electronic forwarding of an earmarked contribution. Section 110.6(c)(1)(v) sets forth the mechanisms for reporting two categories of earmarked contributions: those that pass through a conduit or intermediary's account, and those that the conduit or intermediary forwards to

[110] *See* 11 CFR 102.10 (requiring committee disbursements be made by check from campaign depositories), 103.3(a) (setting campaign depository requirements for receipts and disbursements).

[111] 52 U.S.C. 30102(h)(1).

[112] 11 CFR 102.10; *see also id.* 103.3(a) (same).

[113] *See, e.g.,* Advisory Opinion 1993–04 (Christopher Cox Congressional Committee) (approving ''computer driven billpayer service'' that disbursed funds by electronic transfer); Advisory Opinion 1982–25 (Barbara Sigmund for Congress Committee) (concluding that wire transfer qualifies as ''similar draft'').

[114] 11 CFR 102.6(c)(3).

[115] *See id.* (describing combined payments under payroll deduction plan).

a committee ''in the form of a contributor's check or other written instrument'' without first depositing them in the conduit's or intermediary's account. The regulation thus does not currently address earmarked contributions that the conduit or intermediary forwards electronically without those funds first passing through the conduit or intermediary's account. The Commission asked in the NPRM whether such transactions occur, but it received no comments in response. Given the lack of information before the Commission on this question, the Commission is not making changes at this time.

3. Electronic Contributions to Publicly Funded Committees

The Funding Acts allow public fund matching only for contributions ''made by a written instrument which identifies the person making the contribution by full name and mailing address.'' [116] The Commission is revising 11 CFR 9034.2, which defines ''written instrument'' in this context to include contributions by credit and debit card—but not when made over the telephone—to a participant in the primary matching fund program.[117] Section 9034.2(b) allows a political committee to receive matching funds for contributions by credit card made over the internet only if the electronic record of that transaction includes ''the name of the cardholder and the card number, which can be maintained electronically and reproduced in a written form.'' And § 9034.2(c) requires the contribution also to contain the contributor's ''signature,'' which is defined for these purposes as ''either an actual signature . . . or in the case of such a contribution made over the internet, the full name and card number of the cardholder who is the donor, entered and transmitted by the cardholder.''

Comments received on the ANPRM urged the Commission to bring the requirement that committees maintain the full card number of contributors in line with payment industry security standards.[118] Payment industry standards limit the storage and retention of payment card information in order to safeguard consumers and the payment system from fraud.[119] Specifically, entities may not store the three-digit code printed on the back of payment cards and must render unreadable (by truncation, hashing, or encryption) the card number and expiration date where that information is stored.[120]

Because § 9034.2(b) and (c) require publicly funded candidates to retain the card number for each contribution by credit or debit card, some committees have historically viewed these regulations as inconsistent with payment industry security practices and requirements. Accordingly, and in recognition of the security risks that are attendant upon storing credit card numbers, the Commission is revising 11 CFR 9034.2(b) and (c) by removing the requirements that the recipient must retain contributors' debit and credit card numbers to be eligible for matching funds. All of the regulation's other requirements will remain in effect, including the requirements that the recipient collect the full name and mailing address of each contributor and maintain a ''record that can be reproduced on paper'' of each electronic contribution.

At this time, the Commission is not revising 11 CFR 9034.2(c)(8)(i), which prohibits public fund matching of credit and debit card contributions ''where the cardholder's name and card number are given . . . only orally.'' When § 9034.2(c) was first adopted, the Commission explained the exclusion of credit card ''signatures'' made over the telephone as consistent with the ''written instrument'' limitation on the definition of ''contribution'' in 26 U.S.C. 9034(a).[121] The Commission explained that an oral authorization of a credit or debit card contribution is not a ''written instrument'' for purposes of the Funding Acts, because the only record of such a transaction is ''created wholly by the recipient committee,'' whereas for written authorizations ''it is the signatory's . . . act of entering his or her own name that represents a legal act.'' [122] Although an electronic record of a credit or debit card contribution authorized orally—such as an audio recording of the authorization—constitutes a ''written'' ''record'' under FECA,[123] such a record is created by the recipient committee and thus does not constitute a ''written instrument'' sufficient to meet the Funding Acts' prerequisite for a candidate's receipt of public funds, 26 U.S.C. 9034(a).

Finally, the Commission is revising 11 CFR 9036.2(b)(1)(iii), which requires committees to provide the Commission with a list of contribution ''checks returned unpaid'' (*i.e.,* ''bounced''). The Commission is adding a parallel provision for the electronic equivalent of bounced checks by requiring committees to provide a list of ''credit or debit card or other electronic payment chargebacks.'' The Commission is not adding a similar provision regarding chargebacks to 11 CFR 9036.1(b)(7), which concerns a committee's initial submission for matching funds, because 11 CFR 9036.1(b)(4) already requires such initial submissions to include validation for each deposited contribution.

4. Designation, Redesignation, and Attribution of Contributions

The Commission is revising several provisions concerning the written designation of contributions for particular elections and the attribution of contributions to particular contributors.

First, the Commission is revising 11 CFR 110.1(b)(4), 110.2(b)(4), and 9003.3(a)(1)(vi), which define when contributions are ''designated in writing.'' Each of these rules now allows a contribution to be designated for a particular election (or account, in the case of 11 CFR 9003.3(a)(1)(vi)) [124] if it is made: (1) by a check, money order, or negotiable instrument which clearly indicates it is made with respect to that election or account; or (2) with an accompanying writing signed by the contributor that clearly indicates it is made with respect to that election or account. To ensure that these regulations apply uniformly to electronic and non-electronic transactions, the Commission is removing the reference to a ''check, money order, or other negotiable instrument'' from 11 CFR 110.1(b)(4)(i), 110.2(b)(4)(i), and 9003.3(a)(1)(vi)(A).

Similarly, the Commission is revising 11 CFR 110.1(k)(1) and 9034.2(c), which govern attribution of joint contributions. Section 110.1(k)(1) provides that any contribution made by more than one person, other than a contribution by a

[116] 26 U.S.C. 9034(a).

[117] *See* 11 CFR 9034.2(c)(8) (permitting matching of credit and debit card contributions by written instrument as set forth in 11 CFR 9034.2(b) and (c), but not credit or debit card contributions made orally).

[118] *See* ActBlue, Comment at 2, *sers.fec.gov/fosers/showpdf.htm?docid=297360;* Perkins Coie, Comment at 2, *sers.fec.gov/fosers/showpdf.htm?docid=297359;* Visa, Comment at 1–3, *sers.fec.gov/fosers/showpdf.htm?docid=297361.*

[119] Visa, Comment at 2, *sers.fec.gov/fosers/showpdf.htm?docid=297361.*

[120] *Id.* at 2–3.

[121] *See* Matching Credit Card and Debit Card Contributions in Presidential Campaigns, 64 FR 32394, 32395–96 (June 17, 1999).

[122] *Id.* at 32396.

[123] *See, e.g.,* Advisory Opinion 2013–12 (Service Employees International Union COPE) (noting that ''a telephone-based authorization system that included computer-based (and retrievable) records'' could ''incorporate[] procedural safeguards and recordkeeping mechanisms equivalent to . . . a handwritten signature on a paper document'' (internal quotations omitted)).

[124] Section 9003.3(a) concerns contributions to a publicly funded presidential candidate's general election legal and accounting (''GELAC'') account.

partnership, ''shall include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing.'' Because many contributions are made electronically rather than ''by check, money order, or other negotiable instrument,'' the Commission is removing that reference to how a contribution is made from 11 CFR 110.1(k)(1). The revised regulation requires instead that any joint contribution be ''indicated by the signature of each contributor in writing,'' without reference to a particular written instrument.

In the matching-funds context, § 9034.2(c) details the manners in which joint contributions may be attributed, depending on the type of written instrument by which the contribution is made. The Commission is adding to this section a provision governing the attribution of matchable contributions made by credit and debit cards. Specifically, new § 9034.2(c)(8)(iii) parallels the joint attribution principles that apply to contributions by check,[125] by providing that, ''to be attributed to more than one person, a signed written statement must accompany the credit or debit card contribution indicating that the contribution was made from each individual's personal funds in the amount so attributed.''

F. Updating Other Technologically Outmoded References

The Commission is updating its regulations to reflect technological advances and to remove certain references to outmoded technologies. These revisions do not affect the substance of any of the revised regulations.

1. Telegrams, Telephones, Typewriters, Audio Tapes, and Facsimiles

The Commission is removing the reference to ''telegram'' in 11 CFR 104.6(c)(1) because telegrams are obsolete and therefore not useful to include in the regulation's illustrative, non-exhaustive list of types of communications.[126]

For the same reason, the Commission is replacing the reference to ''typewriters'' with ''computers'' in 11 CFR 114.9(d) and removing the references to ''typewriters'' (without substituting a new term) in 11 CFR 9004.6(a) and 9034.6(a). The word ''computer'' in these contexts includes not only PCs, but also tablets, smartphones, and similar devices.

Similarly, the Commission is adding ''internet service'' to non-exhaustive illustrative lists that include ''telephone service'' in 11 CFR 106.2(b)(2)(iii)(D), 9004.6(a) and (b), and 9034.6(a) and (b).

Because most recording is now digital rather than on magnetic tape, the Commission is replacing all regulatory references to ''tapes,'' as in, for example, ''audio tapes,'' with references to ''recordings'' in 11 CFR 200.6(a)(5), 9007.7(b)(2), and 9038.7(b)(2).

The Commission also is revising 11 CFR 108.6(b), which requires state officers to preserve certain reports concerning federal elections, by replacing the phrase ''in facsimile copy by microfilm or otherwise'' with ''by copy.'' The Commission is not, however, removing all references to ''facsimile'' from its regulations. For example, certain uses of ''facsimile'' in the regulations are grounded in the use of the word in FECA, such as the definition of ''mass mailing'' in 11 CFR 100.27, which is drawn from FECA's definition of ''mass mailing'' as including ''a mailing by . . . facsimile.'' [127]

2. Microfilm and Obsolete Computer References

The Commission is removing most references to ''microfilm,'' ''computer tape,'' ''magnetic tape,'' and similar terms from the regulations because these technologies are, for most purposes, obsolete. These references are largely found in the rules implementing the Funding Acts, FOIA, the Privacy Act, and the Commission's Public Disclosure and Media Relations Division. Specifically, the Commission is making the following revisions, none of which is substantive:

- remove the references to ''microform,'' ''computer tape or microfilm,'' ''computerized,'' and ''Computerized Magnetic Media Requirements'' in 11 CFR 4.1(j), 4.9(c)(5), 9007.1(b)(1), 9036.2(b)(1)(vi), and 9038.1(b)(1);
- replace references to ''machine readable documentation,'' ''magnetic tape or disk,'' ''computer disk,'' ''magnetic tapes or magnetic diskettes,'' and ''computerized magnetic media'' with ''digital storage device'' in 11 CFR 4.1(j), 4.9(a)(3), 9003.1(b)(4), 9003.6(a), 9033.1(b)(5), 9033.12(a), and 9036.1(b)(2);
- delete 11 CFR 9003.6(b) and 9033.12(b), which concern the organization of computer information according to technical specifications of a computer system the Commission no longer uses;
- replace ''computers'' with ''computers or other electronic devices'' in 11 CFR 9004.6(a)(1) and 9034.6(a)(1); and
- replace ''either solely in magnetic media from or in both printed and magnetic media forms'' with ''in printed or digital form or a combination of printed and digital forms'' in 11 CFR 9036.2(b)(1)(ii).

The Commission also is revising and simplifying the fee structures at 11 CFR 4.9 and 5.6, which concern fees for FOIA and Public Disclosure. Specifically, the Commission is removing 11 CFR 4.9(a)(2) (imposing $25 per hour computer access FOIA fee); revising 11 CFR 4.9(c)(4) and 5.6(a) to reduce the fee for document certification; removing from 11 CFR 4.9(c)(4) and 5.6(a) the fees for ''microfilm reader-printer'' and ''microfilm-paper'' copies, ''reels of microfilm,'' publications, computer tapes and indexes, professional research time, and transcripts; [128] removing the specified staff charges from § 4.9(c)(4) and adding a provision to charge the ''direct costs,'' including staff and digital storage devices on which records are produced; removing from 11 CFR 5.6(a) the fees for professional ''research time/photocopying time''; removing 11 CFR 5.6(b), which establishes fees for providing Commission publications; and removing from 11 CFR 5.6(c) the reference to use of a contractor for microfilm and computer tape duplication. The Commission also is making a conforming revision to 11 CFR 112.2(b) by including a reference to the Commission's website in conjunction with an existing reference to the Public Disclosure and Media Relations Division.

In the NPRM, the Commission sought comment on two parallel provisions concerning accommodations for the hearing impaired in television commercials prepared and distributed by publicly financed candidates. The Funding Acts require such candidates to certify that any television advertisement ''contains or is accompanied by closed captioning of the oral content of the commercial to be broadcast in line 21 of the vertical blanking interval, or is capable of being viewed by deaf and hearing impaired individuals via any comparable successor technology to line

[125] *See* 11 CFR 9034.2(c)(1)(ii).

[126] *See* Chenda Ngak, *Last telegram ever to be sent July 14,* CBS News, (June 18, 2013), *https://www.cbsnews.com/news/last-telegram-ever-to-be-sent-july-14/* (reporting that India's state-run telecommunications company, ''the last large-scale telegraph system in the world,'' was slated to shut down telegraph service ''because that part of its business is not commercially viable'').

[127] 52 U.S.C. 30101(23).

[128] The Commission is not changing regulatory references to microfilm that relate to older Commission records that are unavailable in other forms. *See, e.g.,* 11 CFR 5.6(a)(1) (establishing fee for making paper copies from microfilm).

21 of the vertical blanking interval.'' [129] Commission regulations implement this requirement essentially verbatim at 11 CFR 9003.1(b)(10) and 9033.1(b)(12). The Commission asked whether there is a ''successor technology'' that should now be recognized in these provisions, such as technologies that might not apply to traditional broadcast television but are used for cable, satellite, or internet-based television (*e.g.,* Hulu or Netflix). The Commission received no comments in this area and has decided not to revise these rules at this time.

3. Websites

The Commission is revising certain regulatory references to ''websites'' to accommodate newer technologies—such as mobile applications (''apps'') on smartphones and tablets, smart TV, interactive gaming dashboards, e-book readers, and wearable network-enabled devices such as smartwatches or headsets—that have taken many of the same roles and characteristics that the Commission previously ascribed to websites.

First, when the Commission initiated this rulemaking, the definition of ''public communication'' in 11 CFR 100.26 referred to communications placed for a fee on another person's ''website.'' [130] When the Commission defined ''public communication'' in 2006 to include paid internet advertisements on websites, it analogized such advertisements to the other forms of mass communication enumerated in FECA's definition of ''public communication''—such as television, radio, and newspapers—because ''each lends itself to distribution of content through an entity ordinarily owned or controlled by another person.'' [131] The Commission focused on websites because that was the predominant means of paid internet advertising in 2006.[132]

In both the NPRM for this rulemaking and in an NPRM published in 2018 addressing internet communications disclaimers and the definition of ''public communication'' (''internet Communications Disclaimers NPRM''), the Commission proposed updating the definition to include a reference to an ''internet-enabled device or application.'' [133] In each case, the Commission asked whether such terms were ''sufficiently clear and technically accurate'' to describe ''the various media through which paid internet communications can be sent and received.'' [134] In response to the internet Communications Disclaimers NPRM, the Commission received numerous comments addressing the proposed revision to the definition of ''public communication.'' [135] Most who commented on the issue supported the proposed revision.

The Commission amended the definition of ''public communication'' in the Internet Communications Disclaimers rulemaking to include ''communications placed for a fee on another person's website, digital device, application, or advertising platform.'' [136] In that rulemaking, the Commission also adopted a new defined term, ''internet public communication,'' which is defined similarly as ''any public communication over the internet that is placed for a fee on another person's website, digital device, application, or advertising platform.'' [137]

The Commission asked in the Supplemental Notice of Proposed Rulemaking published in this rulemaking (''SNPRM'') whether the definitions of ''public communication'' and ''internet public communication'' should also include communications that are ''promoted for a fee'' on another person's website, digital device, application, or advertising platform, and whether such communications that are ''promoted for a fee'' should be subject to the Commission's disclaimer requirements.[138]

The Commission received six substantive comments in response to the SNPRM. Three commenters supported the proposal and three opposed it. Those commenters that supported the proposal generally did so on the grounds that it better reflects the current advertising landscape and would increase the transparency of sponsored content, so that voters can more readily discern paid communications and determine the source of such messages. The commenters that opposed the proposal expressed concerns about chilling ordinary citizens' speech, and that the proposed language could be read to extend to political committees' internal staff and technology costs. One such commenter suggested modifying the proposed definition to cover communications ''promoted for a fee paid to another person's website, digital device, application, or advertising platform.''

Based on the comments received, the Commission is amending the definition of ''public communication'' at 11 CFR 100.26 and the definition of ''internet public communication'' at 11 CFR 110.11(c)(5)(i) to include communications over the internet that are ''placed or promoted for a fee on another person's website, digital device, application, or advertising platform. A public communication is promoted for a fee where a payment is made to a website, digital device, application, or advertising platform in order to increase the circulation, prominence, or availability of the communication on that website, digital device, application, or advertising platform.''

The updated definitions of ''public communication'' and ''internet public communication'' better reflect the wide and rapidly expanding array of paid internet advertising options. These amendments will increase transparency by helping to ensure that political committees and others properly disclose their paid internet communications.[139] In 2006, the court in *Shays* v. *Federal Election Commission* concluded that ''[w]hile all internet communications do not fall within [the scope of 'any other form of general public political advertising'], some clearly do,'' [140] and directed the Commission to determine what constitutes ''general public political advertising'' in the context of internet communications. In amending the definition of ''public communication'' in response to the *Shays* decision to include paid internet advertising, the Commission acknowledged that the internet is ''a unique and evolving mode of mass communication and political

[129] 26 U.S.C. 9003(e).

[130] The definition of ''public communication'' is relevant to the application of certain disclaimer requirements, 11 CFR 110.11(a), coordination rules, 11 CFR 109.21(c), and financing limitations, *e.g.,* 11 CFR 100.24(b)(3), 300.32(a)(1)-(2), 300.71.

[131] *See* internet Communications, 71 FR 18589, 18594 (Apr. 12, 2006); 52 U.S.C. 30101(22).

[132] Even in the 2006 rulemaking, the Commission stated, albeit in a different context, that the ''terms 'website' and 'any internet or electronic publication' are meant to encompass a wide range of existing and developing technology, such as websites, 'podcasts,' etc.'' internet Communications, 71 FR at 18608 n.52 (citing 2005 testimony enumerating variety of ''Internet communication technologies,'' including instant messaging, ''Internet Relay Chat,'' social networking software, and widgets).

[133] *See* Internet Communication Disclaimers and Definition of ''Public Communication'', 83 FR 12864, 12868 (March 26, 2018).

[134] NPRM, 81 FR at 76433–34; Internet Communication Disclaimers and Definition of ''Public Communication'', 83 FR at 12865, 12868.

[135] The Commission received only one comment addressing the proposal to revise the definition of ''public communication'' in response to the NPRM for the Technological Modernization rulemaking. That comment is discussed further below.

[136] Internet Communication Disclaimers and Definition of ''Public Communication,'' 87 FR 77467, 77471 (Dec. 19, 2022).

[137] *Id.* at 77473.

[138] SNPRM, 87 FR 75518 (Dec. 9, 2022).

[139] *See* Internet Communications, 71 FR 18589 (Apr. 12, 2006).

[140] *Shays* v. *FEC,* 337 F. Supp. 2d 28, 67 (D.D.C. 2004), *aff'd,* 414 F.3d 76 (D.C. Cir. 2005), *reh'g en banc denied* (Oct. 21, 2005).

speech.'' [141] As the internet has continued to evolve since that time, so have the available forms of paid internet advertising, and the Commission is updating its regulations to keep pace.

The amended definitions will also help to prevent the circumvention of disclaimer requirements on paid internet communications.[142] Under the former regulations, arguably a political advertisement placed for free on a social media platform would not require a disclaimer even if the advertiser then pays the platform to promote the communication to a wider audience, while the same communication placed for a fee on the same social media platform to reach the same audience would require a disclaimer. The amended definitions of ''public communication'' and ''internet public communication'' will forestall such an argument by aligning the treatment of these two forms of paid political ads.

Certain commenters opined that the definitions proposed in the SNPRM were too broad because they arguably expanded the definitions of ''public communication'' and ''internet public communication'' beyond paid advertising. The commenters were concerned that, as proposed, the definitions could be read to capture political communications placed or promoted for free on a third party's platform if the speaker incurs staffing, technology, or design costs to create the communication. The revised definitions, however, apply only where the speaker pays a third party's website, digital device, application or advertising platform to increase the communication's visibility on that website, device, application, or platform. They do not apply to communications where the speaker's only costs are to create the communication or to place or promote the communication ''using a forum that he or she controls to establish his or her own audience.'' [143]

In the SNPRM, the Commission sought comments about whether any distinction should be made between several types of communications that are sometimes described as ''promoted.'' One type was a communication where ''a website, digital device, application, or advertising platform is paid directly to 'boost' or expand the scope of viewership of content containing express advocacy or soliciting a contribution in order to increase the circulation or prominence of that content.'' [144] After reviewing the comments received, the Commission has decided that this type of communication is analogous to the traditional forms of paid advertising identified in FECA as a ''public communication'' [145] because the speaker pays the entity that owns or controls the medium of communication to distribute the communication on the speaker's behalf. Accordingly, the updated definitions of ''public communication'' and ''internet public communication'' include this type of ''promoted'' communication. Thus, for example, if a political committee posts a video solicitation for free on a social media platform and pays the platform to boost the video's viewership, the video is both a ''public communication'' and an ''internet public communication.''

In contrast, the updated definitions of ''public communication'' and ''internet public communication'' do not apply to the other types of communications described in the SNPRM, where an individual is paid to create or share political content.[146] The definitions do not encompass instances where individuals make decisions about what content to share with their own audiences. For example, if a political committee posts a video soliciting contributions on a social media site for free and then pays an individual to post the video on that individual's social media page to share with the individual's followers, the video is neither a ''public communication'' nor an ''internet public communication'' under Commission regulations. The same result occurs if the political committee pays an individual to create and post a communication online for the individual's audience. In both situations, the individual would be communicating with the individual's own followers who have sought out such communications, which the Commission has determined are not ''public communications.'' [147]

Some commenters were concerned that the amended definitions of ''public communication'' and ''internet public communication'' could affect individuals' political activity and speech on the internet more broadly. The Commission does not share this concern. Other than the disclaimer requirements discussed above, the amended definitions apply only to communications by entities that are already subject to Commission regulation or that coordinate with candidates or political parties already subject to regulation.[148] Communications by individuals, even when political in nature, should not be affected by the revised definitions other than in the disclaimer context.

Second, the Commission also proposed to revise the disclaimer provision in 11 CFR 110.11, which refers to political committees' ''internet websites'' that are available to the general public.[149] When the Commission revised the disclaimer requirements in 2002 to apply to political committees' websites, it noted ''the widespread use of this technology in modern campaigning, and the relatively nonintrusive nature of disclaimer requirements.'' [150] Disclaimers on political committee websites, the Commission stated, ''will assure, for example, that a website created and paid for by an individual will not have to include a disclaimer'' while the ''use of . . . websites to conduct campaign activity will have to provide the public notice of who is responsible.'' [151] As noted in the discussion of ''public communication'' above, the Commission used the term ''website'' here because that was the predominant means of public ''campaign activity'' on the internet at the time. To update the now-outdated terminology in this provision, the Commission is revising it to refer to political committees' ''websites and internet applications.''

Third, the Commission is updating the definition of ''federal election activity'' to exclude *de minimis* costs incurred by a state, district, or local party committee for certain activities associated with apps.[152] Previously, the definition of ''federal election activity'' excluded *de minimis* costs associated with posting certain general voting information on the ''website'' of a state, district, or local party committee or association of state or local

[141] Internet Communications, 71 FR 18589 (Apr. 12, 2006).

[142] *See id.* at 18593 (recognizing ''the important purpose of BCRA in preventing actual and apparent corruption and the circumvention of [FECA]'').

[143] Internet Communications, 71 FR 18589, 18594–95 (Apr. 12, 2006).

[144] SNPRM, 87 FR at 75519.

[145] 52 U.S.C. 30101(22); *see also id.* 30120(a); 11 CFR 110.26.

[146] SNPRM, 87 FR at 75519.

[147] *See* Internet Communications, 71 FR at 18594–95.

[148] Other than disclaimer requirements, the changes affect the following regulatory provisions: the restrictions on funding of Federal election activity by political party committees and State and local candidates (52 U.S.C. 30101(20)); the allocation of costs of certain communications by some political committees under 11 CFR 106.6(b); and the determination that certain communications must be treated as contributions if coordinated with a Federal candidate or political party committee under 11 CFR 109.21 and 109.37.

[149] *See* 11 CFR 110.11(a)(1).

[150] Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 FR 76962, 76964 (Dec. 13, 2002).

[151] *Id.*

[152] 11 CFR 100.24.

candidates.[153] When the Commission adopted these exclusions in 2010, it recognized the ''administrative complexities'' that state, district, and local party committees and associations of state and local candidates would face in tracking the ''nominal, incidental'' costs of the enumerated activities.[154] The Commission also recognized that many of these activities did not involve any costs and, for those that did, the costs would be ''so small that—even aggregated over a long period of time—they would not result in any meaningful evasion of BCRA's soft money restrictions.'' [155] The Commission now is updating 11 CFR 100.24(c)(7) by providing that the *de minimis* exception also applies to the same enumerated activities when conducted via internet apps of state, district, and local party committees and associations of state and local candidates. The Commission believes that the reasons for excluding this activity from the definition of federal election activity when conducted on a party committee's website—*i.e.,* its *de minimis* incremental cost and the administrative difficulty of determining such cost—apply equally to making the specified information available on a party committee's app.

Finally, the Commission is revising references to ''World Wide Web site,'' ''Web site'' or ''web site'' to read ''website'' in 11 CFR 4.4(g), 100.29(b)(6)(i) and (ii), 100.73, 100.94(b), 100.132, 104.22(b)(2)(i) and (ii), 110.1(c)(1)(iii), 110.2(e)(2), and 110.17(e)(1) and (2); ''internet website'' to read ''website'' in 11 CFR 104.22(a)(6)(ii)(A)(2); ''World Wide Web address'' to read ''website address'' in 11 CFR 110.11(b)(3); and ''Web address'' and ''Web page'' to read ''website address'' and ''web page'' in 11 CFR 300.2(m)(1)(iii). As with the other terminological updates discussed above, none of these proposed revisions affect a substantive change in the regulations.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The Commission certifies that the attached rules would not have a significant economic impact on a substantial number of small entities. The rules would clarify and update existing regulatory language, codify certain existing Commission precedent regarding electronic transactions and communications, and provide political committees and other entities with more flexibility in meeting FECA's recordkeeping and filing requirements. The rules would not impose new recordkeeping, reporting, or financial obligations on political committees or commercial vendors. The Commission therefore certifies that the rules would not have a significant economic impact on a substantial number of small entities.

List of Subjects

11 CFR Part 1

Privacy.

11 CFR Part 4

Freedom of information.

11 CFR Part 5

Archives and records.

11 CFR Part 6

Civil rights, Individuals with disabilities.

11 CFR Part 100

Elections.

11 CFR Part 102

Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 103

Banks and banking, Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 106

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 108

Elections, Reporting and recordkeeping requirements.

11 CFR Part 109

Coordinated and independent expenditures.

11 CFR Part 110

Campaign funds, Political committees and parties.

11 CFR Part 111

Administrative practice and procedure, Elections, Law enforcement, Penalties.

11 CFR Part 112

Administrative practice and procedure, Elections.

11 CFR Part 114

Business and industry, Elections, Labor.

11 CFR Part 116

Administrative practice and procedure, Business and industry, Credit, Elections, Political candidates, Political committees and parties.

11 CFR Part 200

Administrative practice and procedure.

11 CFR Part 201

Administrative practice and procedure.

11 CFR Part 300

Campaign funds, Nonprofit organizations, Political committees and parties, Political candidates, Reporting and recordkeeping requirements.

11 CFR Part 9003

Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9004

Campaign funds.

11 CFR Part 9007

Administrative practice and procedure, Campaign funds.

11 CFR Part 9032

Campaign funds.

11 CFR Part 9033

Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9034

Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9035

Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9036

Administrative practice and procedure, Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9038

Administrative practice and procedure, Campaign funds.

11 CFR Part 9039

Campaign funds, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Federal Election Commission amends 11 CFR chapter I as follows:

PART 1—PRIVACY ACT

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

[153] 11 CFR 100.24(c)(7)(i)–(iii).

[154] *See* Definition of Federal Election Activity, 75 FR 55257, 55265 (Sept. 10, 2010).

[155] *Id.*

Authority: 5 U.S.C. 552a.

§ 1.3 [Amended]

■ 2. In § 1.3, amend paragraph (b) by removing the phrase ''request assistance by mail or in person from the Commission's Chief Privacy Officer during the hours of 9 a.m. to 5:30 p.m. at the street address identified in the definition of ''Commission'' in § 1.2'' and adding in its place the phrase ''request assistance either in person from the Chief Privacy Officer during the hours of 9 a.m. to 5:30 p.m. or by filing a request for assistance, addressed to the Chief Privacy Officer, pursuant to 11 CFR 100.19(g)''.

§ 1.4 [Amended]

■ 3. In § 1.4, amend paragraph (a) removing the phrase ''made at the Federal Election Commission at the street address identified in the definition of ''Commission'' in § 1.2, and to the system manager identified in the notice describing the systems of records, either in writing or in person'' and adding in its place the phrase ''addressed to the system manager identified in the notice describing the systems of records, either in person or by filing the request pursuant to 11 CFR 100.19(g)''.

PART 4—PUBLIC RECORDS AND THE FREEDOM OF INFORMATION ACT

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

Authority: 5 U.S.C. 552, as amended.

§ 4.1 [Amended]

■ 5. In § 4.1 amend paragraph (j) as follows:
■ a. Remove the word ''microform,''; and
■ b. Remove the phrase ''machine readable documentation (*e.g.,* magnetic tape or disk)'' and add in its place the phrase ''digital storage device''.

§ 4.4 [Amended]

■ 6. In § 4.4 amend paragraph (g) by removing ''World Wide website'' and adding in its place ''website''.

§ 4.5 [Amended]

■ 7. Amend § 4.5 as follows:
■ a. In paragraph (a)(4)(i), remove the phrase ''addressed to the Chief FOIA Officer, Federal Election Commission, at the street address identified in the definition of ''Commission'' in § 1.2, and shall indicate clearly on the envelope'' and add in its place the phrase ''addressed to the Chief FOIA Officer and filed pursuant to 11 CFR 100.19(g), and shall indicate clearly on the envelope or subject line, or in a similarly prominent location,''; and
■ b. In paragraph (a)(4)(iv), remove the phrase ''addressed to the Chief FOIA Officer, Federal Election Commission, at the street address identified in the definition of ''Commission'' in § 1.2'' and add in its place the phrase ''addressed to the Chief FOIA Officer and filed pursuant to 11 CFR 100.19(g)''.

§ 4.7 [Amended]

■ 8. In § 4.7 amend paragraph (b)(1) by removing the phrase ''addressed to Chief FOIA Officer, Federal Election Commission, at the street address identified in the definition of ''Commission'' in § 1.2'' and adding in its place the phrase ''addressed to the Chief FOIA Officer and filed pursuant to 11 CFR 100.19(g)''.

§ 4.8 [Amended]

■ 9. Amend § 4.8 as follows:
■ a. In paragraph (b), remove the phrase ''envelope or other cover and at the top of the first page'' and add in its place the phrase ''envelope or subject line, or in a similarly prominent location,''; and
■ b. In paragraph (c), remove the phrase ''delivered or addressed to the Chief FOIA Officer, Federal Election Commission, at the street address identified in the definition of ''Commission'' in § 1.2'' and add in its place the phrase ''addressed to the Chief FOIA Officer and filed pursuant to 11 CFR 100.19(g)''.
■ 10. Amend § 4.9 by:
■ a. Removing paragraph (a)(2);
■ b. Redesignating paragraphs (a)(3) and (4) as paragraphs (a)(2) and (3), respectively;
■ c. In newly redesignated paragraph (a)(2), removing the phrase ''computer disks'' and adding in its place the phrase ''digital storage devices''; and
■ d. Revising paragraphs (c)(4) and (5).
The revisions read as follows:

§ 4.9 Fees.

* * * * *
(c) * * *
(4) For a paper photocopy of a record, the fee will be $.07 per page, which has been calculated to include staff time. For other forms of duplication, including copies produced by computer, the Commission will charge the direct costs, including staff time and the actual cost of any digital storage device provided. The Commission will charge $7.50 for certification of a document. The Commission will not charge a fee for ordinary packaging and mailing of records requested. When a request for special mailing or delivery services is received the Commission will package the records requested. The requestor shall make all arrangements for pick-up and delivery of the requested materials. The requestor shall pay all costs associated with special mailing or delivery services directly to the courier or mail service.
(5) The Commission will advise the requestor of the identity of any private contractor who will perform the duplication services. If fees are charged for such services, they shall be made payable to that private contractor and shall be forwarded to the Commission.
* * * * *

PART 5—ACCESS TO PUBLIC DISCLOSURE AND MEDIA RELATIONS DIVISION DOCUMENTS

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

Authority: 52 U.S.C. 30108(d), 30109(a)(4)(B)(ii), 30111(a); 31 U.S.C. 9701.

§ 5.4 [Amended]

■ 12. Amend § 5.4(a)(5) by removing ''Letter requests'' and adding in its place ''Requests''.

§ 5.5 [Amended]

■ 13. Amend § 5.5 as follows:
■ a. In paragraph (a), remove the phrase ''mail. The Public Disclosure and Media Relations Division is open Monday through Friday between the hours of 9 a.m. and 5 p.m. and is located at the Federal Election Commission at the street address identified in the definition of ''Commission'' in § 1.2'' and add in its place the phrase ''filing a request pursuant to 11 CFR 100.19(g)''; and
■ b. In paragraph (c), remove the phrase ''addressed to the Chief FOIA Officer, Federal Election Commission, at the street address identified in the definition of ''Commission'' in § 1.2'' and add in its place the phrase ''addressed to the Chief FOIA Officer and filed pursuant to 11 CFR 100.19(g)''.
■ 14. Amend § 5.6 as follows:
■ a. Revise paragraph (a);
■ b. Remove paragraph (b);
■ c. Redesignate paragraphs (c) and (d) as paragraphs (b) and (c), respectively; and
■ d. Revise newly redesignated paragraph (b).
The revisions read as follows:

§ 5.6 Fees.

(a) Fees may be charged for copies of records which are furnished to a requester under this part and for the staff time spent in locating and reproducing such records at the rate of $.05 per page for paper copies, including paper copies from microfilm; $4.50 per half hour of staff time after the

first half hour; and $7.50 for certification of a document. Such fees shall not exceed the Commission's direct cost of processing requests for those records computed on the basis of the actual number of copies produced and the staff time expended in fulfilling the particular request.

(b) In the event the anticipated fees for all pending requests from the same requester exceed $25.00, records will not be searched, nor copies furnished, until the requester pays, or makes acceptable arrangements to pay, the total amount due. If any fee is not precisely ascertainable, an estimate will be made by the Commission and the requester will be required to forward the fee so estimated. In the event any advance payment differs from the actual fee, an appropriate adjustment will be made at the time the copies are made available by the Commission.

* * * * *

PART 6—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE FEDERAL ELECTION COMMISSION

■ 15. The authority citation for part 6 continues to read as follows:

Authority: 29 U.S.C. 794.

§ 6.170 [Amended]

■ 16. Amend § 6.170 as follows:

■ a. In paragraph (d)(3), remove the phrase ''filed under this part shall be addressed to the Rehabilitation Act Officer, Federal Election Commission, at the street address identified in the definition of ''Commission'' in § 1.2'' and add in its place the phrase ''under this part shall be addressed to the Rehabilitation Act Officer and filed pursuant to 11 CFR 100.19(g)'';

■ b. In paragraph (g), remove the phrase ''in a letter containing'' and add in its place the phrase ''in writing. This notification will contain'';

■ c. In paragraph (h), remove the word ''letter'' and add in its place the word ''notification''; and

■ d. In paragraph (i), remove the phrase '', Federal Election Commission, at the street address identified in the definition of ''Commission'' in § 1.2'' and add in its place the phrase ''and filed pursuant to 11 CFR 100.19(g)''.

PART 100—SCOPE AND DEFINITIONS (52 U.S.C. 30101)

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

Authority: 52 U.S.C. 30101, 30102(g), 30104, 30111(a)(8), and 30114(c).

§ 100.3 [Amended]

■ 18. Amend § 100.3(a)(3) by removing the phrase ''by letter'' and adding in its place ''in writing''.

■ 19. In § 100.19, revise the introductory text and paragraph (a) and add paragraph (g) to read as follows:

§ 100.19 File, filed, or filing (52 U.S.C. 30104(a)).

With respect to documents required to be filed with the Commission under 11 CFR parts 101, 102, 104, 105, 107, 108, and 109, and any modifications or amendments thereto, the terms *file, filed,* and *filing* mean one of the actions set forth in paragraphs (a) through (f) of this section. With respect to documents to be filed with the Commission under any other provision of 11 CFR, the terms *file, filed,* and *filing* mean one of the actions set forth in paragraph (g) of this section. For purposes of this section, document means any report, statement, notice, designation, request, petition, or other writing to be filed with the Commission.

(a) *Where to deliver reports.* Except for documents electronically filed under paragraph (c) of this section, a document is timely filed upon delivery to the Federal Election Commission as required by 11 CFR part 105, by the close of business on the prescribed filing date.

* * * * *

(g) A document may be filed in person or by mail, including priority mail or express mail, or overnight delivery service, with the Federal Election Commission, or by any alternative means, including electronic, that the Commission may prescribe.

§ 100.24 [Amended]

■ 20. Amend § 100.24 as follows:

■ a. In paragraph (c)(7)(i), by removing the terms ''Web site'' and ''web page'' and adding in their places the phrase ''website or internet application'' wherever they appear; and

■ b. In paragraphs (c)(7)(ii) and (iii), by removing the term ''Web site'' and adding in its place the phrase ''website or internet application'' wherever it appears.

■ 21. Amend § 100.26 by revising the second sentence and adding a third sentence to read as follows:

§ 100.26 Public communications (52 U.S.C. 30101(22)).

* * * The term *general public political advertising* shall not include communications over the internet, except for communications placed or promoted for a fee on another person's website, digital device, application, or advertising platform. A public communication is promoted for a fee where a payment is made to a website, digital device, application, or advertising platform in order to increase the circulation, prominence, or availability of the communication on that website, digital device, application, or advertising platform.

§ 100.29 [Amended]

■ 22. Amend § 100.29 as follows:

■ a. In paragraphs (b)(6)(i) and (ii), remove the term ''Web site'' and add in its place the term ''website'' wherever it appears; and

■ b. In paragraph (b)(6)(ii)(A), remove the phrase ''written documentation'' and add in its place the phrase ''a writing''.

■ 23. Add § 100.34 to subpart A to read as follows:

§ 100.34 Record.

(a) A *record* is information that is inscribed on a tangible medium or that is stored in an electronic or other medium from which the information can be retrieved and reviewed in visual or aural form.

(b) Any person who provides to the Commission a record stored in an electronic or other non-tangible medium shall, upon request of the Commission, provide at no cost to the Commission any equipment and software necessary to enable the Commission to retrieve and review the information in the record. The Commission may request such equipment and software when the Commission cannot retrieve and review the information using the Commission's existing equipment and software.

■ 24. Add § 100.35 to subpart A to read as follows:

§ 100.35 Writing, written.

Written, in writing, or *a writing* means consisting of letters, words, numbers, or their equivalent set down in any medium or form, including paper, email or other electronic message, computer file, or digital storage device.

■ 25. Add § 100.36 to subpart A to read as follows:

§ 100.36 Signature, electronic signature.

(a) A *signature* is an individual's name or mark on a writing or record that identifies the individual and authenticates the writing or record. A *signature* includes an *electronic signature,* unless otherwise specified.

(b) An *electronic signature* is an electronic word, image, symbol, or process that an individual attaches to or associates with a writing or record to identify the individual and authenticate the writing or record. Examples of

electronic signatures include a digital image of a handwritten signature, or a secure, digital code attached to an electronically transmitted message that uniquely identifies and authenticates the sender.

(c) A writing or record may be sworn, made under oath, or otherwise certified or verified under penalty of perjury, by electronic signature. A writing or record may be notarized electronically pursuant to applicable State law.

§ 100.73 [Amended]

■ 26. Amend the introductory text of § 100.73 by removing the term ''Web site'' and adding in its place the term ''website''.

§ 100.82 [Amended]

■ 27. Amend § 100.82(e)(1)(i) and (e)(2)(ii) by removing the word ''documentation'' and adding in its place the word ''records'' wherever it appears.

§ 100.93 [Amended]

■ 28. Amend the introductory text of § 100.93(j)(1), (2), and (3) by removing the word ''documentation'' and adding in its place the term ''a record'' wherever it appears.

§ 100.94 [Amended]

■ 29. Amend § 100.94(b) by removing the term ''Web site'' and adding in its place the term ''website'' wherever it appears.

§ 100.132 [Amended]

■ 30. Amend the introductory text of § 100.132 by removing ''Web site'' and adding in its place ''website''.

§ 100.142 [Amended]

■ 31. Amend § 100.142(e)(1)(i) and (e)(2)(ii) by removing the word ''documentation'' and adding in its place the word ''records'' wherever it appears.

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (52 U.S.C. 30103)

■ 32. The authority citation for part 102 continues to read as follows:

Authority: 52 U.S.C. 30102, 30103, 30104(a)(11), 30111(a)(8), and 30120.

■ 33. Amend § 102.6 as follows:

■ a. In the introductory text of paragraph (c)(2), remove the phrase ''fund in a bill'' and add in its place the phrase ''fund with a bill''; and

■ b. Revise paragraph (c)(3).

The revision reads as follows:

§ 102.6 Transfers of funds; collecting agents.

* * * * *

(c) * * *

(3) *Combining contributions with other payments.* A contributor may write a check or authorize a credit card or electronic payment that represents both a contribution and payment of dues or other fees. The combined payment must be made from the contributor's personal account or on a non-repayable corporate drawing account of the individual contributor. Under a payroll deduction plan, an employer may make a payment on behalf of its employees to a union or its agent that represents a combined payment of voluntary contributions to the union's separate segregated fund and union dues or other employee deductions.

* * * * *

■ 34. In § 102.8, revise the last sentence of paragraph (a) and the last sentence of paragraph (b)(2), and add paragraph (d) to read as follows:

§ 102.8 Receipt of contributions (52 U.S.C. 30102(b)).

(a) * * * Date of receipt shall be the date such person obtains possession of the contribution or, for a contribution made in an electronic transaction in which the receipt of authorization precedes the receipt of funds, obtains the contributor's authorization of the transaction.

(b) * * *

(2) * * * Date of receipt shall be the date such person obtains possession of the contribution or, for a contribution made in an electronic transaction in which the receipt of authorization precedes the receipt of funds, obtains the contributor's authorization of the transaction.

* * * * *

(d) Every person whose usual and normal business involves the processing and transmission of payments and who processes a contribution to a political committee in the ordinary course of its business will satisfy the requirements of paragraphs (a) and (b) of this section if such person transmits funds and contributor information to the recipient political committee within the time periods prescribed in paragraphs (a) and (b) of this section for forwarding contributions.

■ 35. Amend § 102.9 by:

■ a. Revising paragraph (a)(4);

■ b. In paragraph (b)(2) introductory text, paragraphs (b)(2)(i)(B) and (b)(2)(ii), removing the phrase ''cancelled check'' and adding in its place the phrase ''canceled check or record of electronic transfer'';

■ c. In paragraph (b)(2)(i)(B), removing the word ''documentation'' and adding in its place the word ''record'';

■ d. In paragraph (b)(2)(ii), removing the word ''documentation'' and adding in its place the words ''a record'';

■ f. Removing paragraph (b)(2)(iii); and

■ g. Revising paragraph (f).

The revisions read as follows:

§ 102.9 Accounting for contributions and expenditures (52 U.S.C. 30102(c)).

* * * * *

(a) * * *

(4) In addition to the account to be kept under paragraph (a)(1) of this section, for contributions in excess of $50, the treasurer of a political committee or an agent authorized by the treasurer shall maintain a record of each contribution received. A record of a contribution by check or written instrument must contain an image of that instrument. A record of the receipt of a contribution must include sufficient information to associate that contribution with its deposit in the political committee's campaign depository, such as, for example, a batch number.

* * * * *

(f) The treasurer shall maintain the records required by 11 CFR 110.1(l), concerning designations, redesignations, reattributions, and the dates of contributions. If the treasurer does not maintain these records, 11 CFR 110.1(l)(5) shall apply.

§ 102.10 [Amended]

■ 36. Amend § 102.10 by removing the phrase ''check or similar draft drawn on'' and adding in its place the phrase ''check or similar draft, including electronic transfer, from''.

§ 102.11 [Amended]

■ 37. Amend § 102.11 by removing ''journal'' and add in its place ''record'' wherever it appears.

PART 103—CAMPAIGN DEPOSITORIES (52 U.S.C. 30102(H))

■ 38. The authority citation for part 103 continues to read as follows:

Authority: 52 U.S.C. 30102(h), 30111(a)(8).

■ 39. Revise § 103.3(a) to read as follows:

§ 103.3 Deposit of receipts and disbursements (52 U.S.C. 30102(h)(1)).

(a)(1) All receipts by a political committee shall be deposited in account(s) established pursuant to 11 CFR 103.2, except that any contribution may be, within 10 days of the treasurer's receipt, returned to the contributor without being deposited. The treasurer

of the committee shall be responsible for making such deposits. All deposits shall be made within 10 days of the treasurer's receipt. Contributions deposited in a merchant account of a payment processor described in 11 CFR 102.8(d) in the ordinary course of that payment processor's business are not receipts by the committee, but are, instead, contributions to be forwarded by that payment processor under 11 CFR 102.8.

(2) A committee shall make all disbursements by check or similar draft, including electronic transfer, from an account at its designated campaign depository, except for expenditures of $100 or less made from a petty cash fund maintained pursuant to 11 CFR 102.11. Funds may be transferred from the depository for investment purposes, but shall be returned to the depository before such funds are used to make expenditures.

* * * * *

PART 104—REPORTS BY POLITICAL COMMITTEES AND OTHER PERSONS (52 U.S.C. 30104)

■ 40. The authority citation for part 104 continues to read as follows:

Authority: 52 U.S.C. 30101(1), 30101(8), 30101(9), 30102(g) and (i), 30104, 30111(a)(8) and (b), 30114, 30116, 36 U.S.C. 510.

§ 104.2 [Amended]

■ 41. Amend § 104.2(b) by removing the phrase ''or at the street address identified in the definition of ''Commission'' in § 1.2''.

§ 104.3 [Amended]

■ 42. Amend § 104.3(e)(5) by removing the phrase ''at the street address identified in the definition of ''Commission'' in § 1.2,''.

§ 104.4 [Amended]

■ 43. Amend § 104.4(d)(2) by removing the phrase ''typing the treasurer's name'' and adding in its place the phrase ''electronic signature''.

§ 104.6 [Amended]

■ 44. Amend § 104.6(c)(1) by removing the phrase '', telephone or telegram'' and adding in its place the phrase ''or telephone''.

§ 104.10 [Amended]

■ 45. Amend § 104.10(a)(4) and (b)(5) by removing the word ''documents'' and adding in its place the word ''records''.

§ 104.14 [Amended]

■ 46. Amend § 104.14 as follows:

■ a. In paragraph (b)(4)(iv), remove the word ''documentation'' and add in its place the word ''records''; and

■ b. In paragraph (b)(4)(v), remove the word ''Documentation for'' and add in its place the words ''Records of''.

§ 104.17 [Amended]

■ 47. Amend § 104.17(a)(4) and (b)(4) by removing the word ''documents'' and adding in its place the word ''records'' wherever it appears.

§ 104.21 [Amended]

■ 48. Amend § 104.21(c)(3) by removing the phrase ''at the street address identified in the definition of ''Commission'' in § 1.2''.

§ 104.22 [Amended]

■ 49. Amend § 104.22 as follows:

■ a. In paragraph (a)(6)(ii)(A)(2), remove the term ''Internet Web site'' and add in its place the term ''website'';

■ b. In paragraphs (b)(2)(i) and (ii), remove the words ''Web sites'' and add in its place the word ''websites'' wherever it appears; and

■ c. In paragraph (b)(2)(ii), remove the words ''Web site'' and add in its place the word ''website'' wherever it appears.

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

■ 50. The authority citation for part 106 continues to read as follows:

Authority: 52 U.S.C. 30111(a)(8), 30116(b), 30116(g).

§ 106.2 [Amended]

■ 51. Amend § 106.2 as follows:

■ a. In paragraphs (a)(1), (b)(2)(ii), and (b)(2)(v), remove the word ''documentation'' and add in its place the word ''records''; and

■ b. In paragraph (b)(2)(iii)(D), remove the phrase ''supplies, and telephone'' and add in its place the phrase ''supplies, internet service, and telephone''.

PART 108—FILING COPIES OF REPORTS AND STATEMENTS WITH STATE OFFICERS (52 U.S.C. 30113)

■ 52. The authority citation for part 108 continues to read as follows:

Authority: 52 U.S.C. 30102(g), 30104(a)(2), 30111(a)(8), 30113, 30143.

§ 108.6 [Amended]

■ 53. In § 108.6(b), remove the phrase ''in facsimile copy by microfilm or otherwise'' and add in its place ''by copy''.

PART 109—COORDINATED AND INDEPENDENT EXPENDITURES (52 U.S.C. 30101(17), 30116(A) AND (D), AND PUB. L. 107–155 SEC. 214(C))

■ 54. The authority citation for part 109 continues to read as follows:

Authority: 52 U.S.C. 30101(17), 30104(c), 30111(a)(8), 30116, 30120; Sec. 214(c), Pub. L. 107–155, 116 Stat. 81.

§ 109.10 [Amended]

■ 55. In § 109.10(e)(2)(ii), remove the phrase ''typing the treasurer's name'' and add in its place the phrase ''electronic signature''.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

■ 56. The authority citation for part 110 continues to read as follows:

Authority: 52 U.S.C. 30101(8), 30101(9), 30102(c)(2) and (g), 30104(i)(3), 30111(a)(8), 30116, 30118, 30120, 30121, 30122, 30123, 30124, and 36 U.S.C. 510.

■ 57. Amend § 110.1 by:

■ a. In paragraph (b)(3)(i)(A), removing the phrase ''using a committee check or draft'' and adding in its place the phrase ''using a committee check or similar draft, including electronic transfer'';

■ b. In paragraph (b)(4)(i), removing the phrase ''is made by check, money order, or other negotiable instrument which'';

■ c. In paragraph (b)(5)(ii)(B)(*6*), removing the phrase ''including electronic mail'';

■ d. In paragraph (b)(5)(ii)(C)(*7*), removing the phrase '', including electronic mail'';

■ e. In paragraph (b)(6), adding a new fifth sentence after ''11 CFR 110.1(l)(4).'';

■ f. In paragraph (c)(1)(iii), removing the term ''Web site'' and add, in its place the term ''website'';

■ g. In paragraph (k)(1), removing the phrase ''include the signature of each contributor on the check, money order, or other negotiable instrument or in a separate writing'' and adding in its place the phrase ''be indicated by the signature of each contributor in writing'';

■ h. In paragraph (k)(3)(ii)(B)(*3*), removing '', including electronic mail'';

■ i. In paragraph (l)(1), removing the phrases ''copy'' and ''full-size photocopy of the check or written instrument'' and adding in their places the phrases ''record'' and ''record that contains a complete image of that instrument'', respectively;

■ j. In paragraph (l)(4)(i), removing the word ''copy'' and adding in its place the word ''record'';

■ k. In paragraph (l)(4)(ii), removing the phrase ''full-size photocopy of'' and adding in its place the phrase ''record that contains a complete image of''; and
■ l. In paragraph (l)(6), removing the word ''documentation'' and adding in its place the words ''a record'' wherever it appears, and removing the word ''copy'' and add in its place the word ''record'' wherever it appears.

The addition reads as follows:

§ 110.1 Contributions by persons other than multicandidate political committees (52 U.S.C. 30116(a)(1)).

* * * * *

(b) * * *

(6) * * * A contribution made in an electronic transaction is considered to be made when the contributor authorizes the transaction. * * *

* * * * *

■ 58. Amend § 110.2 by:
■ a. In paragraph (b)(4)(i), remove ''is made by check, money order, or other negotiable instrument which'';
■ b. In paragraph (b)(6), add a fifth sentence after ''11 CFR 110.1(l)(4).''; and
■ c. In paragraph (e)(2), remove ''Web site'' and add in its place ''website''.

The addition reads as follows:

§ 110.2 Contributions by multicandidate political committees (52 U.S.C. 30116(a)(2)).

* * * * *

(b) * * *

(6) * * *A contribution made in an electronic transaction is considered to be made when the contributor authorizes the transaction. * * *

* * * * *

■ 59. Amend § 110.6 by:
■ a. Revising paragraph (b)(1);
■ b. In paragraph (c)(1)(ii), removing the phrase ''by letter'' and adding in its place the phrase ''the report shall be provided in writing'';
■ c. In paragraph (c)(1)(iv)(C), removing the phrase ''cash or by the contributor's check or by the conduit's check'' and adding in its place the phrase ''cash, by the contributor's check, by the conduit's check, or by electronic transfer''; and
■ d. In paragraph (c)(1)(v), removing the phrase ''by letter'' and adding in its place the phrase ''in writing''.

The revision reads as follows:

§ 110.6 Earmarked contributions (52 U.S.C. 30116(a)(8)).

* * * * *

(b) * * *

(1) For purposes of this section, *earmarked* means a designation, instruction, or encumbrance, whether direct or indirect, express or implied, oral or written, which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee. A contributor's authorization that a commercial payment processor, whose usual and normal business is to process payments, transmit funds from the contributor to the designated candidate or authorized committee in the commercial payment processor's ordinary course of business does not in itself constitute an earmark.

* * * * *

■ 60. Amend § 110.11 by:
■ a. In paragraph (a)(1), removing the phrase ''Internet websites'' and adding in its place the phrase ''websites and internet applications'';
■ b. In paragraph (b)(3), removing the phrase ''World Wide Web address'' and adding in its place the phrase ''website address''; and
■ c. Revising paragraph (c)(5)(i).

The revision reads as follows:

§ 110.11 Communications; advertising; disclaimers (52 U.S.C. 30120).

* * * * *

(c) * * *

(5) * * *

(i) For purposes of this section, *internet public communication* means any public communication over the internet that is placed or promoted for a fee on another person's website, digital device, application, or advertising platform. A public communication is promoted for a fee where a payment is made to a website, digital device, application, or advertising platform in order to increase the circulation, prominence, or availability of the communication on that website, digital device, application, or advertising platform.

* * * * *

§ 110.17 [Amended]

■ 61. Amend § 110.17(e)(1) and (2) by removing the words ''Web site'' and adding in their place the word ''website'' wherever it appears.

PART 111—COMPLIANCE PROCEDURE (52 U.S.C. 30109, 30107(A))

■ 62. The authority citation for part 111 continues to read as follows:

Authority: 52 U.S.C. 30102(i), 30109, 30107(a), 30111(a)(8); 28 U.S.C. 2461 note; 31 U.S.C. 3701, 3711, 3716–3719, and 3720A, as amended; 31 CFR parts 285 and 900–904.

§ 111.4 [Amended]

■ 63. Amend § 111.4 as follows:
■ a. In paragraph (a), remove the phrase ''to the General Counsel of the Federal Election Commission at the street address identified in the definition of ''Commission'' in § 1.2'' and add in its place the phrase ''addressed to the General Counsel''; and remove the phrase ''three (3) copies'' and add in its place ''three (3) copies of any complaint not filed electronically''; and
■ b. In paragraph (d)(4), remove the phrase ''documentation supporting the facts alleged if such documentation is'' and add in its place the phrase ''records supporting the facts alleged if such records are''.

§ 111.5 [Amended]

■ 64. Amend § 111.5 as follows:
■ a. In paragraph (a), remove the word ''enclose'' and add in its place the word ''provide''; and
■ b. In paragraph (b), remove the word ''enclosed'' and add in its place the word ''provided''.

§ 111.6 [Amended]

■ 65. Amend § 111.6(a) by removing the phrase ''a letter or memorandum'' and adding in its place the phrase ''a written response''.

§ 111.9 [Amended]

■ 66. Amend § 111.9(a) and (b) by removing the phrase ''by letter'' and adding in its place the phrase ''in writing'' wherever it appears.

§ 111.12 [Amended]

■ 67. Amend § 111.12 as follows:
■ a. In paragraph (a), remove the phrase ''documentary or other tangible'' and add in its place the phrase ''records or other''; and
■ b. In paragraph (b), remove the word ''documents'' and add in its place the word ''records''.

§ 111.13 [Amended]

■ 68. Amend § 111.13(c) and (d) by removing the phrase ''method whereby'' and adding in its place the phrase ''method, including electronically, whereby'' wherever it appears.

§ 111.15 [Amended]

■ 69. Amend § 111.15 as follows:
■ a. In paragraph (a), remove the phrase ''of the Federal Election Commission at the street address identified in the definition of ''Commission'' in § 1.2. If possible, three (3) copies should be submitted''; and
■ b. In paragraph (c), remove the word ''documents'' and add in its place the word ''records''.

■ 70. Amend § 111.16 by:
■ a. In paragraph (b), removing the word ''enclose'' and adding in its place the word ''provide'';
■ b. Revising paragraph (c).

The revision reads as follows:

§ 111.16 The probable cause to believe recommendation; briefing procedures (52 U.S.C. 30109 (a)(3)).

* * * * *

(c) Within fifteen (15) days from receipt of the General Counsel's brief, respondent may file a brief with the Commission Secretary, setting forth respondent's position on the factual and legal issues of the case.

* * * * *

§ 111.17 [Amended]

■ 71. Amend § 111.17(a) and (b) by removing the phrase ''by letter'' and adding in its place the phrase ''in writing'' wherever it appears.

§ 111.18 [Amended]

■ 72. Amend § 111.18(d) by removing the phrase ''by letter'' and adding in its place the phrase ''in writing''.

§ 111.23 [Amended]

■ 73. Amend § 111.23 as follows:

■ a. In the introductory text to paragraph (a), remove the phrase ''so advise the Commission by sending a letter of representation signed by the respondent, which letter shall state the following'' and add in its place the phrase ''give the Commission a written notice of representation signed by the respondent, which shall include'';

■ b. In paragraph (a)(1), remove the word ''address'' and add in its place the words ''address, email address''; and

■ c. In paragraph (b), remove the phrase ''a letter of representation'' and add in its place the phrase ''this notice''.

§ 111.35 [Amended]

■ 74. Amend § 111.35(e) by removing ''documentation'' and adding in its place ''records''.

§ 111.36 [Amended]

■ 75. Amend § 111.36 as follows:

■ a. In paragraph (b), remove the word ''documentation'' and add in its place the word ''records'' wherever it appears;

■ b. In paragraphs (c) and (d), remove the word ''documents'' and add in its place the word ''records'' wherever it appears; and

■ c. In paragraph (d), remove the word ''document(s)'' and add in its place the word ''records''.

■ d. In paragraph (e), remove the word ''documents'' and add in its place the word ''records''.

§ 111.37 [Amended]

■ 76. Amend § 111.37(a) and (b) by removing the phrase ''by letter'' and adding in its place the phrase ''in writing'' wherever it appears.

§ 111.40 [Amended]

■ 77. Amend § 111.40(a) by removing the phrase ''by letter'' and adding in its place the phrase ''in writing''.

PART 112—ADVISORY OPINIONS (52 U.S.C. 30108)

■ 78. The authority citation for part 112 continues to read as follows:

Authority: 52 U.S.C. 30108, 30111(a)(8).

§ 112.1 [Amended]

■ 79. Amend § 112.1(e) by removing the phrase ''sent to the Federal Election Commission, Office of General Counsel, at the street address identified in the definition of ''Commission'' in § 1.2'' and adding in its place the phrase ''addressed to the Office of General Counsel and filed with the Commission''.

§ 112.2 [Amended]

■ 80. Amend § 112.2(b) by removing the phrase ''and purchase at the Public Disclosure and Media Relations Division of the Commission'' and adding in its place the phrase ''at the Public Disclosure and Media Relations Division of the Commission and on the Commission's website''.

§ 112.3 [Amended]

■ 81. Amend § 112.3(d) by removing the phrase ''sent to the Federal Election Commission, Office of General Counsel, at the street address identified in the definition of ''Commission'' in § 1.2'' and adding in its place the phrase ''filed with the Office of General Counsel''.

§ 112.4 [Amended]

■ 82. Amend § 112.4(g) by removing the phrase ''sent by mail, or personally delivered'' and adding in its place the phrase ''be provided''.

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

■ 83. The authority citation for part 114 continues to read as follows:

Authority: 52 U.S.C. 30101(8), 30101(9), 30102, 30104, 30107(a)(8), 30111(a)(8), 30118.

§ 114.1 [Amended]

■ 84. Amend § 114.1(g) by removing the phrase ''mailings, oral requests'' and adding in its place the phrase ''mailings, emails, oral requests''.

§ 114.6 [Amended]

■ 85. Amend § 114.6(d)(2)(iii) by removing the phrase ''check drawn on that account'' and adding in its place the phrase ''check or similar draft, including electronic transfer''.

§ 114.8 [Amended]

■ 86. Amend § 114.8 as follows:

■ a. In paragraphs (d)(2) and (3), remove the word ''copy'' and add in its place the word ''record''; and

■ b. In paragraph (d)(3), remove the word ''mailing'' and add in its place the word ''solicitation''.

§ 114.9 [Amended]

■ 87. Amend § 114.9(d) by removing the word ''typewriters'' and adding in its place the word ''computers''.

PART 116—DEBTS OWED BY CANDIDATES AND POLITICAL COMMITTEES

■ 88. The authority citation for part 116 continues to read as follows:

Authority: 52 U.S.C. 30103(d), 30104(b)(8), 30111(a)(8), 30116, 30118, and 30141.

§ 116.8 [Amended]

■ 89. Amend § 116.8 as follows:

■ a. In the introductory text of paragraph (b), remove the phrase ''by letter'' and add in its place the phrase ''in writing''; and

■ b. In the introductory text of paragraph (b), remove the phrase ''The letter'' and add in its place the phrase ''The notification'' wherever it appears.

§ 116.9 [Amended]

■ 90. Amend § 116.9(a)(2) by removing the phrase ''current address and telephone number, and has attempted to contact the creditor by registered or certified mail, and either in person or by telephone'' and adding in its place the phrase ''current address, telephone number, and email address, and has attempted to contact the creditor by registered or certified mail, and either in person, by telephone, or by email''.

PART 200—PETITIONS FOR RULEMAKING

■ 91. The authority citation for part 200 is amended to read as follows:

Authority: 52 U.S.C. 30107(a)(8), 30111(a)(8); 5 U.S.C. 553(e).

§ 200.2 [Amended]

■ 92. Amend § 200.2(b)(5) by removing the phrase ''addressed and submitted to the Federal Election Commission, Office of General Counsel, at the street address identified in the definition of ''Commission'' in § 1.2'' and adding in its place the phrase ''addressed to the Office of General Counsel and filed pursuant to 11 CFR 100.19(g)''.

§ 200.3 [Amended]

■ 93. Amend § 200.3 as follows:

■ a. In paragraph (a)(2), remove ''Send a letter to the Commissioner of Internal Revenue, pursuant to 52 U.S.C. 30111(f), seeking the IRS's'' and add in its place the phrase ''Pursuant to 52 U.S.C. 30111(f), seek the Internal Revenue Service's''; and

■ b. In paragraph (a)(3), remove the phrase ''Send a letter to'' and add in its place the word ''Notify''.

§ 200.4 [Amended]

■ 94. Amend § 200.4(b) by removing the phrase ''sending a letter to'' and adding in its place the word ''notifying''.

§ 200.6 [Amended]

■ 95. Amend § 200.6(a)(5) by removing the phrase ''audio tapes'' and adding in its place the phrase ''audio recordings''.

PART 201—EX PARTE COMMUNICATIONS

■ 96. The authority citation for part 201 continues to read as follows:

Authority 52 U.S.C. 30107(a)(8), 30108, 30111(a)(8), and 30111(b); 26 U.S.C. 9007, 9008, 9009(b), 9038, and 9039(b).

§ 201.3 [Amended]

■ 97. Amend § 201.3 as follows:

■ a. In paragraph (b)(1), remove the phrase ''the letter'' and add in its place te phrase ''the agreement'' wherever it appears; and

■ b. In paragraph (b)(2)(i), remove the word ''letter'' and add in its place the word ''notification''.

PART 300—NON-FEDERAL FUNDS

■ 98. The authority citation for part 300 continues to read as follows:

Authority: 52 U.S.C. 30104(e), 30111(a)(8), 30116(a), 30125, and 30143.

§ 300.2 [Amended]

■ 99. Amend § 300.2 in paragraph (m)(1)(iii), by removing the phrase ''Web address'' and adding in its place the phrase ''website address''; and removing the phrase ''Web page'' and adding in its place the phrase ''web page''.

§ 300.64 [Amended]

■ 100. Amend § 300.64 as follows:

■ a. In paragraphs (c)(3)(ii) and (iii), remove the word ''written'' and add in its place the word ''printed'' wherever it appears;

■ b. In paragraph (c)(3)(iii), remove the word ''non-written'' and add in its place the word ''non-printed''; and

■ c. In paragraphs (c)(3)(v)(A) and (B), remove the word ''written'' wherever it appears.

PART 9003—ELIGIBILITY FOR PAYMENTS

■ 101. The authority citation for part 9003 continues to read as follows:

Authority: 26 U.S.C. 9003 and 9009(b).

§ 9003.1 [Amended]

■ 102. Amend § 9003.1 as follows:

■ a. In paragraph (a)(1), remove the word ''letter'' and add in its place the word ''writing'';

■ b. In paragraph (a)(2), remove the word ''letter'' and add in its place the word ''agreement'' wherever it appears;

■ c. In paragraphs (b)(2) and (3), remove the word ''documentation'' and add in its place the word ''record'' wherever it appears;

■ d. In paragraph (b)(4), remove the phrase ''computerized magnetic media, such as magnetic tapes or magnetic diskettes'' and add in its place the phrase ''digital storage devices'';

■ e. In paragraphs (b)(4) and (5), remove the word ''documentation'' and add in its place the word ''records'' wherever it appears; and

■ f. In paragraph (b)(7), remove the phrase ''name and mailing address'' and add in its place the phrase ''name, email address, and mailing address''.

■ 103. Revise § 9003.2(d) to read as follows:

§ 9003.2 Candidate certifications.

* * * * *

(d) *Form.* Major party candidates shall sign and submit the certifications required under 11 CFR 9003.2 within 14 days after receiving the party's nomination for election. Minor and new party candidates shall sign and submit such certification within 14 days after such candidates have qualified to appear on the general election ballot in 10 or more States pursuant to 11 CFR 9002.2(a)(2). The Commission, upon written request by a minor or new party candidate made at any time prior to the date of the general election, may extend the deadline for filing such certification, except that the deadline shall be a date prior to the day of the general election.

§ 9003.3 [Amended]

■ 104. Amend § 9003.3(a)(1)(vi)(A) by removing the phrase ''is made by check, money order, or other negotiable instrument which''.

■ 105. Amend § 9003.5 by:

■ a. Revising the section heading;

■ b. Revising the paragraph heading of paragraph (b);

■ c. In paragraphs (b)(1) and (b)(2)(ii), removing the phrase ''canceled check negotiated by the payee'' and adding in its place the phrase ''canceled check negotiated by the payee or a record of electronic transfer to the payee'' wherever it appears;

■ d. In paragraphs (b)(1)(ii)(A) and (B), removing the word ''documents'' and adding in its place the word ''records'' wherever it appears;

■ e. In paragraph (b)(1)(iii), removing the word ''documentation'' and adding in its place the word ''record'';

■ f. In paragraphs (b)(1)(iv), (b)(4), and (c), removing the word ''documentation'' and adding in its place the word ''records'' wherever it appears; and

■ g. In paragraph (b)(1)(iv), removing the phrase ''canceled check negotiated by the payee'' and adding in its place the phrase ''canceled check negotiated by the payee or the record of electronic transfer to the payee''.

The revisions read as follows:

§ 9003.5 Records of disbursements.

* * * * *

(b) *Records required.* * * *

* * * * *

§ 9003.6 [Amended]

■ 106. Amend § 9003.6 as follows:

■ a. In paragraph (a), remove the phrase ''computerized magnetic media, such as magnetic tapes or magnetic diskettes'' and add in its place the phrase ''digital storage devices'';

■ b. Remove paragraph (b) and redesignate paragraph (c) as paragraph (b); and

■ c. In newly redesignated paragraph (b), remove the word ''documentation'' and add in its place the word ''records''.

PART 9004—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS

■ 107. The authority citation for part 9004 continues to read as follows:

Authority: 26 U.S.C. 9004 and 9009(b).

§ 9004.6 [Amended]

■ 108. Amend § 9004.6 as follows:

■ a. In paragraph (a)(1), remove the phrase ''telephone service, typewriters, and computers'' and add in its place the phrase ''telephone and internet service, and computers or other electronic devices''; and

■ b. In paragraph (b)(3), remove the phrase ''telephone service'' and add in its place the phrase ''telephone and internet service''.

§ 9004.7 [Amended]

■ 109. Amend § 9004.7(b)(5)(iv) and (v) by removing the word ''documentation'' and adding in its place the word ''records'' wherever it appears.

§ 9004.9 [Amended]

■ 110. Amend § 9004.9(d)(1)(i) and (e) by removing the word ''documentation'' and adding in its place the word ''records'' wherever it appears.

PART 9007—EXAMINATIONS AND AUDITS; REPAYMENTS

■ 111. The authority citation for part 9007 continues to read as follows:

Authority: 26 U.S.C. 9007 and 9009(b).

§ 9007.1 [Amended]

■ 112. Amend § 9007.1 as follows:
■ a. In paragraph (b)(1) introductory text, remove the phrase ''the Commission may request additional or updated computerized information'' and add in its place the phrase ''the Commission may request additional or updated information''; and
■ b. In paragraphs (b)(1)(iv) and (c)(2), remove the word ''documentation'' and add in its place the word ''records'' wherever it appears.

§ 9007.7 [Amended]

■ 113. Amend § 9007.7 as follows:
■ a. In paragraph (a), remove the word ''documents'' and add in its place the words ''documents, records,'' wherever it appears; and
■ b. In paragraph (b)(2), remove the word ''tapes'' and add in its place the word ''recordings'' wherever it appears.

PART 9032—DEFINITIONS

■ 114. The authority citation for part 9032 continues to read as follows:

Authority: 26 U.S.C. 9032 and 9039(b).

§ 9032.2 [Amended]

■ 115. Amend § 9032.2(d) by removing the phrase ''by letter'' and adding in its place the phrase ''in writing''.

PART 9033—ELIGIBILITY FOR PAYMENTS

■ 116. The authority citation for part 9033 continues to read as follows:

Authority: 26 U.S.C. 9003(e), 9033 and 9039(b).

■ 117. Amend § 9033.1 by:
■ a. Revising paragraph (a)(1);
■ b. In paragraphs (b)(2) through (6), removing the word ''documentation'' and adding in its place the word ''records'' wherever it appears;
■ c. In paragraph (b)(5), removing the phrase ''computerized magnetic media, such as magnetic tapes or magnetic diskettes'' and adding in its place the phrase ''digital storage devices''; and
■ d. Revising paragraph (b)(8).

The revisions read as follows:

§ 9033.1 Candidate and committee agreements.

(a) * * *

(1) A candidate seeking to become eligible to receive Presidential primary matching fund payments shall agree in a writing signed by the candidate to the Commission that the candidate and the candidate's authorized committee(s) will comply with the conditions set forth in 11 CFR 9033.1(b). The candidate may submit the written agreement required by this section at any time after January 1 of the year immediately preceding the Presidential election year.

* * * * *

(b) * * *

(8) The candidate and the candidate's authorized committee(s) will submit the name, email address, and mailing address of the person who is entitled to receive matching fund payments on behalf of the candidate and the name and address of the campaign depository designated by the candidate as required by 11 CFR part 103 and 11 CFR 9037.3. Changes in the information required by this paragraph shall not be effective until submitted to the Commission in a writing signed by the candidate or the Committee treasurer.

* * * * *

§ 9033.2 [Amended]

■ 118. Amend § 9033.2 as follows:
■ a. In paragraph (a)(1), remove the phrase ''letter containing the required certifications'' and add in its place the word ''certifications''; and
■ b. In paragraph (c), remove the word ''documentation'' and add in its place the word ''records''.

§ 9033.5 [Amended]

■ 119. Amend paragraph (a)(2) of § 9033.5 by removing ''by letter'' and adding in its place ''in writing''.
■ 120. Amend § 9033.11 by:
■ a. Revising the section heading;
■ b. Revising the paragraph heading of paragraph (b);
■ c. In the introductory text to paragraph (b)(1), adding the phrase ''or a record of electronic transfer'' after the words ''canceled check negotiated by the payee'';
■ d. In paragraphs (b)(1)(ii)(A) and (B), removing the word ''documents'' and adding in its place the word ''records'' wherever it appears;
■ e. In the introductory text to paragraph (b)(1)(iii) and paragraph (b)(1)(iv), removing the word ''documentation'' and adding in its place the word ''record'' wherever it appears;
■ f. In paragraph (b)(1)(iv), removing ''the payee'' and adding in its place ''the payee or the record of electronic transfer'';
■ g. In paragraph (b)(2)(ii), adding the phrase ''or a record of electronic transfer'' after the words ''canceled check negotiated by the payee''; and
■ h. In paragraphs (b)(4) and (c), removing the word ''documentation'' and add in its place the word ''records'' wherever it appears.

The revisions read as follows:

§ 9033.11 Records of disbursements.

* * * * *

(b) *Records required.* * * *

* * * * *

§ 9033.12 [Amended]

■ 121. Amend § 9033.12 as follows:
■ a. In paragraph (a), remove the phrase ''computerized magnetic media, such as magnetic tapes or magnetic diskettes'' and add in its place the phrase ''digital storage devices'';
■ b. Remove paragraph (b) and redesignate paragraph (c) as paragraph (b); and
■ c. In newly redesignated paragraph (b), remove the word ''documentation'' and add in its place the word ''records''.

PART 9034—ENTITLEMENTS

■ 122. The authority citation for part 9034 continues to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

■ 123. Amend § 9034.2 by:
■ a. In paragraph (b), removing the words ''and the card number'' from the last sentence;
■ b. In the introductory text to paragraph (c), removing the words ''and card number'' from the last sentence;
■ c. In paragraph (c)(1)(i), removinge the words ''written document'' and adding in its place the word ''writing'';
■ d. In paragraph (c)(1)(iii), removing the word ''documentation'' and adding in its place the word ''records''; and
■ e. Adding paragraph (c)(8)(iii).

The addition reads as follows:

§ 9034.2 Matchable contributions.

* * * * *

(c) * * *

(8) * * *

(iii) To be attributed to more than one person, a signed written statement must accompany the credit or debit card contribution indicating that the contribution was made from each individual's personal funds in the amount so attributed.

§ 9034.5 [Amended]

■ 124. Amend § 9034.5(c)(1) and (d) by removing the word ''documentation'' and adding in its place the word ''records'' wherever it appears.

§ 9034.6 [Amended]

■ 125. Amend § 9034.6 as follows:
■ a. In paragraph (a)(1), remove the phrase ''telephone service, typewriters, and computers'' and add in its place the phrase ''telephone and internet service, and computers or other electronic devices''; and
■ b. In paragraph (b)(3), remove the phrase ''telephone service'' and add in its place the phrase ''telephone and internet service''.

§ 9034.7 [Amended]

■ 126. Amend § 9034.7(b)(5)(iv) and (v) by removing the word ''documentation'' and adding in its place the word ''records'' wherever it appears.

§ 9034.8 [Amended]

■ 127. Amend § 9034.8(b)(4) by removing the words ''recordkeeping, reporting and documentation'' and adding in their place the words ''recordkeeping and reporting''.

PART 9035—EXPENDITURE LIMITATIONS

■ 128. The authority citation for part 9035 continues to read as follows:

Authority: 26 U.S.C. 9035 and 9039(b).

§ 9035.1 [Amended]

■ 129. Amend § 9035.1(c)(3) by removing the word ''documentation'' and adding in its place the word ''records''.

PART 9036—REVIEW OF MATCHING FUND SUBMISSIONS AND CERTIFICATION OF PAYMENTS BY COMMISSION

■ 130. The authority citation for part 9036 continues to read as follows:

Authority: 26 U.S.C. 9036 and 9039(b).

§ 9036.1 [Amended]

■ 131. Amend § 9036.1 as follows:
■ a. In paragraph (b)(2), remove the phrase ''computerized magnetic media, such as magnetic tapes or magnetic diskettes'' and add in its place the phrase ''digital storage devices'';
■ b. In paragraphs (b)(3) and (4), remove the word ''documentation'' and add in its place the word ''records'' wherever it appears;
■ c. In paragraph (b)(4), add the phrase '', or, for deposits made electronically, information associating contributions to their deposit in the designated campaign depository, such as a batch number'' after the words ''bank statements'';
■ d. In paragraph (b)(5), remove the phrase ''full-size photocopy of each unpaid check, and copies of'' and add in its place the phrase ''record that contains a complete image of each unpaid check and'';
■ e. In paragraph (b)(6), remove the words ''full-size photocopy'' and add in their place the words ''record that contains a complete image''; and
■ f. In paragraph (b)(7), remove the word ''documentation'' and add in its place the word ''records'' wherever it appears.

§ 9036.2 [Amended]

■ 132. Amend § 9036.2 as follows:
■ a. In paragraph (b)(1)(ii), remove the phrase ''either solely in magnetic media from or in both printed and magnetic media forms'' and add in its place the phrase ''in printed or digital form or a combination of printed and digital forms'';
■ b. In paragraph (b)(1)(iii), remove the words ''checks returned unpaid'' and add in their place the phrase ''checks returned unpaid or credit or debit card or other electronic payment chargebacks'';
■ c. In paragraph (b)(1)(vi), remove the phrase ''as specified in the Computerized Magnetic Media Requirements'' from the second sentence;
■ d. In paragraph (b)(1)(vi), remove the phrase ''shall provide the computer equipment and software needed to retrieve and read the digital images, if necessary, at no cost to the Commission, and'' from the fourth sentence; and
■ e. In paragraphs (b)(1)(vi) and (vii), remove the words ''documentation'' and add in its place the word ''records'' wherever it appears.

■ 133. Amend § 9036.3 by:
■ a. Revising the section heading; and
■ b. In the introductory text, paragraphs (b) introductory text, (b)(4), and (d) by removing the word ''documentation'' and adding in its place the word ''records'' wherever it appears.

The revision reads as follows:

§ 9036.3 Submission errors and insufficient records.

* * * * *

§ 9036.4 [Amended]

■ 134. Amend § 9036.4(b)(4) by removing the word ''documentation'' and adding in its place the word ''records''.

§ 9036.5 [Amended]

■ 135. Amend § 9036.5(c)(1) by removing the word ''documentation'' and adding in its place the word ''records'' wherever it appears.

PART 9038—EXAMINATIONS AND AUDITS

■ 136. The authority citation for part 9038 continues to read as follows:

Authority: 26 U.S.C. 9038 and 9039(b).

§ 9038.1 [Amended]

■ 137. Amend § 9038.1 as follows:
■ a. In the introductory text to paragraph (b)(1), remove the phrase ''the Commission may request additional or updated computerized information'' and add in its place the phrase ''the Commission may request additional or updated information''; and
■ b. In paragraphs (b)(1)(iv) and (c)(2), remove the word ''documentation'' and add in its place the word ''records'' wherever it appears.

§ 9038.2 [Amended]

■ 138. Amend § 9038.2(b)(3) by removing the word ''documentation'' from the paragraph heading and adding in its place the word ''records''.

§ 9038.7 [Amended]

■ 139. Amend § 9038.7 as follows:
■ a. In paragraph (a), remove the word ''documents'' and add in its place the words ''documents, records,'' wherever it appears; and
■ b. In paragraph (b)(2), remove the word ''tapes'' and add in its place the word ''recordings'' wherever it appears.

PART 9039—REVIEW AND INVESTIGATION AUTHORITY

■ 140. The authority citation for part 9039 continues to read as follows:

Authority: 26 U.S.C. 9039.

§ 9039.2 [Amended]

■ 141. Amend § 9039.2 as follows:
■ a. In paragraph (a)(3), remove the word ''documents'' and add in its place the words ''documents or records''; and
■ b. In paragraph (b), remove the word ''documentation'' and add in its place the word ''records''.

§ 9039.3 [Amended]

■ 142. Amend § 9039.3(b)(2)(vi) by removing the word ''documents'' and adding in its place the word ''records''.

Dated: December 14, 2023.

On behalf of the Commission,

Dara Lindenbaum,

Chair, Federal Election Commission.

[FR Doc. 2023–27908 Filed 12–29–23; 8:45 am]

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's **List of Public Laws**.

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TABLE OF EFFECTIVE DATES AND TIME PERIODS—JANUARY 2024

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	21 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	35 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
January 2	Jan 17	Jan 23	Feb 1	Feb 6	Feb 16	Mar 4	Apr 1
January 3	Jan 18	Jan 24	Feb 2	Feb 7	Feb 20	Mar 4	Apr 2
January 4	Jan 19	Jan 25	Feb 5	Feb 8	Feb 20	Mar 4	Apr 3
January 5	Jan 22	Jan 26	Feb 5	Feb 9	Feb 20	Mar 5	Apr 4
January 8	Jan 23	Jan 29	Feb 7	Feb 12	Feb 22	Mar 8	Apr 8
January 9	Jan 24	Jan 30	Feb 8	Feb 13	Feb 23	Mar 11	Apr 8
January 10	Jan 25	Jan 31	Feb 9	Feb 14	Feb 26	Mar 11	Apr 9
January 11	Jan 26	Feb 1	Feb 12	Feb 15	Feb 26	Mar 11	Apr 10
January 12	Jan 29	Feb 2	Feb 12	Feb 16	Feb 26	Mar 12	Apr 11
January 16	Jan 31	Feb 6	Feb 15	Feb 20	Mar 1	Mar 18	Apr 15
January 17	Feb 1	Feb 7	Feb 16	Feb 21	Mar 4	Mar 18	Apr 16
January 18	Feb 2	Feb 8	Feb 20	Feb 22	Mar 4	Mar 18	Apr 17
January 19	Feb 5	Feb 9	Feb 20	Feb 23	Mar 4	Mar 19	Apr 18
January 22	Feb 6	Feb 12	Feb 21	Feb 26	Mar 7	Mar 22	Apr 22
January 23	Feb 7	Feb 13	Feb 22	Feb 27	Mar 8	Mar 25	Apr 22
January 24	Feb 8	Feb 14	Feb 23	Feb 28	Mar 11	Mar 25	Apr 23
January 25	Feb 9	Feb 15	Feb 26	Feb 29	Mar 11	Mar 25	Apr 24
January 26	Feb 12	Feb 16	Feb 26	Mar 1	Mar 11	Mar 26	Apr 25
January 29	Feb 13	Feb 20	Feb 28	Mar 4	Mar 14	Mar 29	Apr 29
January 30	Feb 14	Feb 20	Feb 29	Mar 5	Mar 15	Apr 1	Apr 29
January 31	Feb 15	Feb 21	Mar 1	Mar 6	Mar 18	Apr 1	Apr 30